

ASIAN-AFRICAN LEGAL CONSULTATIVE ORGANIZATION



THE INTERNATIONAL CRIMINAL COURT: RECENT DEVELOPMENTS

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THE INTERNATIONAL CRIMINAL COURT: RECENT DEVELOPMENTS

I. INTRODUCTION

A. Background

1. The International Criminal Court (ICC), governed by the “Rome Statute” of the International Criminal Court,¹ is the first permanent, treaty based court established to help end impunity for the perpetrators of the most serious crimes of international concern namely, the Crimes of Genocide, Crimes against Humanity, and War Crimes. The Court will also have jurisdiction over the Crime of Aggression once a definition has been adopted by the Assembly of States Parties.² The Court may exercise jurisdiction over such international crimes only if they were committed on the territory of a State Party or by one of its nationals. These conditions however do not apply if a situation is referred to the Prosecutor by the United Nations Security Council, or if a State makes a declaration accepting the jurisdiction of the Court.

2. The Rome Statute was adopted on 17 July 1998 and entered into force on 1 July 2002.³ As of 1st June 2008, 108 countries are States Parties to the Rome Statute⁴. Out of 108 countries⁵ 30 are African States,⁶ 14 are Asian States,⁷ 16 are from Eastern Europe, 23 are from Latin America and the Caribbean, and 25 are from Western Europe and other States. The ICC is an independent, permanent judicial institution and not part of the United Nations.⁸ Although, the Court’s expenses are funded primarily by States Parties, it also receives voluntary contributions from governments, international organizations,

¹ Text of the Rome Statute circulated as document A/CONF.183/9 of 17 July 1998 and corrected by proces-verbaux of 10 November 1998, 12 July 1999, 30 November 1999, 8 May 2000, 17 January 2001 and 16 January 2002.

² http://www.icc-cpi.int/library/about/ataglance/ICC-Ataglance_en.pdf

³ Official Records of the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, Rome, 15 June-17 July 1998, vol. I; Final documents (United Nations publication, Sales No. E. 02.I.5), sect. A.

⁴ <http://www.icc-cpi.int/asp/statesparties.html>

⁵ This information based on ICC website as of 1st June 2008, visited on 25th March 2009.

⁶ Burkina Faso, 30 November 1998; **Senegal**, 2 February 1999; **Ghana**, 20 December 1999; Mali, 16 August 2000; Lesotho, 6 September 2000; **Botswana**, 8 September 2000; **Sierra Leone**, 15 September 2000; Gabon, 20 September 2000; **South Africa**, 27 November 2000; **Nigeria**, 27 September 2001; Central African Republic, 3 October 2001; Benin, 22 January 2002; **Mauritius**, 5 March 2002; Democratic Republic of the Congo, 11 April 2002; Niger, 11 April 2002; **Uganda**, 14 June 2002; Namibia, 20 June 2002; **Gambia**, 28 June 2002; **United Republic of Tanzania**, 20 August 2002; Malawi, 9 September 2002; Djibouti, 5 November 2002; Zambia, 13 November 2002; Guinea, 14 July 2003; Congo, 3 May 2004; Burundi, 21 September 2004; Liberia, 22 September 2004; **Kenya**, 15 March 2005; Comoros, 18 August 2006; Chad, 1 January 2007 and Madagascar, 14 March 2008. More information see <http://www.icc-cpi.int/region&id=3.html>

⁷ Fiji, 29 November 1999; Marshall Islands, 7 December 2000; Nauru, 12 November 2001; **Cyprus**, March 2002; Cambodia, 11 April 2002; **Mongolia**, 11 April 2002; **Jordan**, 11 April 2002; Tajikistan, 5 May 2002; Timor-Leste, 6 September 2002; Samoa, 16 September 2002; **Republic of Korea**, 13 November 2002; Afghanistan, 10 February 2003; **Japan**, 17 July 2007 and Cook Island, 18 July 2008. For more information see <http://www.icc-cpi.int/region&id=4.html>

⁸ http://www.icc-cpi.int/library/about/ataglance/ICC-Ataglance_en.pdf

individuals, corporations and other entities.⁹ Fifty-two States, including one State not Party to the Rome Statute, have ratified or acceded to the Agreement on the Privileges and Immunities of the International Criminal Court.

3. The Statute recognizes that States have the primary responsibility for investigating and punishing these crimes and also the Court is complementary to the efforts of States to investigating and prosecuting international crimes. The Court is the focal point of an emerging system of international criminal justice which includes national courts, international courts and tribunals with both national and international components. There are currently four situations, which are under investigation by the Office of the Prosecutor of the ICC. Three States Parties have referred situations on their territories to the Prosecutor, and also the Security Council has referred one situation to the Prosecutor for investigation.

4. This Secretariat Report prepared for the **Forty-Eighth Annual Session** seeks to highlight the developments that have taken place after the Forty-Seventh Annual Session of the Organization. This Report briefly highlights the Issues for focused consideration during the Forty-Eighth Session; AALCO's Work Programme on the International Criminal Court in the previous years; Report on the Seventh Session of the Assembly of States Parties, Report of the Special Working Group on the Crime of Aggression, Consideration of the item during the Sixty-Third Session of the United Nations General Assembly (2008), Summary Report of the Seminar jointly organized by AALCO and the Government of Japan on "International Criminal Court: Emerging Issues and Future Challenges", held on 18th March 2009, in New Delhi and Comments and Observations of the AALCO Secretariat.

B. Deliberations during the Forty-Seventh Annual Session of AALCO (30th June to 4th July 2008, New Delhi (HQ) India)

5. **Amb. S.R. Tabatabaei Shafiei, Deputy Secretary-General** introduced the topic at the Forty-Seventh Session and informed that the Secretariat had been following the developments related to the International Criminal Court since its Thirty-Fifth Session, held in Manila (Philippines) in 1996. The DSG stated that as of 1st June 2008, 106 States Parties had ratified the Rome Statute. The Statute recognized that States had the primary responsibility for investigating and prosecuting international crimes, guaranteeing fair public trials consistent with internationally recognized human rights principles. He noted the importance of cooperation between the Court and the United Nations; States; International and Regional Organizations as essential to an effective and efficient functioning of the Court. In this regard he mentioned that a Memorandum of Understanding between the AALCO and ICC was signed on 5 February 2008.

6. Thereafter, he briefly enumerated the discussion during the Sixth Session of the Assembly of States Parties on a non-paper by the Chairman of the Special Working Group on the Crime of Aggression, on defining the individual's conduct in relation to the Crime of Aggression. The non-paper met with broad agreement among delegations.

⁹ http://www.icc-cpi.int/library/about/ataglance/ICC-Ataglance_en.pdf

Strong support was expressed for using United Nations General Assembly resolution 3314, adopted at the 29th Session of the UNGA on 14 December 1974, as a basis in defining an act of aggression. As regards the conditions for the exercise of jurisdiction, consideration was given to two new elements concerning the crime of aggression, namely 1) the suggested role of the Pre-Trial Chamber and 2) the so-called 'green light' option with regard to the Security Council's role. Discussions in the resumed Sixth Session of ASP held from 2-6 June 2008 also made headway on a revised paper presented by the Chairman covering the definition of the crime of aggression and jurisdiction of the Court in respect of that crime. However, despite all these efforts the definition of the crime of aggression remained elusive.

7. Several delegations participated in the deliberations on the topic and attached great importance to the fundamental principles of the working of the ICC, namely independence, impartiality, rule of law, and professionalism. They added that the principle of “complementarity” was the key to the survival and vitality of the ICC and national juridical systems, social tradition and culture deserved due respect. However, National Courts should be given the primary role in the prosecution of human rights violations, they believed that it would encourage universal acceptance of the jurisdiction of the ICC.

8. All the delegations made observations regarding the “Definition of the Crime of Aggression”. Some noted that the ICC should have the widest possible reach in terms of providing for various acts defining the crime of aggression. They gave their views on the individual responsibility and command responsibility.

9. The Delegate of the Islamic Republic of Iran noted that despite the efforts of the international community over the past sixty years it was regrettable that such a definition still remained elusive, and that the international community continued to struggle with a non-paper by the Chairman of the Working Group on the Crime of Aggression, instead of formulated articles that could be considered in the Review Conference scheduled to be held in Rome in 2010. He said that if this opportunity was not availed this matter would be further postponed by another 10 years.

10. The Delegate of the Republic of South Africa noted that as regards the definition of the State act of aggression, broad consensus was also emerging, as the outstanding issues, especially the place of and reference to General Assembly Resolution 3314 (XXIX) on the definition of aggression, were being considered, studied and analysed. The major definitional issue that remained were the conditions for the exercise of jurisdiction, and especially the role of the Security Council in that regard. The Delegate called on all States Parties and States participating in the proceedings of the Special Working Group to work towards an acceptable and workable compromise in this regard, taking the important principle of equality before the law duly into account, in order to ensure that the mandate of the Special Working Group could be successfully completed well in advance of the Review Conference scheduled for 2010.

11. Many delegations wanted a clearly defined role for the Security Council in case of failure or declining to determine the acts of Aggression to the effect that independent judicial bodies such as ICC should not be impeded.

12. The Delegate of Japan noted from its experience that ratification to the Statute was an arduous process. He noted with satisfaction that 16 Member States of AALCO are parties to the Statute and encouraged others to do so.

13. The Delegate of Indonesia informed that his country had taken steps towards the ratification of the Statute, by promulgating normative and institutional infrastructure.

14. In relation to the issue of prosecutorial discretion and victims rights highlighted by the Secretariat, the Delegate of Malaysia noted that since this matter was not under discussion in the Special Working Group, clarification was required on what, if any, additional proposals AALCO or its Member States may have on this matter.

15. The proposal of holding an “Inter-Sessional Meeting of Experts on International Criminal Law from the Asian-African Region” to formulate a definition of the Crime of Aggression by AALCO Member States, was put forward and accepted vide RES/47/S 9.

C. Issues for focussed Consideration during the Forty-Eighth Session

16. Focussing on basic principles of criminal law, and in particular the elements of offences, brings to the fore the fundamental structure of the “Crime of Aggression” that has emerged from the negotiations to date. The definition of the Crime of Aggression is so far one of the most important unresolved issues under the Rome Statute and is of great significance for developing countries too. The Crime of Aggression is included in the Rome Statute under Article 5, i.e., Crimes within the jurisdiction of the Court. Though the Rome Statute is supposed to have jurisdiction over the Crime of Aggression, it has not been defined yet. Work on elaborating an acceptable definition of the Crime of Aggression is in progress in the Special Working Group constituted by the Assembly of States Parties. *Bearing in mind that the ‘Review Conference’ would be held in 2010, this Secretariat report has identified some of the issues for focused consideration during the Forty-Eighth Session. They are:*

- *Crime of aggression – 2009 Chairman’s Paper;*
- *Definition of the “crime” and the “act of aggression”;*
- *Conditions for the exercise of jurisdiction;*
- *Activation of the Court’s subject-matter jurisdiction on aggression with respect to Security Council referrals;*
- *Future work on Aggression; and*
- *Issues before the Review Conference.*

II. AALCO'S WORK PROGRAMME ON THE INTERNATIONAL CRIMINAL COURT

17. The AALCO has been following the developments relating to the establishment of the ICC since its **Thirty-Fifth Session** (Manila, 1996). The initial discussions in the AALCO relating to the establishment of the International Criminal Court were first held at two Special Meetings convened within the framework of the Thirty-Fifth (Manila, 1996) and Thirty-Sixth (Tehran, 1997) Sessions of the AALCO.

18. The Organization at its **Thirty-Seventh Session** (New Delhi, 1998) noting that a Conference of Plenipotentiaries was to be held in Rome from 15th June to 17th July, 1998 directed the Secretariat to participate at the Conference and report on its outcome at the next session. Accordingly, the then Deputy Secretary General, Ambassador Dr. Wafik Zaher Kamil represented the AALCO at the said conference. Two meetings were organized by the AALCO parallel to the Rome Conference with the aim to collate the views of the AALCO's Member States on the contentious issues before the Conference. The views expressed at those two meetings were then forwarded to the Chairman of the Committee of the Whole, Mr. Philippe Kirsch.

19. At the **Thirty-Eighth Session** (Accra, 1999) the outcome of the Rome Conference was duly reported and the Secretariat was directed to monitor and report on the developments in the Preparatory Commission established pursuant to Resolution F adopted in the Rome Conference.

20. At the **Thirty-Ninth Session** (Cairo, 2000) the Secretariat reported on the developments in the First and Second sessions of the Preparatory Commission held during the year 1999. After detailed discussions the Organization in its resolution 39/7 requested the Secretariat to continue monitoring the work of the Preparatory Commission and report to the Fortieth Session.

21. At the **Fortieth Session** (New Delhi, HQ, 2001) the Secretariat reported on the developments in the Sixth and Seventh Sessions of the Preparatory Commission held during the years 2000 and 2001. After detailed deliberations, the Secretariat was directed to monitor the work of the Preparatory Commission vide resolution 40/7 and present a substantive report to its 41st Session.

22. At the **Forty-First Session** (Abuja, 2002) Deputy Secretary-General Amb. Dr. Ali Reza Deihim reported on the developments in the Eighth, Ninth and Tenth sessions of the Preparatory Commission, held during the years 2001 and 2002. After intensive deliberations, the Secretariat was directed to monitor the deliberations of the First Assembly of States Parties and in the subsequent meetings and present a substantive report on the developments at its Forty-Second Session.

23. In the rationalization of agenda at the **Forty-Second Session** (Seoul, 2003), the item was considered as a deliberated item and the Deputy Secretary-General Amb. Dr. Ali Reza Deihim reported on the progress achieved on the item pertaining to the International Criminal Court after the entry into force of the Rome Statute. After

intensive deliberations, the Secretariat *vide* Res/42/10 was directed to “follow-up the deliberations in the Second Meeting of the Assembly of States Parties and its subsequent meetings, and in the Working Group on the Crime of Aggression, and present a report at its forty-third session”.

24. At the **Forty-Third Session** (Bali, 2004), the Deputy Secretary-General Amb. Dr. Ali Reza Deihim *inter alia* reported upon the work of the Second Session of the Assembly of States Parties, facts pertaining to the first possible cases before the ICC, the extension of UN peacekeepers immunity from the ICC’s jurisdiction by the Security Council, as well as the bilateral immunity agreements entered into by the United States of America with other states. He also suggested for an exchange of views on AALCO’s role in the context of the ICC, as he believed that exchange of information would definitely contribute to a better understanding of Rome Statute and its importance in the process of achieving international criminal justice against perpetrators of serious crimes against humanity, war crimes, genocide and in future crime of aggression.

25. At the **Forty-Fourth Session** (Nairobi, 2005) the agenda item on “The International Criminal Court: Recent Developments” was considered as a deliberated item. The Vice President of ICC Her Excellency Judge Akua Kuenyehia had appreciated Asian and African states for playing an important role in the Rome Conference. Her presentation focused on: the need for an ICC; the role of States and inter-governmental organization. The delegations from the different member states expressed their views on Definition of Aggression, Special working group on the Crime of Aggression and questioned Darfur issue to the ICC.

26. At the Forty-Fourth Session Resolution 44/S10 adopted *inter alia* directed the Secretariat to follow-up the deliberations in the “Special Working Group on the Crime of Aggression” with a view to expediting the elaboration of the definition of the crime of aggression, and the conditions under which the ICC can exercise its jurisdiction with regard to this crime. It also directed the Secretariat to follow-up the deliberations in the Fourth Session of the Assembly of the States Parties and its subsequent meetings, in the Special Working Group on the Crime of Aggression, and present a report in the Forty Fifth Session. The Secretary General was requested to “explore the feasibility of convening an inter-sessional meeting, *inter alia*, for promotion of human rights in the backdrop of the Rome Statute of ICC; the implementation of the Rome Statute through national legislative mechanisms; and the ways and means through which the AALCO Member States can contribute to the process of elaboration of the definition of the crime of aggression, and the conditions under which the ICC can exercise its jurisdiction with regard to this crime. The topic was not considered at the Forty-Fifth Golden Jubilee Session (New Delhi) as it was a non-deliberated item.

27. At the **Forty-Sixth Session** (Cape Town, 2007) the agenda item on “The International Criminal Court: Recent Developments” was considered as a deliberated item. In that Session deliberations mainly focussed on the “definition of aggression” and delegations expressed their views on it. Moreover, the deliberations also included the work done by Special working group on the Crime of Aggression and the Darfur issue., Resolution 46/S9 adopted at the Forty-Sixth Session *inter alia* directed the Secretariat to follow-up the deliberations in the “Special Working Group on the Crime of Aggression” with a view to expediting the elaboration of the definition of the crime of aggression, and

the conditions under which the ICC can exercise its jurisdiction with regard to this crime. It also directed the Secretariat to follow-up the deliberations in the Sixth Session of the Assembly of the States Parties and its subsequent meetings, in the Special Working Group on the Crime of Aggression, and present a report in the Forty-seventh Session. The Secretary General was requested to “explore the feasibility of convening an inter-sessional meeting, *inter alia*, for promotion of human rights in the backdrop of the Rome Statute of ICC; the implementation of the Rome Statute through national legislative mechanisms; and the ways and means through which the AALCO Member States can contribute to the process of elaboration of the definition of the crime of aggression, and the conditions under which the ICC can exercise its jurisdiction with regard to this crime.

28. At the **Forty-Seventh Session** (New Delhi (HQ), 2008) the agenda item on “The International Criminal Court: Recent Developments” was considered as a deliberated items. The deliberations at that Session have been mentioned in the Introduction, part B of this document. Resolution RES/47/S 9 adopted on 4th July 2008 directed the Secretariat to follow-up the deliberations in the Special Working Group on the Crime of Aggression, Seventh Session of the Assembly of States Parties, developments regarding the cases in the ICC and present a report at the Forty-Eighth Session. The Secretary General was requested to “explore the feasibility of convening an inter-sessional meeting, *inter alia*, for promotion of human rights in the backdrop of the Rome Statute of ICC; the implementation of the Rome Statute through national legislative mechanisms; and the ways and means through which the AALCO Member States can contribute to the process of elaboration of the definition of the crime of aggression, and the conditions under which the ICC can exercise its jurisdiction with regard to this crime.

III. REPORT OF THE ASSEMBLY OF STATES PARTIES

29. The Assembly of States Parties is the management oversight and legislative body of the International Criminal Court and Part 11 of the Rome Statute provides for the Assembly of States Parties (ASP). It is composed of representatives of the States that have ratified and acceded to the Rome Statute. Each State Party is represented by a representative who is proposed to the Credential Committee by the Head of the State of the government or the Minister of Foreign Affairs.¹⁰ Moreover, each State Party has one vote and every effort has to be made to reach decisions by consensus. If consensus cannot be reached then decisions are taken by vote.¹¹ Other States, which have either signed the Statute or signed the Final Act of the Rome Diplomatic Conference, may sit in the Assembly as Observers. On the basis of the principles of equitable geographic distribution and the adequate representation of the principal legal systems of the world, the Bureau of Assembly of States Parties consisting of a President, two Vice Presidents and 18 members elected by the Assembly for a three-year term. The Assembly is responsible for the adoption of the normative texts and of the budget, the election of the Judges and of the Prosecutor and the Deputy Prosecutor. It meets at least once in a year. The reports of the previous Sessions of the Assembly of States Parties (ASP-I to ASP VI)

¹⁰ According to the Chapter IV of the Rules of Procedure of the Assembly of States Parties.

¹¹ Rome Statute article 112 (7).

were reported in the earlier reports of AALCO.¹² It maybe mentioned that the resumed sessions of all these sessions took place in the following year.

A. Seventh Session and First and Second Resumptions of the Assembly of States Parties (ASP VII):

30. In accordance with the decision taken by the Assembly of States Parties (hereinafter “the Assembly”) to the Rome Statute of the International Criminal Court, taken at its sixth session, in December 2007, the Assembly convened its regular Seventh Session from 14th to 22nd November 2008 in The Hague. The first and second resumptions of the Seventh ASP were held in New York from 19th – 23rd January 2009 and 9th – 13th February 2009. The report given herein below has covered both Sessions together highlighting appropriately wherever a particular topic was discussed.

31. The Eighth Session of the ASP will take place in The Hague from 18th - 26th November 2009 (resolution ICC-ASP/7/Res.3, para. 67).

32. The Bureau of the Assembly consists of a President (Mr. Christian Wenaweser (Liechtenstein), two Vice-Presidents (Mr. Jorge Lomonaco (Mexico) and Mr. Zachary D. Muburi-Muita (Kenya) and 18 members elected by the Assembly for three year terms. The President in consultation with the Bureau, continued in his capacity as Chairperson of the Special Working Group on the Crime of Aggression, while Mr. Masud Husain (Canada) was appointed to chair the Working Group on the Programme Budget for 2009. Mr. Rolf Fife (Norway), the Assembly’s focal point on the review of the Rome Statute, chaired the Working Group on the Review Conference.

33. The President of the Assembly in accordance with Rule 92 of the Rules of Procedure¹³ invited all States Parties to the Rome Statute to participate in the Session and other States that had signed the Statute were also invited to participate as observers. At the meeting, the Assembly adopted the following agenda for discussion: States in arrears; Election of the two Vice-Presidents and 18 Members of the Bureau; Credentials of representatives of States at the seventh session: (a) Appointment of the Credentials Committee; (b) Report of the Credentials Committee; Organization of the work; General debate; Report on the activities of the Bureau; Consideration and adoption of the budget for the seventh financial year; Consideration of the audit reports; Report of the Board of Directors of the Trust Fund for Victims; Report of the Special Working Group on the Crime of Aggression; Premises of the Court; Review Conference; Decisions concerning dates of the next session of the Assembly of States Parties; Decisions concerning dates and venue of the next sessions of the Committee on Budget and Finance and Other matters.

¹² Refer AALCO Report on “International Criminal Court: Recent Developments” 2003/SD/S 10; 2004/SD/S 10; 2005/SD/S 10; 2006/SD/S 10; 2007/SD/S 9 and AALCO/47th HEADQUARTERS (NEW DELHI) SESSION/2008/S 9. For more information regarding the ASP-I to ASP VI refer www.icc.cpi-int.

¹³ Official Records of the Assembly of States Parties to the Rome Statute of ICC, First Session, New York, 3-10 December 2002 (United Nations Publication, Sales No. E.03.V.2 and corrigendum), part II.C.

a. Report on the activities of the Bureau.

34. At its 1st meeting, on 14 November 2008, the Assembly took note of the oral report on the activities of the Bureau, delivered by President, on behalf of the outgoing President, Mr. Bruno Stagno Ugarte (Costa Rica). In his report, the President noted that, since the sixth session held in November/December 2007 and 14 November 2008, the Bureau had held 13 meetings in order to assist the Assembly in carrying out its activities under the Rome Statute.

35. The Working Group in The Hague had made considerable progress on the issues such as the strategic planning process and its concrete implementation, including on the priority issues identified in resolution ICC-ASP/5/Res.2. In addition, the Working Group continued its work on cooperation, intensified the dialogue with the Court on Outreach and considered the proposed programme budget for 2009. At its 11th meeting, on 9 September 2008, the Bureau assigned the issue of the assessment of the Regulations of the Trust Fund for Victims and the issue of the establishment of an independent oversight mechanism, provided for in article 112, paragraph 4, of the Rome Statute, to The Hague Working Group.

36. The Working Group in New York had been particularly engaged with the implementation of the Plan of action for achieving universality and full implementation of the Rome Statute, the issue of arrears, including measures to promote payments by States, the identification of ways to improve equitable geographical representation within the existing model, and the preparations for the Review Conference, including financial and legal implications, as well as practical and organizational issues.

37. The Secretariat of the Assembly had provided the Oversight Committee on the permanent premises, The Hague Working Group and the Committee on Budget and Finance with independent substantive servicing, as well as administrative and technical assistance in the discharge of their responsibilities. The Secretariat assisted in coordinating the work of the Bureau and of the New York Working Group and facilitated the dissemination of information and communications. In addition, the Secretariat had organized the resumed sixth session of the Assembly, devoted to the Special Working Group on the Crime of Aggression, at United Nations Headquarters in June 2008. The Secretariat also provided logistical support for events to mark the tenth anniversary of the adoption of the Rome Statute, both in The Hague and in New York.

38. Furthermore, in accordance with paragraph 6, sub-paragraph (h), and paragraph 7, of the Plan of action for achieving universality and full implementation of the Rome Statute, the Secretariat had requested all States to convey information relevant to the promotion of the ratification and implementation of the Rome Statute.

B. ICC Prosecutor's Report to ASP VII

39. On 14th November 2008 Mr. Luis Moreno Ocampo, Prosecutor of the ICC presented his report to the seventh session of the Assembly of States Parties. This report provided an overview of the activities of the International Criminal Court¹⁴ since the sixth session of the Assembly of States Parties to the Rome Statute in 2008, covering the period in November – December 2007 until 30 September 2008. It also included the detailed update of the four situations currently before the Court

i. Judicial Proceedings

40. The Prosecutor continued his investigations into the four situations before the Court: Uganda, Democratic Republic of the Congo, Central African Republic and Darfur, Sudan. The judicial activity of the Court continued to increase in 2008, following the arrest and surrender of two persons. Four persons are currently in the custody of the Court, with their cases at different stages of proceedings.

41. A total of 960 victims applied to participate in judicial proceedings in one of the situations or cases, of whom 126 have been authorised to so participate. Proceedings before the Court are, in principle, public. Decisions of the Chambers and filings of parties and participants are published on the Court's web site (<http://www.icc-cpi.int>). In certain circumstances, proceedings or decisions may be kept confidential for a period of time, for example, to protect the security of victims and witnesses.

42. On 7 February 2008, Mr. Mathieu Ngudjolo Chui was surrendered to the Court by the Democratic Republic of the Congo. Pre-Trial Chamber I subsequently joined his case with that of Mr. Germain Katanga. On 26 September, Pre-Trial Chamber I confirmed 10 counts of crimes against humanity or war crimes against each of the two individuals and committed them to trial.

43. On 3 July 2008, Belgium surrendered Mr. Jean-Pierre Bemba to the Court pursuant to a warrant of arrest issued by Pre-Trial Chamber III in relation to the situation in the Central African Republic. Mr. Bemba is suspected of having committed three counts of crimes against humanity and five counts of war crimes. A hearing to confirm the charges against Mr. Bemba is scheduled to begin before Pre-Trial Chamber III on 4 November 2008.

44. In the case of Mr. Thomas Lubanga Dyilo, Trial Chamber I ordered a halt to all proceedings on 13 June 2008 and subsequently ordered the unconditional release of the accused following the withholding by the Prosecutor from the defence and the judges of potentially exculpatory evidence obtained on condition of confidentiality. The Prosecutor appealed both the decision staying proceedings and the decision to release Mr. Lubanga, and Mr. Lubanga remains in custody pending the outcome of the appeals.

¹⁴ ICC-ASP/7/25

45. As a result of the investigation into the situation in Darfur, Sudan, the Prosecutor applied for a warrant of arrest against the President of Sudan. The Prosecutor alleged that the President is criminally responsible for genocide, crimes against humanity and war crimes. The Prosecutor's application for the warrant of arrest is pending before Pre-Trial Chamber I.

46. In carrying out its activities, the Court continued to engage States Parties, other States, International and regional organizations and civil society, in strict accordance with the Rome Statute and applicable agreements concluded by the Court. The Court issued numerous requests for cooperation to different actors. While cooperation was generally forthcoming, States did not execute seven warrants of arrest, and more support is needed in protecting witnesses.

ii. Analysis activities

47. The Office of the Prosecutor analyses all information on crimes within its jurisdiction.

48. The Office of the Prosecutor received and analysed 1677 new article 15 communications relating to purported crimes during the reporting period, of which 1458 referred to Georgia and 210 were dismissed as manifestly outside the jurisdiction of the Court. In parallel, the Office continued the proactive examination of open sources.

49. The Office continued its analysis of various situations in the preliminary examination phase. As part of its ongoing analysis of the situation in Colombia, the Prosecutor led a mission to Colombia from 25 to 27 August 2008. On 18 June 2008, the Office wrote to the Government of Colombia seeking further information on the decision to extradite senior former paramilitary leaders to the United States of America in order to evaluate the degree to which they will face criminal justice for the commission of alleged crimes against humanity. The Office awaited an official reply.

50. The Office also wrote to various parties in Kenya seeking further information in relation to alleged crimes committed on that territory, including to the two parties which now constitute the Government. The Office received a reply from the Kenyan National Commission on Human Rights but still awaits a reply from either of the two political parties concerned.

51. The Office continued to await a reply to a request sent to the Government of Afghanistan seeking further information in relation to alleged crimes committed on that territory.

52. In relation to Côte d'Ivoire, despite the Office's outstanding request to carry out a mission to that territory and several discussions, no progress had been made in this regard. The Office called upon the Government of Côte d'Ivoire to facilitate a mission as a matter of urgency.

53. As confirmed by the Prosecutor on 20 August 2008, the Office is analysing the situation of the Russian Federation and Georgia. The Office formally invited information regarding the situation from the Governments of Georgia and the Russian Federation and began analysing reports from Georgia and over 3000 documents received from the Russian Government as well as other sources. The Office continued to gather more information in order to determine whether there is a reasonable basis to proceed with an investigation.

iii. Outreach

54. In 2008, the Court achieved tangible progress in the implementation of the Strategic Plan for Outreach in relation to three situations: the Democratic Republic of the Congo, Uganda and Darfur, Sudan. The Court increased the number of activities, enhanced its operational capacity to engage affected communities, and tested and consolidated the evaluation system assessing the impact of its work against pre-established quantitative and qualitative indicators. In the Central African Republic, where outreach is still at an early stage, the Court's activities would commence by the end of 2008, following the recruitment of a small team.

iv. Cooperation with the Court

55. The Court's contributions to achieving the aims enshrined in the Rome Statute depend not only on its activities but also on the extent of international cooperation provided to it by States and others, in particular in the arrest and surrender of persons as well as in the protection of witnesses. The Rome Statute imposes both a general obligation on States Parties to cooperate fully with the Court in its investigation and prosecution of alleged crimes and specific obligations to comply with particular requests of the Court, such as requests for arrest and surrender. The Court made numerous requests to States Parties on diverse issues. In accordance with article 87 of the Rome Statute, such requests were often made on a confidential basis.

56. The Democratic Republic of the Congo and Belgium each fulfilled a request for arrest and surrender during the reporting period. However, seven warrants of arrest remained outstanding.

57. The Court sought and received increased cooperation from States Parties in protecting witnesses and others at risk on account of witnesses testifying before the Court. The Court is able to protect witnesses only with the effective assistance of States Parties. The Court maintained and enhanced local protection and response measures in its areas of operation in the Democratic Republic of the Congo, Uganda, Chad (in relation to the situation in Darfur, Sudan) and the Central African Republic in collaboration with national and local authorities and other partners.

58. The number of witnesses in need of protection continued to increase, however, while the lack of arrest of suspects necessitated maintaining protection measures in the pending cases. As at 30 September 2008, 300 individuals had benefited from the Court's

Witness Protection Programme. To address the need for further cooperation, the Court sought out additional agreements with States on the protection and relocation of witnesses. Ten agreements on the relocation of witnesses have been concluded to date.

59. The Court also sought the support of States not party to the Rome Statute, international and regional organizations and civil society organizations on an *ad hoc* basis or pursuant to cooperation agreements concluded by the Court. In particular, the Court relied on extensive cooperation from the United Nations within the framework of the relationship agreement concluded pursuant to article 2 of the Rome Statute. In accordance with a memorandum of understanding concluded between the Court and MONUC, the Court agreed to meet the costs of the United Nations in providing cooperation and assistance to the Court in relation to the case of *The Prosecutor v. Thomas Lubanga Dyilo*.

60. In light of the extensive cooperation between the Court and the United Nations and the need to address specific issues of cooperation directly with staff at United Nations Headquarters, the New York Liaison Office played an increasingly critical role in accomplishing the Court's objectives. The Liaison Office continued to facilitate and enhance contacts and the exchange of information between the Court and the United Nations and its Organs, Funds, Programmes and Agencies, as well as between the Court and Permanent and Observer Missions to the United Nations. The sustained contacts have promoted better understanding for the work of the Court and its judicial procedures, thereby also contributing to enhanced support for and cooperation with the Court.

61. The Court exchanged letters with the European Union with a view to establishing cooperation with the European Union-led peacekeeping force (European Union military operations in eastern Chad and north-eastern Central African Republic).

62. The Headquarters Agreement between the Court and the host State¹ entered into force on 3 March 2008. This has further enhanced cooperation between the Court and the host State and has facilitated the Court's smooth operations in The Hague. The Headquarters Agreement has provided much needed clarity and certainty on issues which were not adequately covered by the interim arrangements.

64. The report also contained details of the composition and organization of the work of the Court.

65. In conclusion the Prosecutor of ICC mentioned that on 17 July 2008, the Court and the States Parties celebrated the tenth anniversary of the adoption of the Rome Statute. Considerable progress has been achieved since that time in building up the Court and in carrying out investigations, prosecutions and judicial activities. The Court has continued to live up to its mandate as a purely judicial institution, acting in full accordance with the Rome Statute. At the same time, the past year has once again confirmed the necessity of States Parties and others fulfilling their obligations to cooperate with the Court. In particular, support continues to be needed in arresting and

surrendering persons, in protecting witnesses and in ensuring global respect for the judicial mandate of the Court in accordance with the international rule of law.

66. Throughout the reporting period, the Court continued to work on improving the effectiveness and efficiency of all of its activities. The first judicial proceedings, in particular, those before the Appeals Chamber, shed light on the meaning of heretofore unclear provisions of the Rome Statute and provided guidance to parties and participants on procedures before the Court. Through revising its strategic objectives and initiating a risk-management exercise, the Court took steps to further consolidate and rationalize its administration. The actions taken by the Court in these areas form a basis for future improvements in the coming year and beyond, as the Court continues to strive towards ensuring the most efficient and expeditious fair proceedings and administration.

b. Consideration and adoption of the budget for the seventh financial year

67. The Assembly, through its Working Group, considered the proposed programme budget for 2009 on the basis of the draft proposal submitted by the Registrar, the reports of the Committee on Budget and Finance and the reports of the External Auditor. At its 7th meeting, on 21 November 2008, the Assembly considered and approved, by consensus, the programme budget for 2009. At the same meeting, the Assembly adopted, by consensus, resolution ICC-ASP/7/Res.4, concerning the programme budget in relation to the following:

- (a) Programme budget for the year 2009, including appropriations totaling €101,229,900 for the major programmes and staffing tables for each of the major programmes;
- (b) Working Capital Fund for 2009;
- (c) Scale of assessments for the apportionment of the expenses of the International Criminal Court;
- (d) Financing of appropriations for the year 2009; and
- (e) Contingency Fund.

In relation to the financing of the 2009 programme budget, the Assembly decided, on an exceptional and one-time basis, that the assessments would be based on €6,229,900 of the programme budget and further decided to allow the Court to draw up to €5 million from the Working Capital Fund, following a notification from the Registrar to the President of the Assembly and the Chair of the Committee on Budget and Finance providing a detailed report on efforts made to find efficiencies and other savings. The Assembly also decided to extend indefinitely the Contingency Fund. At the same meeting, the Assembly also adopted, by consensus, resolution ICCASP/ 7/Res.5 by which it amended rule 110.1 of the Financial Regulations and Rules. Furthermore, at the same meeting, the Assembly adopted resolution ICC-ASP/7/Res.6 by which it amended rule 40 of the Rules of Procedure of the Assembly of States Parties, and resolution ICC-ASP/7/Res.7 by which it amended rule 28 of the Rules of Procedure of the Committee on Budget and Finance.

c. Consideration of audit reports

68. At its 7th meeting, on 21 November 2008, the Assembly took note of the report of the Working Group on the Programme Budget for 2009 (ICC-ASP/7/WGPB/1) and, inter alia:

(a) Took note with appreciation of the reports of the External Auditor on the audit of the financial statements of the Court for the period 1 January to 31 December 2007 (ICCASP/ 7/10 and Corr.1) and of the Trust Fund for Victims for the same period (ICCASP/ 7/11);

(b) Took note that the Committee on Budget and Finance had endorsed the recommendations contained in the External Auditor's reports;

(c) Endorsed the recommendation of the Committee on Budget and Finance in its report on the work of its eleventh session that, inter alia, the Court should work towards the implementation of the International Public Sector Accounting Standards (IPSAS) in the medium term and that the Court should report to the Assembly at its eighth session through the Committee;

(d) Decided to amend the reporting requirements of the Registrar in respect of the activities of the Office of Internal Audit by amending rule 110.1 of the Financial Regulations and Rules; and

(e) Invited the Court to revisit the terms of reference of the Audit Committee, with a view to aligning the composition of the Audit Committee more closely with the model recommended by the Committee on Budget and Finance and the External Auditor, and urged the Court to redouble its efforts to identify external members and commence the functioning of the Audit Committee.

d. Report of the Board of Directors of the Trust Fund for Victims

69. At its 1st meeting, on 14 November 2008, the Assembly heard a statement delivered by Ms. Simone Veil, Chair of the Board of Directors of the Trust Fund for Victims. The Assembly considered the report on the activities and projects of the Board of Directors of the Trust Fund for Victims, for the period 1 July 2007 to 30 June 2008 (ICC-ASP/7/13), and took note of the report.

e. Report of the Special Working Group on the Crime of Aggression

70. At its 7th meeting, on 21 November 2008, the Assembly took note of the report of the Special Working Group on the Crime of Aggression (ICC-ASP/7/ SWGCA/1*)

f. Premises of the Court

71. At its 1st meeting, on 14 November 2008, the Assembly heard a statement delivered by Mr. Jorge Lomonaco (Mexico), Chairperson of the Oversight Committee on the permanent premises of the Court, and took note of the report of the Oversight Committee on the permanent premises (ICCASP/ 7/22 and Add.1/Rev.1). At its 7th meeting, on 21 November 2008, the Assembly adopted resolution ICC-ASP/7/Res.1 whereby it, inter alia, accepted the offer of the host State to provide a loan of up to a maximum of €200 million, to be repaid over a period of 30 years at an interest rate of 2.5 per cent, specifying that this would not create any legal obligation for the Court to borrow the full amount or limit the discretion of the Court to seek funds for the same purpose from any other source.

72. The Assembly further agreed to invite States Parties to consider making a one-time payment equal to their share in the value of the total estimated overall construction costs, subject to an adjustment once the final cost of the project is determined. These States Parties would not be assessed for the accrued interest and the repayment of the host State loan. Furthermore, the Assembly agreed to establish, within the ambit of the annual proposed programme budget, a permanent premises budget for the purpose of payment of accrued interest on the loan and repayment of the loan through regular annual installments.

g. Decisions concerning dates and venue of the next sessions of the Committee on Budget and Finance

73. At its 7th meeting, on 21 November 2008, the Assembly decided that the Committee on Budget and Finance would hold its twelfth session from 20 to 24 April 2009 and its thirteenth session from 14 to 22 September 2009 in The Hague (resolution ICC-ASP/7/Res.3 para. 59).

h. Trust Fund for the participation of the least developed countries and other developing States in the work of the Assembly

74. The Assembly expressed its appreciation to Finland, Greece, Netherlands and Poland for their contributions to the Trust Fund for the participation of the least developed countries and other developing States in the work of the Assembly. The Assembly noted with satisfaction that 17 delegations had made use of the Trust Fund to attend the seventh session of the Assembly.

i. Election of Six Judges

75. On 19 January 2009, at the 9th meeting of the First Resumption of the Seventh Session of the ASP, the Assembly, on the recommendation of the Bureau, decided that for the purposes of electing judges of the International Criminal Court, any meeting of

the Assembly should continue until as many candidates as were required for all seats to be filled had obtained, in one or more ballots, the highest number of votes and a two-thirds majority of the States Parties present and voting. Consequently, all candidates elected as judges should be considered as having been elected at the same meeting irrespective of whether or not the ballot continued for one or more days. At the same meeting, the Assembly recommended that the candidates should not be present in the conference room when the Assembly was engaged in the process of voting.

76. The following candidates were elected Judges of the International Criminal Court. Joyce Aluoch (Kenya); Sanji Mmasenono Monageng (Botswana); Fumiko Saiga (Japan); Mohamed Shahabuddeen (Guyana); Cuno Tarfusser (Italy); and Christine Van den Wyngaert (Belgium). On the recommendation of the Bureau, it was decided that the terms of office of judges of the International Criminal Court elected by the Assembly shall begin to run as from 11 March 2009 following the date of election.

j. Election of six members of the Committee on Budget and Finance

77. At its 10th meeting, on 22 January 2009, the Assembly, in accordance with paragraph 11 of resolution ICC-ASP/1/Res.5, dispensed with a secret ballot and elected by consensus the following candidates as members of the Committee on Budget and Finance: Mr. Masud Husain (Canada); Ms. Rossette Nyirinkindi Katungye (Uganda); Ms. Elena Sopková (Slovakia); and Mr. Santiago Wins (Uruguay).

78. In respect of the candidates from the Asian States, the Assembly, in accordance with paragraphs 10, 11 and 12 of resolution ICC-ASP/1/Res.5, conducted a secret ballot and elected the following candidates as members of the Committee on Budget and Finance: Mr. Fawzi Gharaibeh (Jordan) and Mr. Shinichi Iida (Japan). At the same meeting the Assembly decided that the terms of office of the six members should begin to run as from 21 April 2009 following the date of their election.

IV. Report of the Special Working Group on the Crime of Aggression.

i. Introduction

79. 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 six meetings on 9, 10, 11 and 13 February 2009. Ambassador Christian Wenaweser (Liechtenstein) served as Chair of the Special Working Group. This report has been given herein below in detail as defining the “Crime of Aggression” is one of the most important tasks confronting the international community, which would *inter alia* be extensively deliberated upon in the forthcoming Review Conference. As this one of the most important issues to be discussed threadbear in the Review Conference the Proposals of the Chairman of the SWGCA have been annexed to this brief. (Annex I, II and III)

80. The discussions in the Group were held on the basis of three papers submitted by the Chairman: a revised discussion paper (“2009 Chairman’s paper”); 1 a “Non-paper on other substantive issues regarding aggression to be addressed by the Review Conference”; 2 and an informal note on the work programme.³ At the first meeting of the Group, the Chairman introduced all three documents. He recalled that the Group was open to participation by all States on an equal footing, and encouraged delegations to comment in particular on issues that had not been thoroughly discussed in recent sessions. The Chairman further recalled that, in accordance with resolution ICC-ASP/7/Res.3, this was the final session of the Group, but not the final opportunity to discuss the crime of aggression. After the conclusion of the work of the Special Working Group, discussions would continue in the framework of the preparations of the Review Conference and possibly at the Review Conference itself.

ii. 2009 Chairman’s paper

81. In introducing the 2009 Chairman’s paper, the Chairman noted that the paper was the product of the Group’s work over several years and contained only minor changes as compared to the June 2008 version. In particular, the revised version reflected a new structure based on the understanding that the Review Conference would adopt the amendments on aggression as an annex to an enabling resolution. The annex to that resolution would contain only the actual amendments to the Rome Statute, whereas other issues, such as the question of entry into force, would be addressed in the draft resolution or possibly some other text. Draft article 15 bis was renumbered and included two new technical additions (paragraphs 3 and 5), the contents of which had already been agreed during earlier discussions. The Chairman explained that the paper was presented in a manner that should allow the Group to adopt a text that was as clean as possible. In this context, he emphasized that the absence of footnotes and brackets was not intended to indicate that those parts of the text were agreed and that the topics that had been discussed in the past remained on the table. The Chairman also recalled the general understanding that “nothing is agreed until everything is agreed”, that the suggested provisions were interlinked and that they would therefore be considered as a package.

iii. Structure of the 2009 Chairman’s paper

82. There was general support for the overall structure of the 2009 Chairman’s paper, consisting of a draft enabling resolution to which amendments would be annexed. A suggestion was made to refer in the opening phrase of the enabling resolution to “The Review Conference”, rather than to “States Parties”. This would more closely mirror the structure of resolutions adopted by the Assembly of States Parties as well as the Rome Conference. The Chairman subsequently circulated a suggested wording for such an amendment, which met with general agreement.

iv. Procedure for entry into force of the amendment on aggression

83. The Chairman noted that the general question of whether paragraph 4 or 5 of article 121 of the Rome Statute was applicable to the amendment on aggression had

already been comprehensively discussed in the past.⁴ It was understood that the solution to this issue was closely linked to the outcome on other parts of the provisions on aggression.

84. The Chairman invited delegations to focus their comments on a proposal submitted by a delegation suggesting that paragraphs 4 and 5 of article 121 of the Rome Statute comprised a unified and complementary regime, rather than two mutually exclusive regimes. Under this reading, the amendment on aggression would initially enter into force only for those States Parties that had ratified it, as outlined in paragraph 5. However, once seven-eighths of States Parties to the Rome Statute had ratified the amendment, it would enter into force for all States Parties, in accordance with paragraph 4. Once that threshold would be met, paragraph 5, including its second sentence, would no longer apply and the amendment would become binding on all States Parties.

85. While delegations welcomed the non-paper as a contribution to the debate, the view prevailed in the discussion that the amendment procedures set out in paragraphs 4 and 5 were mutually exclusive. This was evidenced by the phrase “Except as provided in paragraph 5” in paragraph 4, as well as by the content of the second sentence of paragraph 5. The drafting history as well as academic commentaries on these provisions also supported this view. It was noted that the Rome Statute provided in article 122 and article 121, paragraphs 4 and 5, three distinct amendment regimes to which different thresholds for entry into force applied. Some delegations, however, expressed interest in the proposal and welcomed attempts to bridge the two regimes. It was also suggested to add a provision to the Statute ensuring that States that ratify the Statute after the entry into force of the amendment were treated equally with States Parties that have not ratified the amendment.

86. Some delegations used the opportunity to reiterate arguments in favor of their preferred regime for entry into force, as reflected in previous reports of the Group.⁵ During this discussion, some new arguments were raised. It was submitted that applying article 121, paragraph 5, to the amendment on aggression would de facto amount to allowing reservations, which were prohibited under article 120 of the Statute, and which would be incompatible with the object and purpose of the Statute in the sense of article 19 (c) of the Vienna Convention on the Law of Treaties. Such an approach was also inconsistent with article 12, paragraph 1, of the Rome Statute, whereby States Parties automatically accept the jurisdiction of the Court with respect to the crimes referred to in article 5. Furthermore, it was suggested that article 121, paragraph 4, of the Rome Statute might find more support amongst delegates favoring the application of paragraph 5 if the Court’s jurisdiction would only apply to States that had accepted such jurisdiction by way of a declaration.

87. It was also suggested that article 5, paragraph 2, of the Rome Statute implied that the amendments on aggression only needed to be adopted by the Review Conference, and that therefore no ratification process was necessary for the entry into force of the provisions on aggression. States Parties had thus already given anticipatory consent to the future exercise of jurisdiction over the crime of aggression when ratifying the Statute.

This reading was strongly contested by some delegations, while others indicated they would want to consider it further.

88. It was suggested that article 121, paragraphs 4 and 5, could be invoked in respect of different amendments pertaining to aggression. Suggestions to delete or revise the second sentence of article 121, paragraph 5, were also made. It was also noted that consideration could be given to drafting an amendment procedure specific to the crime of aggression, since that crime was already included in the Rome Statute, but lacked a definition, unlike the other crimes contained therein. It was observed, however, that proposals to amend the amendment provisions in the Rome Statute would not solve the immediate problem of determining which procedure was applicable to the amendments on aggression.

v. Draft amendment #1: Deletion of article 5, paragraph 2 of the Rome Statute

89. No objection was raised to the suggested deletion of article 5, paragraph 2, of the Rome Statute. Nevertheless, it was also recalled that the issue was linked to an agreement on the definition contained in article 8 bis and the conditions for the exercise of jurisdiction.

vi. Draft amendment #2: Definition of the “crime” and the “act” of aggression (draft article 8 bis)

90. The suggested wording of draft article 8 bis found generally strong support. It was stressed that the text was the result of years of negotiation and many compromises, and some delegations recalled that they had preferred different solutions for certain parts of the text, but supported the draft as a balanced compromise. Nevertheless, some delegations recalled their concern about the threshold clause contained in draft article 8 bis, paragraph 1, which would limit the Court’s jurisdiction to cases where the act of aggression “by its character, gravity and scale, constitutes a manifest violation of the Charter of the United Nations”. It was argued that the clause was unnecessary because any act of aggression would constitute a manifest violation of the Charter of the United Nations, and that the definition should not exclude any acts of aggression. Furthermore, aggression was sufficiently qualified through the list of acts contained in draft article 8 bis, paragraph 2. Other delegations expressed support for the threshold clause, which would provide important guidance for the Court, and in particular prevent the Court from addressing borderline cases. It was also argued, however, that the current text implies that the threshold clause will constitute a new definitional layer applicable to the act of aggression, which has been clearly defined by article 8 bis, paragraph 2.

91. To enhance clarity, it was suggested that the space between the first and the second sentence of draft article 8 bis, paragraph 2, be deleted. The revised version of the 2009 Chairman’s paper that was subsequently circulated included this editorial change.

92. Some delegations explored possible changes to the text. These suggestions received limited support. With respect to draft article 8 bis, paragraph 1, it was suggested to include the element of “intent” as well as a reference to “persons” in plural. In this

respect, it was recalled that these issues were already addressed in the general part of the Rome Statute, in particular articles 25 and 30, as well as in draft article 25, paragraph 3 bis. Caution was also expressed that such changes could have unintended consequences for the interpretation of other crimes, and it was pointed out that the drafting in the Chairman's paper followed the structure of the other crimes covered in the Statute. Furthermore, a suggestion was made with respect to draft article 8 bis, paragraph 2, namely to replace the phrase "in any other manner inconsistent with the Charter of the United Nations" with the threshold clause contained in paragraph 1. In response, it was recalled that the phrase in question was based on article 2, paragraph 4, of the Charter of the United Nations, which was also mirrored in article 1 of General Assembly resolution 3314 (XXIX). The suggestion was also made to insert a reference to "unlawful" use of force in draft article 8 bis, paragraph 2, for the sake of clarity. Delegations recalled, however, that this suggestion had been discussed in the past, without attracting significant support. It was argued that such a reference was not necessary, as any use of force inconsistent with the Charter of the United Nations was, by definition, unlawful.

93. Some delegates expressed the view that draft article 8 bis contained certain shortcomings. In particular, it was questioned whether the text sufficiently criminalized the activities of armed groups, in particular where such activities enjoyed the cooperation of a State. Furthermore, the view was expressed that the reference to "another State" might inadvertently omit acts committed against a territory that falls short of statehood, and that therefore, the word "State" in that paragraph should be given a broad interpretation. In this regard, it was observed that the General Assembly Declaration on Friendly Relations⁶ recognized that Non-Self-Governing territories had a distinct status under the Charter of the United Nations. A discussion of the statehood issue also took place during the drafting of General Assembly resolution 3314 (XXIX) and was reflected in the explanatory note to article 1 of the definition of aggression. It was recalled that some other understandings recorded in the context of the adoption of that resolution might also still be relevant.

94. Some delegations reiterated their view that General Assembly resolution 3314 (XXIX) had not been adopted for the purpose of defining an individual crime, but as guidance for the Security Council in its determination of a State act of aggression. Some delegations also reiterated their views and preferences regarding the nature of the list of acts of aggression in paragraph 2 of draft article 8 bis (open or closed), which had been discussed in previous meetings of the Group.⁷ In particular, it was stated that acts similar to those listed might also constitute acts of aggression. The point was made that the reference to General Assembly resolution 3314 (XXIX) did not import the content of that resolution as a whole. The view was also expressed that the list should include acts that are not of military nature, such as economic embargoes.

vii. Draft amendment #3: Conditions for the exercise of jurisdiction (draft article 15 bis)

95. The Chairman recalled that draft article 15 bis, dealing with the conditions for the exercise of jurisdiction over the crime of aggression, had been discussed for a number of years. Two technical additions were reflected in paragraphs 3 and 5 of the draft text, as

outlined in the Explanatory Note to the 2009 Chairman's paper.⁸ The Chairman noted that a solution for the difficult issue of the conditions for the exercise of jurisdiction was not expected during this session, and he therefore encouraged delegations to limit their comments to the question whether draft article 15 bis accurately reflected the status of the discussion. The various positions on this issue were amply reflected in previous reports of the Group.

96. There was general agreement that the alternatives and options contained in paragraph 4 reflected the positions of delegations and required further discussion, including on the basis of new ideas and suggestions. While it was agreed that paragraph 4 would require more work, paragraphs 1 to 3 as well as 5 and 6 were generally acceptable.

97. Some delegations used the opportunity to reiterate their preferences on the issue of conditions for the exercise of jurisdiction, in particular by identifying their preferred alternatives and options as well as combinations thereof. These views are comprehensively reflected in previous reports of the Group.⁹ In this context, a new suggestion was made to include option 2 currently contained in alternative 1 under the umbrella of alternative 2, in combination with options 2, 3 and 4 thereunder. It was indicated that such a proposal could be understood to already be contained in the current structure of draft article 15 bis, paragraph 4, and that the search for a compromise on these issues will have to continue after the conclusion of the work of the Group.

98. An earlier suggestion to simplify the wording of alternative 2, option 2 was recalled. The option would thus simply read: "in accordance with article 15". This was intended to bring the procedure for the crime of aggression in line with other crimes. The question was raised, however, whether the proposed wording was intended to limit the procedure referred to in alternative 2, option 2 to *proprio motu* investigations by the Prosecutor, as was the case with article 15 of the Rome Statute, or instead apply to all jurisdictional trigger mechanisms, as was envisaged in the 2009 Chairman's paper.

99. The Chairman suggested a technical improvement to the wording of draft article 15 bis, paragraph 5, replacing the reference to the Court's "determination of an act of aggression" with the phrase "own findings". There was general agreement on this change.

viii. The "red light" proposal

100. Delegations continued their discussion of the so-called "red light" proposal, which was submitted in a further revised version.¹⁰ This proposal would allow the Security Council to decide to stop an ongoing investigation into a crime of aggression by adopting a resolution under chapter VII of the United Nations Charter. The additional explanation was provided that the proposal intended to complement the current scenarios contained in draft article 15 bis, paragraph 4: Currently, these scenarios only foresaw that the Security Council would either determine the existence of an act of aggression, or not act at all. The proposal would address the missing scenario in which the Security Council would indicate that it would not be justified to conclude that an act of aggression had been committed. The text reflected the language contained in article 2 of General Assembly resolution 3314 (XXIX).

101. There was limited support for the proposal, while some delegations wished to consider it further. Some delegations reiterated their doubts raised during previous meetings of the Group, in particular regarding the overlap of this proposal with article 16 of the Statute. Furthermore, doubts were expressed whether such a negative determination by the Security Council was legally binding for the Court. It was further questioned whether the Security Council was even empowered to make a negative determination of aggression under the United Nations Charter or article 2 of General Assembly resolution 3314 (XXIX). The latter provision seemed to apply only to the internal deliberations of the Security Council that would lead to the conclusion not to make a determination. The point was also made that article 2 of the resolution dealt with the first use of armed force by a State, which would *prima facie* be considered an act of aggression. In contrast, the purpose of the Court's proceedings was to determine individual criminal responsibility.

x. Draft amendment #4: Forms of participation in the crime (draft article 25, paragraph 3 bis)

102. As in previous meetings of the Group, there was general agreement on the inclusion of draft article 25, paragraph 3 bis, which would ensure that the leadership requirement would not only apply to the principal perpetrator, but to all forms of participation. It was noted that this provision was crucial to the structure of the definition of aggression in its current form. The view was also expressed that the language of this provision was sufficiently broad to include persons with effective control over the political or military action of a State but who are not formally part of the relevant government, such as industrialists.

x. Other substantive issues regarding aggression to be addressed by the Review Conference

103. The Chairman submitted a non-paper on other substantive issues regarding aggression to be addressed by the Review Conference.¹³ He noted that the Review Conference could address some of these issues when adopting the amendment on aggression, though not necessarily in the enabling resolution itself. The concrete wording suggested in the non-paper on these issues was merely intended to assist in the discussion, and was not meant to imply that these issues necessarily needed to be addressed explicitly. Delegations welcomed the non-paper as a useful basis for discussion. The summary of these discussions below should be read in conjunction with the more detailed explanations on the various topics contained in the non-paper itself.

xi. Activation of the Court's subject-matter jurisdiction on aggression with respect to Security Council referrals

104. The non-paper raised the question of the moment at which the Court would possess subject matter jurisdiction over the crime of aggression on the basis of article 13, paragraph b, of the Rome Statute (referral by the Security Council), either after adoption of the relevant amendments by the Review Conference, or after their entry into force. In

addition, the non-paper offered draft language for the possibility of clarifying that a Security Council referral, which may include the crime of aggression, does not depend on the consent of the State concerned, as was the case with any other Security Council referral. The following two sentences were suggested for discussion:

basis of a Security Council referral in accordance with article 13 (b) of the Statute once the amendment on aggression [is adopted by the Review Conference/has entered into force].

It is understood that the Court shall exercise jurisdiction over the crime of aggression on the basis of a Security Council referral in accordance with article 13 (b) of the Statute irrespective of whether the State concerned has accepted the Court's jurisdiction in this regard.

105. Delegations generally found the language suggested agreeable, but expressed different views on the time of activation of the Court's subject-matter jurisdiction over the crime of aggression. Some delegations preferred the alternative in which the Court could exercise jurisdiction over aggression based on a Security Council referral once the amendment on aggression was adopted by the Review Conference. The wording of article 5, paragraph 2, and article 121, paragraph 3, of the Rome Statute were cited in support of this view. This was also considered to be consistent with the fact that the Security Council's power to refer cases to the Court did not depend on the acceptance of the State concerned, as evidenced in particular by article 103 of the Charter of the United Nations. Other delegations, in particular those who favored the application of article 121, paragraph 4, for the entry into force of the amendments on the crime of aggression, voiced a preference that the Court could exercise jurisdiction over the crime of aggression only after the amendment on aggression had entered into force.

xii. Minimum number of ratifications in case of article 121, paragraph 5

106. The non-paper explored the idea, originally raised during the November 2008 session of the Group, that a minimum number of ratifications for entry into force could be required in case article 121, paragraph 5, was applied. No support was expressed for such a possibility, in particular as a number of delegations preferred that the Court's subject-matter jurisdiction over the crime of aggression be activated upon the adoption of the amendments on aggression by the Review Conference. The point was also made that such a minimum number of ratifications was inconsistent with the wording of article 121, paragraph 5, of the Rome Statute.

xiii. Implications of article 121, paragraph 5, second sentence, for State referrals and *proprio motu* investigations

107. The non-paper referred to previous discussions on this issue, during which there was a strong view that the application of article 121, paragraph 5, of the Rome Statute should not lead to differential treatment between non-States Parties and States Parties that have not accepted the amendment on aggression. 14 The Chairman recalled that these issues were discussed without prejudice to delegations' positions on the application of

either paragraph 4 or 5 of article 121 of the Rome Statute, and recommended that this complex issue be considered on the basis of the updated chart included in the non-paper and the scenarios described therein. 32. With respect to scenario 2, referring to an act of aggression committed by a State Party that has accepted the amendment on aggression against a State Party that has not accepted the amendment on aggression, the following language was suggested for discussion:

It is understood that article 121, paragraph 5, second sentence, of the Statute does not prevent the Court from exercising jurisdiction in respect of an act of aggression committed by a State Party that has accepted the amendment on aggression.

108. A number of delegations agreed with this clarification, which would ensure equal treatment of States that are victims of aggression, be they States Parties that have not accepted the amendment on aggression, or non-States Parties. The view was also expressed that, under all nine scenarios listed in the chart, the issue should be left for the judges to decide. 34. With respect to scenario 4, referring to an act of aggression committed by a State Party that has not accepted the amendment on aggression against a State Party that has accepted the amendment on aggression, two alternatives were submitted by the Chairman, both of which intend to avoid differential treatment of State Parties and non-States Parties.

109. Alternative 1 would clarify that the Court did have jurisdiction in scenarios 4 and 7:

It is understood that article 121, paragraph 5, second sentence, of the Statute does not prevent the Court from exercising jurisdiction in respect of an act of aggression committed against a State Party that has accepted the amendment.

110. Alternative 2 would clarify that the Court did not have jurisdiction in scenarios 4 and 7:

It is understood that article 121, paragraph 5, second sentence of the Statute prevents the Court from exercising jurisdiction in respect of an act of aggression committed by any State that has not accepted the amendment.

111. Both alternatives met with some support as well as some opposition. While no agreement was reached on this issue, the textual approach taken in these two alternatives was considered appropriate and practical. It was noted that these formulations were based on the assumption of concurrent territorial jurisdiction over the crime of aggression (discussed below).

xiv. The leadership crime of aggression and territoriality

112. During a preliminary discussion of this issue in November 2008, broad support had been expressed for the view that “concurrent jurisdiction arises where the perpetrator acts in one State and the consequences are felt in another”.¹⁵ The non-paper explored

whether the issue should be clarified explicitly or not, and suggested the following language for discussion:

It is understood that the notion of “conduct” in article 12, paragraph 2 (a), of the Statute encompasses both the conduct in question and its consequence.

113. There was general support for the concept contained in this draft language, though some delegations expressed the view that clarification was not needed on this issue and that it was best left to be determined by the Court. Concern was also expressed that the language proposed may have unintended consequences including for other crimes. Furthermore, an alternative formulation was suggested: “It is understood that jurisdiction based on the territoriality principle relates both to the territory in which the conduct itself occurred and the territory in which its consequences occurred.” Some delegations supported this language, while others preferred the language contained in the non-paper.

xv. Jurisdiction *ratione temporis*

114. The non-paper suggested that language could be considered to specify that the provisions on aggression would not have retroactive effect, in response to a suggestion made during the last meeting of the Group. The draft language in the non-paper was modeled after article 11 of the Rome Statute and read as follows:

(i) It is understood, in accordance with article 11, paragraph 1, of the Statute, that the Court has jurisdiction only with respect to crimes of aggression committed after the amendment [has been adopted by the Review Conference/has entered into force].

(ii) It is understood, in accordance with article 11, paragraph 2, of the Statute, that in case of article 13, paragraph (a) or (c), the Court may exercise its jurisdiction only with respect to crimes of aggression committed after the entry into force of the amendment for that State, unless that State has made a declaration under article 12, paragraph 3.

115. The draft language was generally well received and considered useful, and delegations voiced different preferences regarding the options contained in the bracketed language in paragraph 1, which were linked to the question of the activation of the Court’s subject-matter jurisdiction over the crime of aggression (see paragraph 29 above). A drafting suggestion was made to insert a reference to article 13, paragraph b, of the Rome Statute into the first paragraph. Some delegations supported this suggestion, while it was also noted that in this case, a reference to article 12, paragraph 3, of the Rome Statute might have to be added to the first paragraph as well.

xvi. Elements of Crimes

116. The Group continued its discussion regarding the future process with respect to the drafting of Elements of Crimes.¹⁶ The view was expressed that it would be preferable for the Elements of Crimes to be presented at the Review Conference for adoption along with the amendments on aggression. The Group was informed that two delegations were

currently preparing a discussion paper on the Elements of Crimes, which would be discussed with interested delegations. The discussion paper would be made available to delegates ahead of the inter-sessional meeting in June 2009.

xvii. Future work on Aggression

117. Following suggestions during the last meeting of the Group in November 2008, the Chairman informed the Group about the status of preparations for an inter-sessional meeting on aggression, thereby updating the information contained in the informal note on the work programme. The Chairman was now exploring the possibility of such a meeting taking place from 8-10 June 2009, in New York. The Chairman further announced that he would no longer chair the discussions on aggression following the conclusion of the Special Working Group at this final session. He suggested that the future work on aggression should be chaired by H.R.H. Prince Zeid Ra'ad Zeid Al-Hussein (Jordan).

118. At the June inter-sessional meeting, delegates would continue the discussion on the work achieved in the past and also have the opportunity to discuss the Elements of Crimes. The Chairman emphasized that the discussions on the Elements of Crimes would take place in the same format as the other meetings on aggression in the past and were thus open for participation by all States. The first substantive discussion at the June inter-sessional meeting would also offer an opportunity to exchange views on the timing of the adoption of the Elements. A number of delegations had expressed the view that the Elements should be adopted simultaneously with the amendments on aggression themselves, but the discussion on this topic had not been conclusive. The suggested venue for the inter-sessional meeting met the support of delegations, especially by those who had been unable to travel to the Princeton inter-sessional meetings in the past. A request for interpretation services at the inter-sessional meeting was made, which the Chairman took under advisement.

xviii. Conclusion of the Special Working Group on the Crime of Aggression

119. The Chairman circulated a revised version of the 2009 Chairman's paper, reflecting the progress made during this session.

120. At its sixth meeting, on 13 February 2009, the Special Working Group concluded its work in accordance with resolution ICC-ASP/1/Res.1 ("Continuity of work in respect of the crime of aggression") 17 and in accordance with resolution F of the Final Act of the Rome Conference.

V. CONSIDERATION OF THE ITEM DURING THE YEAR 2008 AT THE UNITED NATION'S GENERAL ASSEMBLY

A. ICC President's Report to the 63rd Session of the United Nation's General Assembly: 30th October 2008

121. The fourth annual report of the International Criminal Court (hereinafter “the Court”) was submitted to the Sixty-Third Session of the General Assembly (A/63/323) in accordance with article 6 of the Relationship Agreement between the United Nations and the International Criminal Court ¹⁵. Since the conclusion of the Relationship Agreement on 4th October 2004, the Court and the United Nations have steadily developed their mutual cooperation while respecting the independence and judicial nature of the Court. The report covered the period from 1 August 2007 to 31 July 2008. It covers the main developments in the Court’s activities and other developments of relevance to the relationship between the Court and the United Nations.

122. In carrying out its functions, the Court relies critically on the cooperation of States, international organizations and civil society in accordance with the Rome Statute and international agreements concluded by the Court. Areas where the Court requires cooperation include facilitating investigations, arresting and surrendering persons, protecting witnesses and enforcing sentences. The Court has concluded supplementary cooperation agreements with a number of actors and has continued to take steps to ensure the cooperation needed to ensure respect for and enforcement of its decisions.

123. Four situations were before the Court during the reporting period. The Prosecutor continued to investigate the situations in the Democratic Republic of the Congo; Uganda; Darfur, the Sudan; and the Central African Republic. Judicial proceedings took place in each situation. The Prosecutor also carried out analysis activities on three continents.

124. In the case of *The Prosecutor v. Thomas Lubanga Dyilo*, Trial Chamber I stayed proceedings and ordered the unconditional release of the accused in light of the non-disclosure by the prosecution to the defence of potentially exculpatory evidence obtained on condition of confidentiality. The prosecution has since appealed the decisions staying proceedings and ordering Mr. Lubanga’s release and has requested that the Trial Chamber lift the stay of proceedings. Mr. Lubanga remains in custody pending the outcome of the appeals proceedings.

125. The Court issued or unsealed four new warrants of arrest — three in the situation in the Democratic Republic of the Congo and one in the situation in the Central African Republic.

126. Germain Katanga and Mathieu Ngudjolo Chui were surrendered to the Court on 17 October 2007 and 7 February 2008 respectively. They are each charged with nine counts of war crimes and four counts of crimes against humanity in the situation in the Democratic Republic of the Congo. A hearing to confirm the charges against them was held from 27 June to 16 July 2008. A decision on the confirmation of charges is expected to be rendered by 26 September 2008.

127. In the situation in the Central African Republic, Mr. Jean-Pierre Bemba Gombo was arrested in Belgium and surrendered to the Court on 3 July 2008. He is suspected of

¹⁵ See A/58/874 and Add.1 annex and paragraph 16 of Assembly resolution 62/12.

having committed three counts of crimes against humanity and five counts of war crimes. A hearing on the confirmation of charges against Mr. Bemba is currently scheduled to take place on 4 November 2008.

128. On 14 July, the Prosecutor submitted an application for a warrant of arrest against the President of the Sudan, on counts of genocide, crimes against humanity and war crimes.

129. Seven warrants of arrest are outstanding: four in the situation in Uganda, two in the situation in Darfur, the Sudan, and one in the situation in the Democratic Republic of the Congo. All of the warrants have been outstanding for over a year; four have been outstanding for over three years. The Court does not have the power to arrest persons. This responsibility belongs to States and, by extension, international organizations.

130. The Court continued to strengthen its cooperation with States, the United Nations and other actors with a view to ensuring the necessary support in all areas. The Court has developed more than three years of experience with its field operations and continues to adapt its activities in the field to reflect its judicial developments.

131. In addition to operational cooperation, the public and diplomatic support of the United Nations continued to be important to the Court. Such support increased the likelihood of international cooperation being received from States and other actors. It also strengthened the Court by reaffirming its judicial, non-political mandate and the importance of upholding the rule of law.

132. Another instance of cooperation between the Court and the United Nations is the conclusion of the first phase of the digitization of the entire legislative history of the Rome process, a project which is funded by the Court and has been undertaken by the Secretariat of the Assembly of States Parties and the Codification Division of the Office of Legal Affairs. This data would greatly benefit the Court, practitioners, academics and the public.

133. Cooperation with regional organizations is also important to the Court. Efforts to finalize a memorandum of understanding between the African Union and the Court continued. The Court aims to finalize and sign this agreement as soon as possible in order to strengthen cooperation with the African Union and African States. In May 2008, the first Vice-President of the Court, Judge Akua Kuenyehia, briefed the plenary of the Pan-African Parliament on the Court's activities and had a fruitful exchange of views with the joint sitting of the Committee on Justice and Human Rights and the Committee on Cooperation, International Relations and Conflict Resolution. The Court has also exchanged letters with the European Union with a view to concluding some form of cooperation with the European Union-led peacekeeping force (European Union military operations in Eastern Chad and North Eastern Central African Republic).

134. On 1 October 2007, the Rome Statute entered into force for Japan following the deposit of its instrument of accession on 17 July 2007. On 14 March 2008, Madagascar

ratified the Rome Statute. On 15 July 2008, Suriname acceded to the Rome Statute. On 18 July, the Cook Islands acceded to the Rome Statute. With the entry into force of the Rome Statute for Suriname and the Cook Islands on 1 October 2008, there will be 108 States Parties to the Rome Statute.

135. In July 2008, the States Parties to the Rome Statute and civil society organizations celebrated the tenth anniversary of the adoption of the Rome Statute on 17 July 2008. To mark this event, celebrations were held in a number of locations including The Hague on 3 July 2008, and New York on 17 July 2008. The Secretary-General addressed the informal meeting of the Assembly of States Parties, held at Headquarters in New York, to commemorate the anniversary. A sub regional conference was also held in Benin and was attended by the Registrar of the Court. Another celebration was held in South Africa, where Judge Navanethem Pillay participated on behalf of the Presidency.

136. During the reporting period, the following States became Parties or signatories to the Agreement on Privileges and Immunities of the Court: Mexico, Portugal, the United Kingdom of Great Britain and Northern Ireland and the Netherlands. As of the date of submission of the fourth report, 63 States had become signatories to the Agreement.

137. The past year once again highlighted the importance of international cooperation to the activities of the Court. On the one hand, three individuals were surrendered to the Court, enabling it to begin judicial proceedings against each of them in The Hague. On the other hand, seven warrants of arrest remain outstanding. The credibility of the Court and its impacts depend on its decisions being enforced. While the surrender of three individuals further strengthened its credibility, the outstanding warrants highlight the fact that much more needs to be done.

VI. REVIEW CONFERENCE

138. On 20 November 2008, the Assembly heard a statement by H.E. Mr. Fredrick Ruhindi, Deputy Attorney General and Minister of State for Justice and Constitutional Affairs of Uganda. At its 7th meeting, on 21 November 2008, the Assembly took note of the report of the Working Group on the Review Conference (ICC-ASP/7/WGRC/1) and adopted resolution ICC-ASP/7/Res.2 on the venue of the Review Conference. Further during the Second resumption of ASP VII on 13th February 2009, the Assembly agreed with the views expressed in the non-paper submitted by the Assembly's focal point on the review of the Rome Statute, H.E. Mr. Rolf Einar Fife (Norway).

139. It may be recalled that the parameters for the scope of the Review Conference are defined in the Rome Statute (in particular articles 121 to 123, as well as article 5, paragraph 2; and article 124), the Final Act of the Rome Conference (resolutions E and F), as well as in subsequent decisions of the Assembly of States Parties (hereinafter "the Assembly") (in particular decisions on the crime of aggression, such as ICC-ASP/1/Res.1, as well as references to the Review Conference in the omnibus resolution, ICC-ASP/7/Res.3).

140. Reference was made to the progress reports of the focal point made since his appointment at the third session of the Assembly, based on contacts and exchanges concerning the preparation for the Conference. These included views on key parameters for the scope of the Conference, reflected particularly in the focal point's preliminary paper of 21 November 2006 (ICC-ASP/5/INF.2) and the progress report of 4 December 2007 (ICC-ASP/6/INF.3). These showed that approaches made to the focal point had confirmed a deep commitment by States Parties to the aims and integrity of the Rome Statute. Moreover, they showed that there is a longstanding broad support for the proposed goals of the Review Conference of strengthening the Court and protecting the integrity of the Statute. At the same time, it was acknowledged that the Court has been in existence for only a few years. Some key procedures have not yet been implemented. This has limited the empirical basis for any discussion of amendments in important areas. A key focus should therefore be on what the Review Conference could usefully do in order to enhance the principles and purposes of the Statute and support for the Court. The focal point recommended that, in addition to a focus on amendments that command very broad, preferably consensual, support, consideration should also be given to a stocktaking of international criminal justice in 2010.

141. It was further recalled that the Assembly decided at its seventh session that *"proposals for amendments to the Rome Statute to be considered by the Review Conference should be discussed at the eighth session of the Assembly of States Parties in 2009, with a view to promoting consensus and a well prepared Review Conference"*. Furthermore, the Assembly recommended that, *"in addition to a focus on amendments that may command very broad, preferably consensual support, the Review Conference should be an occasion for a "stocktaking" of international criminal justice in 2010.*

142. The following issues require substantive preparation:

(1) Mandatory issues arising from the Rome Statute and the Final Act of the Rome Conference:

- a) **Review of article 124 of the Statute:** This is the only legally mandatory review to be carried out at the first Review Conference. This concerns the transitional provision in article 124 on deferred acceptance of jurisdiction of the Court for war crimes. The matter should therefore be discussed within the New York Working Group, with a view to elaborating a concrete report reflecting views and containing a recommendation to the Assembly.
- b) **Crime of aggression** (article 5, paragraph 2, of the Statute; resolution F of the Final Act): The Special Working Group on the Crime of Aggression will conclude its work during the second resumption of the seventh session of the Assembly. The future work on aggression (including the preparation of a further intersessional meeting) will be addressed by the Special Working Group directly.
- c) **Consideration of the crimes of terrorism and drug crimes**, in accordance with

resolution E of the Final Act.² The matter should be discussed within the New York Working Group, with a view to elaborating a concrete recommendation to the Assembly.

(2) Consideration of other potential amendments to the Rome Statute: Any initiatives for draft amendments beyond those referred to under (1) above should be communicated to and discussed within the New York Working Group. Currently, one such initiative has been indicated by the delegation of Belgium with respect to the list of weapons contained in article 8, paragraph 2 (b) (xx).

(3) **Stocktaking of international criminal justice:** The Assembly has recommended that the Review Conference should be an occasion for a “stocktaking” of international criminal justice in 2010. The New York Working Group should discuss and prepare the modalities of such a stocktaking exercise, with a view to elaborating a concrete recommendation to the Assembly.

VII. Summary Report on the Seminar on “International Criminal Court: Emerging Issues and Future Challenges”, jointly organized by AALCO and the Government of Japan, held on 18th March 2009, at the ITC Hotel Maurya, in New Delhi.

143. It may be recalled that out of the 15 agenda items currently on AALCO’s work programme, is “International Criminal Court – Recent Developments. The Secretariat has been following the developments relating to the establishment of the ICC since its Thirty-Fifth Session held in Manila in 1996. Ever since, the Organization has continuously reported the developments in the ICC at its successive Annual Sessions, and most of the Member States were keenly interested in the deliberations relating to this topic during the Annual Sessions.

144. The AALCO Secretariat and the Government of Japan joined hands to organize a one day seminar on “International Criminal Court: Emerging Issues and Future Challenges”, with the objective of raising awareness about the Rome Statute and the ICC amongst the AALCO Member States.

145. The Inaugural Session began with a welcome address rendered by the Secretary-General of AALCO. H. E. Mr. Hideaki Domichi, Ambassador of Japan in New Delhi presented his introductory remarks on the topic. This was followed by the address by Hon’ble Ms. Fumiko Saiga, Judge of the ICC on the topic “The ICC Today: Activities and Challenges”. Thereafter, the keynote address was delivered by H.E. Mr. Ichiro Komatsu, Ambassador of Japan to Switzerland and former Director-General of International Legal Affairs Bureau, Ministry of Foreign Affairs of Japan when Japan joined the ICC in 2007, on the topic “Japan’s Accession to the ICC”.

146. This was followed by the morning session on the Theme “Progressive Development of International Criminal Jurisprudence: An Overview”. Professor V.S. Mani, Director School of Law and Governance, Jaipur National University made a

presentation on the topic “Contribution of International Criminal Tribunals to the development of International Criminal Law”. This was followed by a presentation by Mr. Christopher Harland, Regional Legal Adviser, ICRC, on the topic “Principles of International Humanitarian and Human Rights Law in the Rome Statute”.

147. The afternoon Session was on the theme “ICC: Current Developments and Contemporary Challenges”. The first presentation on the topic “Asian-African Perspectives on ICC” was made by Prof. Dr. Rahmat bin Mohamad, Secretary-General of AALCO. The second presentation on the topic “ Issues before the first Review Conference of the Rome Statute to be held in Rome in 2010” was made by Mr. Y.S.R. Murthy, Director, National Human Rights Commission. This was followed by views presented by the discussant Mr. C. Jayaraj, Advocate, Supreme Court of India.

148. Participants heard all the presentations with great interest and at the end of both the sessions, substantive discussions were held.

149. In terms of participation nearly 100 delegates attended the seminar, 19 Member States of AALCO, 20 Non-Member States, 3 International Organizations and other participants including academia from Jawaharlal Nehru University, and Delhi University.

150. In conclusion, the Secretary-General thanked the Government of Japan for its generous financial and technical contribution as well as the AALCO Member States for their participation. He hoped that the AALCO Secretariat would be able to take more such initiatives in the future as well. A comprehensive publication regarding the proceedings of the seminar would shortly be brought out, and thereafter it would be circulated to all the Member States and participants.

VIII. COMMENTS AND OBSERVATIONS OF AALCO SECRETARIAT

151. The year 2008 marked the Tenth Anniversary of the adoption of the Rome Statute that established the International Criminal Court (ICC). Ten years later the Court is an independent, fully functional Organization, based in The Hague. 108 States Parties have ratified the Rome Statute in its short existence, but the number is obviously not enough for a Court with universal aspirations. One of the pillars of the Rome Statute is the principle of complementarity. Thus, there is the fundamental principle that persons who committed the most serious crimes underlined in the Rome Statute would, first of all, be punished by a national court in the State Party itself, and if this can be done there is no obligation to hand over a suspect to the ICC. In other words the ICC is the Court of last resort.

152. In order to carry on its functions effectively the Court has to cooperate with both the United Nations and other International Organizations as well as with States. The significance of the Rome Statute is building a network of cooperation between the States Parties and the ICC, in order to ensure that there is no safe haven anywhere in the world for persons who committed serious crimes such as war crimes, crimes against humanity

and genocide. As Judge Saiga of the ICC¹⁶ said “Setting up a network in the international community for preventing these suspects from going unpunished will serve as the greatest deterrent for these horrendous crimes”.

153. Recent developments in the functioning of the ICC evoke mixed reactions from the world community. While on the one hand it seems the Court is making strides towards realizing its goals, in the form of indicting persons responsible for committing the gravest crimes, on the other hand one of the most important task of defining the mother of all crimes the “Crime of Aggression”, despite all efforts, remains elusive. As the Review Conference of the ICC is fast approaching, there are many tasks that need to be accomplished, including the “Definition of the Crime of Aggression”, and as a serious concern raised by one of the AALCO Member State “if we miss this opportunity in 2010, we might have to wait another ten years in fulfilling that mandate”.

154. The Review Conference is scheduled to be held in the year 2010. It is felt that the success of the Review Conference should not solely rely on amendments and that it should also be an opportunity for stocktaking, benchmarking and evaluating the work of the international criminal justice system established by the Rome Statute. As highlighted by the President of the Assembly of States Parties the preparatory process for this conference would be conducted in a transparent and inclusive manner. Some of the issues that would require substantive preparation, as highlighted in the non-paper on the scope of the Review Conference are: Review of article 124 of the Rome Statute, Crime of Aggression, consideration of the crimes of terrorism and drug crimes, consideration of other potential amendments and stocktaking of international criminal justice. This would be a good opportunity for AALCO Member States to put forward their views on issues of common concern.

155. On 14 July 2008 the ICC Prosecutor filed an Application under Article 58 of the Rome Statute, requesting the Pre-Trial Chamber I to issue a Warrant of Arrest for the President of Sudan. The warrant of arrest was issued on 4th March 2009. The ICC advocates applaud the precedent-setting charge against a sitting head of State; critics warn of over-reach and serious collateral damage. This argument can be substantiated from the statements made at the 21st Summit of Arab Leaders held in Doha, Qatar from 30th – 31st March 2009, wherein it was stated that the International Criminal Court was hindering the Arab and African efforts to resolve the Sudanese issue, calling on the Security Council to postpone the arrest warrant issued by the ICC against the Sudanese President. The Arab Leaders rejected the ICC warrant and declared that they would not execute it. A view expressed at the Summit was that there was urgent need to review the functioning of the Security Council itself, and that justice did not lie in targeting the weak and turning a blind eye towards powerful criminals. It was also felt that international legitimacy should not prevail over sovereignty.

¹⁶ Inaugural address of Judge Saiga of the ICC “The ICC Today: Activities and Challenges” delivered at the seminar on International Criminal Court: Emerging Issues and Future Challenges”, jointly organized by AALCO and the Government of Japan, held in New Delhi on 18th March 2009.

156. In view of the fact that all the four cases currently pending before the ICC are from the African Continent, a perception is firming up that the ICC is becoming Afro centric. This misconception was recently refuted by Judge Fumiko Saiga¹⁷ when she said that “It is certainly not correct to think that the Court is only interested in cases from the African continent”. In this regard, the international community needs to remain vigilant against the possible misuse of indictment against African leaders. However, it is pertinent to note here that the office of the Prosecutor of the ICC is currently conducting preliminary analysis of situations in a number of countries including Chad, Cote D Ivoire, Afghanistan, Georgia, Colombia and Palestine.

¹⁷ Ibid.

**Proposals for a provision on aggression elaborated by the Special
Working Group on the Crime of Aggression**

Draft resolution

(to be adopted by the Review Conference)

The Review Conference,
(insert preambular paragraphs)

1. *Decides* to adopt the amendments to the Rome Statute of the International Criminal Court (hereinafter: “the Statute”) contained in the annex to the present resolution, which are subject to ratification or acceptance and shall enter into force in accordance with article 121, paragraph [4 / 5] of the Statute; *(add further operative paragraphs as needed)*

Annex

**Draft amendments to the Rome Statute of the International Criminal Court on the
Crime of Aggression**

1. *Article 5, paragraph 2, of the Statute is deleted.*
2. *The following text is inserted after article 8 of the Statute:*

Article 8 bis

Crime of aggression

1. For the purpose of this Statute, “crime of aggression” means the planning, preparation, initiation or execution, by a person in a position effectively to exercise control over or to direct the political or military action of a State, of an act of aggression which, by its character, gravity and scale, constitutes a manifest violation of the Charter of the United Nations.
2. For the purpose of paragraph 1, “act of aggression” means the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State, or in any other manner inconsistent with the Charter of the United Nations. Any of the following acts, regardless of a declaration of war, shall, in accordance with United Nations General Assembly resolution 3314 (XXIX) of 14 December 1974, qualify as an act of aggression:
 - (a) The invasion or attack by the armed forces of a State of the territory of another State, or any military occupation, however temporary, resulting from such invasion or attack, or any annexation by the use of force of the territory of another State or part thereof;

(b) Bombardment by the armed forces of a State against the territory of another State or the use of any weapons by a State against the territory of another State;

(c) The blockade of the ports or coasts of a State by the armed forces of another State;

(d) An attack by the armed forces of a State on the land, sea or air forces, or marine and air fleets of another State;

(e) The use of armed forces of one State which are within the territory of another State with the agreement of the receiving State, in contravention of the conditions provided for in the agreement or any extension of their presence in such territory beyond the termination of the agreement;

(f) The action of a State in allowing its territory, which it has placed at the disposal of another State, to be used by that other State for perpetrating an act of aggression against a third State;

(g) The sending by or on behalf of a State of armed bands, groups, irregulars or mercenaries, which carry out acts of armed force against another State of such gravity as to amount to the acts listed above, or its substantial involvement therein.

3. The following text is inserted after article 15 of the Statute:

Article 15 bis
Exercise of jurisdiction over the crime of aggression

1. The Court may exercise jurisdiction over the crime of aggression in accordance with article 13, subject to the provisions of this article.

2. Where the Prosecutor concludes that there is a reasonable basis to proceed with an investigation in respect of a crime of aggression, he or she shall first ascertain whether the Security Council has made a determination of an act of aggression committed by the State concerned. The Prosecutor shall notify the Secretary-General of the United Nations of the situation before the Court, including any relevant information and documents.

3. Where the Security Council has made such a determination, the Prosecutor may proceed with the investigation in respect of a crime of aggression.

4. **(Alternative 1)** In the absence of such a determination, the Prosecutor may not proceed with the investigation in respect of a crime of aggression,

Option 1 – end the paragraph here.

Option 2 – add: unless the Security Council has, in a resolution adopted under Chapter VII of the Charter of the United Nations, requested the Prosecutor to proceed with the investigation in respect of a crime of aggression.

4. (**Alternative 2**) Where no such determination is made within [6] months after the date of notification, the Prosecutor may proceed with the investigation in respect of a crime of aggression,

Option 1 – end the paragraph here.

Option 2 – add: provided that the Pre-Trial Chamber has authorized the commencement of the investigation in respect of a crime of aggression in accordance with the procedure contained in article 15;

Option 3 – add: provided that the General Assembly has determined that an act of aggression has been committed by the State referred to in article 8 bis;

Option 4 – add: provided that the International Court of Justice has determined that an act of aggression has been committed by the State referred to in article 8 bis.

5. A determination of an act of aggression by an organ outside the Court shall be without prejudice to the Court's own findings under this Statute.

6. This article is without prejudice to the provisions relating to the exercise of jurisdiction with respect to other crimes referred to in article 5.

4. The following text is inserted after article 25, paragraph 3 of the Statute:

3 bis. In respect of the crime of aggression, the provisions of this article shall apply only to persons in a position effectively to exercise control over or to direct the political or military action of a State.

5. The first sentence of article 9, paragraph 1 of the Statute is replaced by the following sentence:

1. Elements of Crimes shall assist the Court in the interpretation and application of articles 6, 7, 8 and 8 bis.

6. The chapeau of article 20, paragraph 3 of the Statute is replaced by the following paragraph; therest of the paragraph remains unchanged:

2. No person who has been tried by another court for conduct also proscribed under article 6, 7, 8 or 8 bis shall be tried by the Court with respect to the same conduct unless the proceedings in the other court:

**Non-paper on other substantive issues on aggression to be addressed
by the Review Conference**

1. In previous meetings of the Special Working Group on the Crime of Aggression (SWGCA), in particular during the seventh session of the Assembly, a number of issues have surfaced which the Review Conference might usefully address when adopting the amendment on aggression, though not necessarily in the amendment text itself. Instead, these issues could be dealt with in the resolution by which the provisions on aggression are adopted, or elsewhere in the Final Act of the Conference. Delegations might also be of the view that some, or all of these issues, do not need to be addressed explicitly at all, e.g. because they would be reflected in the report of the Working Group or elsewhere in the “travaux préparatoires”.

2. The drafting suggestions below are thus only submitted with a view to facilitating a deeper discussion of the issues addressed, without prejudice to the eventual placement and format of such text.

I. Activation of the Court’s subject-matter jurisdiction on aggression with respect to Security Council referrals

3. Delegations might wish to deepen the consideration of this question, which was only preliminarily discussed during the last session.¹ There appeared to be increasing acceptance of the view that, in accordance with article 5, paragraph 2, of the Statute, the Court would be able to exercise jurisdiction over the crime of aggression on the basis of a Security Council referral immediately after the adoption of the provision on aggression by the Review Conference. Such an approach would follow from the wording of article 5, paragraph 2, and more generally from the jurisdictional system established by articles 12 and 13 of the Rome Statute, which do not require State consent in case of Security Council referrals. Alternatively, delegations could come to the conclusion that the subject-matter jurisdiction on aggression based on Security Council referrals begins with the entry into force of the amendment (under either article 121, paragraph 4 or 5). In either case, it might be useful to have the agreed understanding reflected. The following language could be considered:

It is understood that the Court may exercise jurisdiction over the crime of aggression on the basis of a Security Council referral in accordance with article 13 (b) of the Statute once the amendment on aggression [is adopted by the Review Conference/has entered into force].

4. In this context, the SWGCA could furthermore consider language clarifying that a Security Council referral, which may include the crime of aggression, as any other Security Council referral, does not depend on the consent of the State concerned. Such a clarification could be useful irrespective of which entry into force provision is applied

(article 121, paragraph 4 or 5), and would in particular address questions that could be raised in the context of article 121, paragraph 5, second sentence.

It is understood that the Court shall exercise jurisdiction over the crime of aggression on the basis of a Security Council referral in accordance with article 13 (b) of the Statute irrespective of whether the State concerned has accepted the Court's jurisdiction in this regard.

II. Minimum number of ratifications in case of article 121, paragraph 5

5. During the November 2008 session of the SWGCA, some delegations expressed interest in requiring a minimum number of ratifications for the entry into force of the amendments on aggression under the option in which article 121, paragraph 5, is applied. Such a requirement would arguably only add value if combined with the understanding that the Court may accept Security Council referrals only after the entry into force of the amendment (and not, as discussed above, immediately after the adoption of the amendment by the Review Conference). In this case, delegations might want to avoid a situation where a single ratification of the amendment would activate the Court's jurisdiction with respect to Security Council referrals. Nevertheless, the opposite view was also expressed, favoring a quick activation of the Court's subject-matter jurisdiction. It was also questioned whether the introduction of a provision on a minimum number of ratifications required for entry into force was compatible with article 121, paragraph 5. The following language is thus only presented with a view to facilitating the discussions on this issue, with the understanding that there is currently no agreement as to whether article 121, paragraph 4 or 5 should apply.

(Text in bold to be added to operative paragraph 1 of the draft resolution in the 2009 Chairman's Paper)

*... the amendments ... shall enter into force in accordance with article 121, paragraph 5, of the Statute **one year after the deposit of the [xth] instrument of ratification or acceptance.***

III. Implications of article 121, paragraph 5, second sentence, for State referrals and *proprio motu* investigations

6. The SWGCA has already held a preliminary discussion on this issue, during which there was a strong view that the application of article 121, paragraph 5, second sentence, should not lead to differential treatment between non-States Parties and States Parties that have not accepted the amendment on aggression.³ At the same time, the sentence in question has given rise to different interpretations, and some delegations called for clarification.

7. Article 121, paragraph 5, second sentence, reads: "*In respect of a State Party which has not accepted the amendment, the Court shall not exercise its jurisdiction regarding a crime covered by the amendment when committed by that State Party's nationals or on its*

territory.

8. The issue can best be understood by referring to the illustrative chart on “Jurisdiction scenarios regarding article 121, paragraph 5, second sentence”,⁴ and in particular scenarios 2 and 4 contained therein. Delegations held different views regarding the question of jurisdiction under these two scenarios, but the view prevailed that there should be no discrimination between non-States Parties and States Parties that have not accepted the amendment.

<i>May the Court exercise jurisdiction over the crime of aggression?</i>	Victim: State Party, accepted CoA	Victim: State Party, has <u>not</u> accepted CoA	Victim: Non-State Party
Aggressor: State Party, accepted CoA	1 Yes	2 ?	3 Yes
Aggressor: State Party, has <u>not</u> accepted CoA	4 ?	5 No	6 No
Aggressor: Non-State Party	7 Yes	8 No	9 No

9. In order to facilitate the discussion of this complex issue, it is suggested to address scenarios 2 and 4 separately. With respect to both scenarios, text can be formulated that ensures non-discrimination and clarifies whether the Court has jurisdiction. The respective formulations could eventually be merged once agreement on an overall approach is reached.

10. **With respect to scenario 2**, the following interpretative language could be considered to ensure non-discrimination (compare scenarios 2 and 3) and to clarify that the Court **does**⁵ have jurisdiction:

It is understood that article 121, paragraph 5, second sentence, of the Statute does not prevent the Court from exercising jurisdiction in respect of an act of aggression committed by a State Party that has accepted the amendment on aggression.

11. **With respect to scenario 4**, the following interpretative language could be considered to ensure non-discrimination (compare scenarios 4 and 7). Since delegations appeared to have different views as to whether the Court should have jurisdiction in scenario 4, two alternatives are provided, both of which ensure non-discrimination.

Alternative 1 (clarifies that the Court does have jurisdiction in scenario 4 and 7):

It is understood that article 121, paragraph 5, second sentence, of the Statute does not prevent the Court from exercising jurisdiction in respect of an act of aggression committed against a State Party that has accepted the amendment.

Alternative 2 (clarifies that the Court **does not** have jurisdiction in scenarios 4 and 7):

It is understood that article 121, paragraph 5, second sentence, of the Statute prevents the Court from exercising jurisdiction in respect of an act of aggression committed by any State that has not accepted the amendment.

IV. The leadership crime of aggression and territoriality

12. The SWGCA has already held a preliminary discussion on this issue, during which broad support was expressed for the view that “concurrent jurisdiction arises where the perpetrator acts in one State and the consequences are felt in another”.⁶ Should delegations indeed wish to clarify this issue, along the lines indicated during the last session of the SWGCA, the following language could be considered:

It is understood that the notion of “conduct” in article 12, paragraph 2 (a), of the Statute encompasses both the conduct in question and its consequence.

V. Jurisdiction *ratione temporis*

13. During the last meeting of the SWGCA, the suggestion was made that it should be specified that the amendments on aggression shall apply prospectively. The SWGCA had discussed this issue during its 2004 Princeton meeting⁷, during which there was no objection to specifying that the provisions on aggression would not have retroactive effect. In light of the provisions of article 5, paragraph 2, and following the structure of article 11 of the Statute, the following language could be considered:

(i) *It is understood, in accordance with article 11, paragraph 1, of the Statute, that the Court has jurisdiction only with respect to crimes of aggression committed after the amendment [has been adopted by the Review Conference/has entered into force].*

(ii) *It is understood, in accordance with article 11, paragraph 2, of the Statute, that in case of article 13, paragraph (a) or (c), the Court may exercise its jurisdiction only with respect to crimes of aggression committed after the entry into force of the amendment for that State, unless that State has made a declaration under article 12, paragraph 3.*

14. It should be noted that the first paragraph suggested above marks the beginning of jurisdiction *ratione temporis* in case of a Security Council referral or in case of an *ad hoc* declaration under article 12, paragraph 3, of the Statute. The second paragraph marks the beginning of jurisdiction *ratione temporis* for referrals by States Parties and for *proprio motu* investigations.

Informal note on the work programme

1. The Chairman of the Special Working Group on the Crime of Aggression (SWGCA) would like to draw the attention of all delegations to the report of the Special Working Group of the seventh session¹ and the revised Chairman's paper submitted in preparation of the upcoming session (2009 Chairman's paper).

2. In order to facilitate the preparation for the substantive work of this last session of the SWGCA, the Chairman would like to suggest a number of issues on which the Group could usefully focus its work. This list is subject to change depending on the progress made in the discussions and without prejudice to other topics delegations may wish to raise.

I. Draft amendments on aggression, based on the 2009 Chairman's paper

3. The main goal of this session will be to adopt a final report of the SWGCA for consideration by the Assembly of States Parties, containing a set of draft amendments to the Rome Statute. It is envisaged that this document should be as clean as possible, based on the 2009 Chairman's paper. At the same time, it is understood that several questions, including the issue dealt with in draft article 15 bis, paragraph 4 (procedural options in case of inaction by the Security Council) will require further work after the completion of the SWGCA. It is also understood that all draft provisions on the crime of aggression are interlinked and that the principle "nothing is agreed until everything is agreed" therefore applies.

II. Other substantive issues related to the draft amendments on aggression

4. In previous meetings of the SWGCA, in particular during the seventh session of the Assembly, a number of issues have surfaced which the Review Conference might usefully address when adopting the amendments on aggression, though not necessarily in the amendment text itself. These relate, *inter alia*, to (a) the activation of the Court's subject-matter jurisdiction on aggression with respect to Security Council referrals; (b) the question of a minimum number of ratifications to be required in connection with article 121, paragraph 5, of the Statute; (c) issues related to the potential application of article 121, paragraph 5, second sentence; (d) the question of territoriality of the crime of aggression in light of its nature as a leadership crime; and (e) the question of jurisdiction *ratione temporis*.

5. The Chairman therefore suggests draft language on these issues for discussion by the SWGCA. The Review Conference could adopt language on these issues simultaneously with the amendments on aggression, in an appropriate format that is yet to be discussed. A separate nonpaper has been submitted in order to facilitate discussions.

III. Elements of Crimes

6. In light of the previous discussions of the SWGCA,² the 2009 Chairman's paper contains a draft amendment to article 9 of the Statute. The SWGCA could in particular make recommendations to the Assembly regarding the future consideration of the Elements of Crimes and the timing of their adoption.

IV. Future work on aggression

7. This will be the final session of the SWGCA. Since the Assembly has already agreed to continue the work on aggression after the SWGCA has concluded its work, the Group should discuss such future work. In this context, delegations might wish to discuss the modalities for submission of the proposed amendment on aggression, on the one hand in light of article 121 of the Rome Statute (submission to the United Nations Secretary-General), and on the other hand in light of resolution ICC-ASP/1/Res.1 (Continuity of work in respect of the crime of aggression) and resolution F of the Final Act of the Rome Conference (submission to the Assembly). Furthermore, the details of a further inter-sessional meeting on aggression should be discussed. At this stage, such a meeting is tentatively planned for a duration of two and a half days, from 15 to 17 June 2009, at Princeton University, in light of the discussions held at the seventh session of the Assembly.