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**Assembly of States Parties**

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**Fifth session**

The Hague

23 November to 1 December 2006

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

**I. Introduction**

1. The Special Working Group on the Crime of Aggression of the Assembly of States Parties to the Rome Statute of the International Criminal Court held three meetings on 27, 28 and 29 November 2006. Ambassador Christian Wenaweser (Liechtenstein) served as Chairperson of the Special Working Group.

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

3. The Special Working Group had before it the outcome of the informal inter-sessional meeting held in Princeton, New Jersey, United States of America, from 8 to 11 June 2006, contained in document ICC-ASP/5/SWGCA/INF.1.

4. At the first meeting of the Group, the Chairperson presented an overview of the report of the inter-sessional meeting and highlighted the productive nature of the discussions held in Princeton. He also recalled the decision of the Assembly of States Parties that the Special Working Group should conclude its work at least 12 months prior to the Review Conference and referred to the consultations held regarding the preparation of such a Conference. The Chairperson stressed the link between those discussions and the timetable of the Special Working Group and indicated that there may be a need to review the timetable of the Group if the Review Conference were to be held in 2010. He invited delegations to focus the discussion on the consideration of the report on the inter-sessional meeting of the Special Working Group and the timetable towards the Review Conference.

**II. Consideration of the report of the inter-sessional meeting of the Special Working Group on the Crime of Aggression**

5. The Special Working Group expressed its appreciation to the Liechtenstein Institute on Self-Determination at Princeton University for hosting and providing financial support for the inter-sessional meeting and to the Governments of Canada, Finland, Liechtenstein, the Netherlands, Sweden and Switzerland for the financial support they had provided for the meeting.

6. Delegations welcomed the informal inter-sessional meeting as a further positive step towards the elaboration of a definition of aggression. It was generally acknowledged that the Group had made substantial progress at the 2006 inter-sessional meeting, as reflected in the report of that meeting. In this context, it was noted that the 2006 inter-sessional meeting had benefited from broad participation and that participation by States not parties to the Rome Statute was essential at this stage of the discussions.

7. A number of delegations made comments and observations on the issues contained in the report of the inter-sessional meeting or reiterated positions reflected in that report. It was pointed out that the definition of the crime of aggression was one of the main tasks of the Review Conference and that the Special Working Group needed to make all possible efforts to conclude its mandate on time.

8. Regarding the definition of the act of aggression at the State level, the importance of a precise definition was stressed. Delegations expressed different views on the question of whether to define the act of aggression in a generic manner, possibly accompanied by a specific list. In this context, the importance of General Assembly resolution 3314 (XXIX) and the need to respect the principle of legality were stressed. Different views were also expressed as to the need to qualify an act of aggression as a “manifest” violation of the United Nations Charter, or as amounting to a “war of aggression”. Caution was expressed against the inclusion of the notions of “threat” or “attempt” of aggression.

9. Opinions continued to differ “as to whether the exercise of jurisdiction over the crime of aggression should be conditioned on a prior determination of the act of aggression by the Security Council or another body outside the Court”. Some delegations reiterated their positions in this regard without there being an agreement on the issue. It was also pointed out that better progress might be possible by looking at each of the three ways of establishing jurisdiction under article 13 of the Statute separately. A suggestion was made to subject prosecutorial action to judicial control of an extended Pre-Trial Chamber in cases where the Prosecutor acts on the basis of a State referral or in the exercise of his *proprio motu* powers. It was argued that such a type of control would establish an additional filter against politically motivated action. A number of delegations expressed interest in that suggestion. Nonetheless, a concern was raised that such a form of judicial review would involve the Court in political determinations which should be left to the Security Council.

10. There was widespread agreement among delegations that the discussions had moved to a new phase in light of the 2006 inter-sessional meeting. Delegations indicated that the time was ripe for an updating of the 2002 Coordinator’s paper in view of recent discussions and requested the Chairperson to submit a revised version of the paper that could serve as a basis for discussion during the resumed fifth session of the Assembly of States Parties.

11. The Chairperson indicated he would continue consulting delegations on the issues discussed in the current session. He informed delegations that a revised version of the paper would be available before the resumed fifth session in order to give States sufficient time to consider it.

### **III. Timetable towards the Review Conference**

12. Given that the Rome Statute provides for the Review Conference to be convened in 2009, continued support was expressed for the idea of maintaining the existing timetable, which foresees at least 10 days of exclusive meeting time for the Special Working Group between 2006 and 2008, in order to enable the Special Working Group to accomplish its work as originally scheduled. It was acknowledged, at the same time, that it might be advisable to

extend the work of the Group beyond 2008 if the Review Conference were to be held in 2010. It was proposed to cover this period through additional meetings, while allowing delegations sufficient time to prepare comments for the Review Conference.

13. The Chairperson informed delegations that a further inter-sessional meeting at Princeton University was tentatively planned for June 2007.

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