

Discussion Paper

The Assembly of States Parties,

PP1 *Recognizing* the historic significance of the consensual decision at the Kampala Review Conference to adopt the amendments to the Rome Statute on the crime of aggression, and in this regard *recalling* resolution RC/Res.6,

PP2 *Recalling* its resolve to activate the Court's jurisdiction over the crime of aggression as early as possible, subject to a decision according to paragraphs 3 of article 15 *bis* and article 15 *ter*,

PP3 *Noting with appreciation* the Report on the facilitation on the activation of the jurisdiction of the International Criminal Court over the crime of aggression¹, which summarizes the views of States Parties,

PP4 *Noting* the view that, in accordance with paragraph 5 of article 121 of the Rome Statute, in respect of a State Party which has not accepted the amendments on the crime of aggression, the Court shall not exercise its jurisdiction regarding a crime of aggression when committed by that State Party's nationals or on its territory,

PP5 *Noting* the view that, in accordance with paragraph 4 of article 15bis of the Rome Statute, the Court may, in accordance with article 12, exercise jurisdiction over a crime of aggression, arising from an act of aggression committed by a State Party, unless that State Party has previously declared that it does not accept such jurisdiction,

PP6 *Recalling* that in paragraph 1 of RC/Res.6 the Review Conference decided to adopt, in accordance with paragraph 2 of article 5 of the Rome Statute the amendments regarding the crime of aggression, which are subject to ratification or acceptance and shall enter into force in accordance with paragraph 5 of article 121; and noted that any State Party may lodge a declaration referred to in article 15 *bis* prior to ratification or acceptance of the amendments;

PP7 Desirous to provide legal certainty regarding the Court's exercise of jurisdiction and to respect the views expressed by States Parties in this regard,

Option 1:

OP1 *Decides* to activate the Court's jurisdiction over the crime of aggression.

Option 2:

OP1 *Decides* to activate the Court's jurisdiction over the crime of aggression,

¹ ICC-ASP/16/24

OP2 *Confirms* that in accordance with paragraph 5 of article 121 of the Rome Statute, the amendments to the Statute regarding the crime of aggression adopted at the Kampala Review Conference enter into force for those States Parties which have accepted the amendments one year after the deposit of their instruments of ratification or acceptance and that in respect of a State Party which has not accepted the amendments, the Court shall not exercise its jurisdiction regarding the crime when committed by that State Party's nationals or on its territory,

Option 3:

OP1 *Decides* in accordance with paragraphs 3 of article 15 *bis* and article 15 *ter* to activate the Court's jurisdiction over the crime of aggression, subject to the following provisions;

OP2 *Takes note* of the views expressed by States Parties, individually or collectively, as reflected in the Report on the facilitation² and upon adoption of this resolution as reflected in the Official Records that, for whatever reason, they do not accept the Court's jurisdiction over the crime of aggression unless they ratify or accept the amendments regarding the crime of aggression, *requests* the Secretariat to communicate these views to the Court and to all States Parties, and *affirms* that in case of a State referral or *proprio motu* investigation the Court shall not exercise its jurisdiction in respect of the crime of aggression when committed by nationals or on the territory of these States Parties.

OP 3 *Stresses* that the previous paragraph shall be without prejudice to the possibility to lodge a declaration referred to in article 15 *bis*.

[*continue under all options*]

OPX *Renews* its call upon all States Parties **which have not yet done so** to ratify or accept the amendments to the Rome Statute on the crime of aggression.

² ICC-ASP/16/24, see Annex II.A.