

Amendment Proposals of Iranian Islamic Human Rights Commission for the First Review Conference on the Rome Statute of International Criminal Court

As a participant in the Review Conference and as one of the new members of the Coalition for the International Criminal Court (CICC), the Iranian Islamic Human Rights Commission emphasizes on legal and historical significance of First Review Conference and hereby proposes the following legal and technical considerations about the proposed amendments for the Rome Statute:

- ✚ The revision of Article 124 of the Rome Statute;
- ✚ The crime of aggression;
- ✚ The inclusion of the use of certain weapons as war crimes in non-international armed conflicts;
- ✚ Deletion of article 98(2) of the Rome Statute.

A) The Revision of Article 124 of the Rome Statute

According to the article 120 of the Rome Statute which prohibits reservation to the Statute, considering this fact that all of the war criminals within the jurisdiction of the Court must be prosecuted; reaffirming that current execution of article 124 of the Rome Statute is an obstacle for complete elimination of impunity and universality of the Court and its inclusion weakened the jurisdictional regime of the ICC and is seen as incompatible with the object and purpose of the Rome Statute; with a view to transitional character of the provision; and recalling that under the Rome Statute per se, it is possible to review article 124 in the Review Conference;

The Iranian Islamic Human Rights Commission supports the deletion of article 124 of the Rome Statute of the International Criminal Court.

B) *Crime of Aggression*

It seems that the main source for defining the crime of aggression is UN General Assembly Resolution 3314 (XXIX) of 14 December 1974. As the Resolution 3314 addresses aggressions committed between states, and also as is mentioned in the Paragraph 1 of Article 8 bis (planning preparation, initiation or execution *by a person* in a leadership position of an act of aggression), the prediction of an act of aggression by a natural person could be considered an acceptable definition for aggression.

Based on the proposal presented by the chairman of the Special Working Group on the Crime of Aggression in January 2009, and the proposals offered by the Special Workshop in February 2009, two Alternatives are available. In the Alternative 1, the supremacy of the Security Council over the Court is clear and in the Alternative 2, attempts are made to maintain the independence of the Court.

It seems that the Alternative 2 is more acceptable but it contains four Options out of which the Options 3 and 4 do not seem to answer the immediate needs regarding the opening of investigations, gathering and preserving evidences, holding hearings for witnesses and victims or the protection of the rights of the accused. The reason is that the determination of aggression in the UN General Assembly in presence of 192 member states is not simple and quick task to perform, at the same time the determination of aggression before the International Court of Justice might take a long time.

Therefore, the first and second Options sound more reasonable. At the same time, the first Option does not fully comply with the Rome Statute. The reason is that in case of a state-party referral or *proprio motu* of the Prosecutor's own volition, according to the article 15 of the Statute, the commencement of investigation must be first authorized by the Pre-trial Chamber. Therefore, the second Option indicating that the Prosecutor may proceed with the investigation in respect of a crime of aggression "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" seems more reasonable provided that the Pre-trial Chamber issues the authorization in a timely manner. If the crime of aggression is defined and the conditions for application of jurisdiction are clarified, the Commission supports deletion of the second paragraph of the article 5 of the Statute.

At the same time, considering the fact that the paragraph 4 of article 121 in the Statute covers all of amendments related to the Statute, while paragraph 5 presents specifications only on the amendments related to the crimes within the jurisdiction of the Court, therefore it seems that both paragraphs can be applicable.

C) The inclusion of the use of certain weapons as war crimes in non-international armed conflicts

In addition to emphasis on the proposed idea of inclusion of the use of certain weapons as war crimes in non-international armed conflicts, it is also proposed that all prohibited war methods in international conflicts be prohibited in non-international conflicts as well. The Commission supports the proposed amendments which insert three new crimes in the list of war crimes applicable in non-international armed conflict.

D) Deletion of the Rome Statute Article 98(2)

To ensure the full compliance of the states with the International Criminal Court, the deletion of article 98 (2) is strongly proposed, since the application of this article might cause the member states of the ICC to refrain from cooperating with the Court, when in a bilateral agreements with other states on non-extradition of their nationals to the Court.

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