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COMMITTEE OF THE WHOLE

PROPOSAL SUBMITTED BY CAMEROON

Article 5

Crimes within the jurisdiction of the Court

Proposals aimed at specifying the manner in which the crime of aggression (article 5) might fall within the jurisdiction of the Court, with the consequent reformulation of the relationship between the Court and the Security Council (article 10).

Crime of aggression

Option A

1. For the purpose of the present Statute, the crime of aggression is one of the following acts committed by an individual who is in a position of exercising control or capable of directing or guiding the political or military action of a State:

- (a) initiating,
- (b) planning,
- (c) preparing,
- (d) ordering, or
- (e) launching

the use of armed force by that State against the sovereignty, territorial integrity or political independence of another State when this use of force is in manifest contravention of the Charter of the United Nations.

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2. The Court shall prosecute and punish the crime of aggression as defined in paragraph 1 of this article without prejudice to the powers exercised by the Security Council in regard to aggression under Chapter VII of the Charter of the United Nations.

Option B

1. For the purpose of the present Statute, and subject to the role performed by the Security Council in regard to aggression in accordance with article 10 of the present Statute, the crime of aggression is one of the following acts committed by an individual who is in a position of exercising control or capable of directing or guiding the political or military action of a State:

- (a) initiating,
- (b) planning,
- (c) preparing,
- (d) ordering, or
- (e) launching

the use of armed force by that State against the sovereignty, territorial integrity or political independence of another State when that use of armed force is in manifest contravention of the Charter of the United Nations.

N.B. Since of necessity this definition of the crime of aggression involves the relationship between the Court and the Security Council, a new formulation for article 10 appears to be necessary:

Article 10

Relationship between the Security Council and the Court

1. The Security Council shall determine the existence of aggression in accordance with the pertinent provisions of the Charter of the United Nations before any proceedings take place in the Court in regard to a crime of aggression.

2. The Security Council may determine the existence of aggression in accordance with paragraph 1 of this article:

- (a) On its own initiative;
- (b) At the request of a State which considers itself the victim of aggression;
- (c) At the request of the Court when a complaint relating to a crime of aggression has been submitted to it;

(d) At the request of any other organ of the United Nations which, under the Charter, is able to draw the attention of the Security Council to a situation likely to endanger the maintenance of international peace and security.

3. The Court, when a complaint relating to a crime of aggression has been submitted to it, shall suspend its deliberation and refer the matter to the Security Council for a declaration, in accordance with the pertinent provisions of the Charter, that the aggression does or does not exist. A letter from the President of the Security Council shall convey the Security Council's finding to the Prosecutor of the Court, accompanied by all supporting material available to the Council in regard to the aggression whose existence it has determined. (N.B. This sentence is a repetition of article 10, paragraph 2.)

4. Notwithstanding the provisions of paragraph 1 of this article, the Court may commence an investigation for the purpose of establishing whether a crime of aggression within the meaning of the present Statute exists, if the Security Council, having had the matter referred to it by the Court under paragraph 3 of the present article, does not reply within a reasonable time.

5. The Security Council, on the basis of a formal decision under Chapter VI of the Charter of the United Nations, may lodge a complaint with the Prosecutor specifying that crimes referred to in article 5 appear to have been committed. (N.B. This reproduces article 10, paragraph 3.)

6. The Court may request the assistance of the Security Council in conducting investigations into cases submitted to it, in arresting persons who are being prosecuted or have escaped from custody, or in enforcing its decisions.
