

17 March 2000
English
Original: Spanish

**Preparatory Commission for the International
Criminal Court**

Working Group on the Crime of Aggression

New York

13-31 March 2000

12-30 June 2000

27 November-8 December 2000

**Considerations by Colombia regarding its proposal on
aggression contained in document
PCNICC/2000/WGCA/DP.1**

At the request of several delegations, we should like to make the following clarifications in writing concerning the proposal submitted:

1. In preparing this proposal, we had in mind the document submitted by the Coordinator and the other proposals under discussion, with a view to helping progress towards a consensus.
2. The starting-point was the need to separate the definition of the crime of aggression from the conditions for the exercise of the jurisdiction of the Court with regard to that crime, as provided in article 5, paragraph 2, of the Statute.
3. The proposed **definition** contains the following elements:
 - 3.1. The conduct consists of the planning, preparation, ordering, initiation or execution of an armed attack on a State. The crime is committed when there is participation in any of those acts, which are described in general terms.
 - 3.2. The consequence of the aggressive conduct is injury to protected interests: a State's territorial integrity, sovereignty or political independence.
 - 3.3. The circumstance characterizing an armed attack is the illegitimate use of force.
 - 3.4. The active subject or subjects envisaged would be the person or persons in a position to exercise control or direct the political or military action of a State.
4. **Conditions for the exercise of the jurisdiction of the Court**
 - 4.1. The first paragraph emphasizes respect for the Charter of the United Nations in relation to the responsibilities of the Security Council for the maintenance of

international peace and security and its powers under Chapter VII, in accordance with the provisions at the end of paragraph 2 of article 5 of the Statute.

With regard to the exercise of the jurisdiction of the International Criminal Court, three situations are envisaged:

4.1.1. When there is a prior determination by the Security Council that an act of aggression exists, under Article 39 of the Charter of the United Nations, the Court shall proceed to rule on the admissibility of a case which has been referred to the Prosecutor or on which investigations have begun, in accordance with articles 17 and 18.

4.1.2. When there is no prior determination by the Security Council of the existence of an act of aggression, the Court shall decide on its jurisdiction in accordance with article 19. To that end, the Court may request information from States, international organizations or the Security Council.

4.1.3. When the Security Council, in accordance with article 13 (b) of the Statute, refers a situation to the Court in which a crime of aggression appears to have been committed, it shall be understood, by that very fact, that the Council has made the determination that an act of aggression exists, under Article 39 of the Charter of the United Nations, and the Court may exercise jurisdiction.

4.2. Paragraph 5 of the proposal reiterates, for the sake of greater clarity, that the provisions shall be without prejudice to the provisions of article 19, for under any of the situations envisaged, there is a need to ensure balance and protection from the possibility of challenges to the jurisdiction of the Court or the admissibility of a case.
