Mr. Chairman,

We would like to join the distinguished colleagues who appreciated your efforts to revise the working paper on the question of “definition of the crime of aggression and the conditions for the exercise of jurisdiction”. Though the paper follows a narrow approach, yet it incorporates many important ideas stated during the previous sessions; including those shared during the Princeton meetings.

Pakistan is committed to upholding the rule of international law, in accordance with the principles of the United Nations Charter. We strongly believe, there should be no impunity for “the most serious crimes of international concern”, including the crime of aggression.

Traditionally, the crime of aggression has been considered to be committed by states, whereas we favour the principle that the jurisdiction of the Court should be limited to individuals.

We have evaluated both the “differential” and “monistic” approaches to define the crime of aggression. The differential approach is consistent, with the earlier approach adopted in Rome Statute to address crime of genocide, war crimes and crime against humanity. However, in case of crime of aggression, if we apply the provisions of Article 25 of the Statute, it will broaden the scope of jurisdiction even to those individuals, who could not be considered part of the leadership cadre, thus defeating the near consensus understanding that crime of aggression is a leadership crime.

We will also like to draw attention to the principle of “nullum crimen sine lege”, in the backdrop of article 22 of the Statute. This will underline that definition of a crime shall be strictly construed and shall not be extended by analogy.

Therefore, not on the basis of a specific approach methodology, but due to scope of the provisions of Article 25 and its implications, we support
“monistic” approach, asking for “participation” to be included in the statutory definition.

The language between the two square brackets also presents two distinct possibilities. The “manifest violation of the Charter” as stated between the first set of brackets is a high sounding “political” expression, however, it lacks a proper definition. Would it be appropriate that after years of deliberations, we base definition of a complex legal concept on an undefined political expression? To overcome the worst, my delegation is inclined to support addition of language between the second set of square brackets at the end of variant (b).

This approach will also address the concerns related to the question of “threshold” of the crime. It will be appropriate to highlight that due to the very nature of the crime of aggression, my delegation will prefer a high threshold.

The Princeton sessions witnessed exhaustive debate on the questions of “generic” and “specific” approaches to the definition. There are delegations who have even proposed a “combined approach”, which entails an agreed list of crimes of aggression with the provision for future additions, when required. We are of the view that an open ended approach will not serve the purpose. Therefore, my delegation supports the drafting approach adopted in the General Assembly Resolution 3314 (1974). This resolution was adopted after twenty years of negotiations; hence, it reflected the consensus approach to the fundamental questions of drafting. We are of the view that an agreed and final list of crimes of aggression, with statutory provisions, should be added to the definition.

We are also ready to consider a reference to the Resolution 3314 in the definition as proposed in the working paper. A specific reference to paragraphs 1, 2 and 3 will be a preferred option as compared to general reference to the Resolution. A specific reference will indicate forward movement from the twenty year old position and will provide a concise definition.

Mr. Chairman,

Coming to paragraph 4 & 5, my delegation is of the view that the trigger mechanism for the crime of aggression should not be different from the one which is applicable to the other crimes within the ICC jurisdiction. We have noted that for some a role of one organ of the UN will politicize the justice, while a more exhaustive role of the Security Council does not bother them. We
believe that the trigger mechanism should be subjected to less and less political pressures. It may be noted that some crimes of serious concern to the international community, in the past, were results of political failures.

Therefore, my delegation has taken a consistent position on the role of the Security Council vis-à-vis the ICC. We oppose a selective approach in favour of some Member States, on the ICC jurisdiction. We think there is no need to add new provisions in the Statute to complement the role of the Council, as proposed in paragraph 4 and option 2 of paragraph 5 of the working paper. The existing provisions about the role of the Council have held back many UN Member States from becoming parties to the Statute. It is in this backdrop that we find it difficult to support a combination of paragraph 4 and 5. More work is required to streamline the language of paragraph 4, before a combination could be considered. We are studying the Belgian proposal with interest to see a way forward. However, at this stage we do not support deletion of option 3 & 4.

In the end I will like to highlight one aspect of the subject which has still not been discussed. Article 1 of Rome Statute provides for principle of complementarity between the ICC and national criminal jurisdictions. This principle must be upheld while elaborating the conditions of jurisdiction, for the crime of aggression.

I thank you Mr. Chairman