



***REPORT ON THE REVIEW CONFERENCE OF THE ROME STATUTE OF THE INTERNATIONAL CRIMINAL COURT,  
KAMPALA, UGANDA, MAY 31-JUNE 11, 2010***

The AMICC secretariat participated as part of the NGO presence at the Review Conference of the Rome Statute held in Kampala, Uganda from May 31-June 11, 2010. AMICC's main objective was an outcome at Kampala which left the United States on good terms with the other government representatives and feeling that its concerns and interests had been met there. This good experience for the US would further its relationship and policy towards the ICC.

AMICC's function at the Review Conference was to conduct advocacy and report on the issues discussed below, and to engage in discussions and provide information to the delegations and NGOs present in Kampala. As a coalition of NGOs, AMICC does not take a position on the substance of issues. Our reports like this one are confined therefore to description and characterization.

The US attended the Review Conference with a large delegation drawn from all parts of the American government that are important in making policy about the ICC. The US participation in the Review Conference came at a time when the US was developing a new approach toward the ICC. NGOs committed to supporting the ICC want a future US policy that would help establish clear guidelines for US relations with the Court and for US objectives in the future development of the ICC. The outcome of the Review Conference was expected to be decisive in deciding the final form of a US policy or approach to the Court.

The US delegation was co-led by Ambassador-at-Large for War Crimes Issues Stephen Rapp and State Department Legal Adviser Harold Koh. In addition, around eighteen other delegation members represented numerous US government departments including State, Justice, Defense, the Uniformed Services, and the National Security Council. The US government had prepared extensively for the Review Conference in order to ensure that its interests and concerns were addressed. The preparations included detailed instructions for the US delegation and an established communications with back-up arrangements in Washington in order to respond to evolving events during the conference.

Further support for the delegation came from the first National Security Strategy (NSS) of the Obama Administration which was published in the week before the Review Conference. The NSS devoted a paragraph to the pursuit of international justice in part through a US policy of engagement with the ICC. This sent the message, which the US delegation emphasized in Kampala, that the US viewed the court as vital for the promotion of international stability, and that the American commitment to the Court would continue regardless of the outcome of the Review Conference.

The US delegation was generally well received by other delegations in Kampala. It held extensive meetings with governments and NGOs, especially on the crime of aggression. In formal statements, the US delegation posed some questions about the definition and the elements of this crime. These issues had been previously agreed upon within a special working group negotiating the crime of aggression. The US chose not to participate in this group. The US also stated its views about the role of the Security Council in the exercise of the Court's jurisdiction over the crime of aggression.





## High-Level and National Support for the ICC

Statements by high-level officials and government delegations occupied much of the first two days of the Review Conference (“High-Level Segment”). UN Secretary-General Ban Ki-moon, Ugandan President Yoweri Museveni, President of the Assembly of States Parties (ASP) President Christian Wenaweser, ICC President Sang-Hyun Song, Prosecutor Luis Moreno-Ocampo, and former UN Secretary-General Kofi Annan all made speeches on the opening day. On the second day, Ambassador Rapp delivered a statement of behalf of the US. The speech reiterated US support for the Court, and urged the delegates present to proceed cautiously and to strive for consensus on any agreement on the crime of aggression. The speech was generally well received by the other delegations. The US also announced two “pledges” making commitments on cooperation with the Court and on domestic judicial capacity building.

At the conclusion of the second day of the general debate, States Parties delegations unanimously adopted a high-level declaration.<sup>1</sup> The text of the declaration had been agreed upon in advance. It declared that July 17 – the date on which the delegates at the Rome Conference in 1998 adopted the Rome Statute – would be celebrated by the ICC States Parties as the Day of International Criminal Justice (also known as International Justice Day) as a first step towards making this an official international day devoted to international justice.

## Stocktaking

A major component of the Review Conference was a “stocktaking” of the progress and status of the international system of criminal justice. This two-day program took place during the first week of the conference. It examined the successes and challenges of the ICC as the central but not the only judicial institution during the Court’s first seven years of operation in several thematic areas. The four subjects were cooperation, complementarity, victims and affected communities, and peace and justice. The format for each stocktaking issue included a formal three-hour program of panel and roundtable discussions by experts, and statements by country and NGO delegations. In addition, there were a host of side events on the stocktaking topics. The US attended all of the formal sessions, made a statement during the session on complementarity and co-sponsored with Norway and the Democratic Republic of Congo (DRC) an informal side event on the subject of “positive complementarity” – the support of domestic legal capacities. Stocktaking ultimately resulted in the conference approval of two resolutions, a declaration, and approved summaries by the moderators of the discussions on each of the four areas.<sup>2</sup>

## *Cooperation*

State cooperation, such as assisting with evidence and arrests, is essential to the success of international justice and of the ICC. The Rome Statute requires all States Parties to cooperate with the ICC in its investigations, prosecutions, and general operation. In addition, the UNSC can require any UN member state to cooperate with the ICC as it did in its referral of the case of Darfur, Sudan to the ICC. Philippe Kirsch, former judge and president of the ICC, moderated the roundtable discussion which included ICC President Sang-Hyun Song on

<sup>1</sup> [http://www.icc-cpi.int/iccdocs/asp\\_docs/Resolutions/Review Conference-Decl.1-ENG.pdf](http://www.icc-cpi.int/iccdocs/asp_docs/Resolutions/Review%20Conference-Decl.1-ENG.pdf)

<sup>2</sup> <http://www.icc-cpi.int/Menus/ASP/ReviewConference/Stocktaking/Stocktaking.htm>





the experiences of the ICC in securing state cooperation during its first seven years.<sup>3</sup> This stocktaking topic resulted in a declaration reaffirming the importance of countries' cooperation to fulfilling the mandate of the Court and urging states to cooperate with the ICC.<sup>4</sup>

At an NGO side event on cooperation on the first day of the Review Conference, Ambassador Rapp in response to a request described the cooperation of the US with the ICC and suggested how non-States Parties can assist the Court. Later in the week, at the US event on the Democratic Republic of the Congo, the DRC's justice minister thanked the Obama administration for the new US law requiring a greater American effort to counter the Lord's Resistance Army (LRA) formerly in Uganda and now in the DRC. The US government previously pledged to cooperate with the ICC in enforcing its arrest warrant for the LRA leader Joseph Kony.

### *Complementarity*

The drafters of the Rome Statute established the ICC to be a court of last resort, one that operates only when states are either unable or unwilling to act. This is reflected in the Rome Statute's principle of complementarity, which mandates the ICC to honor requests to take jurisdiction over cases from countries in good faith and with the necessary resources and judicial capabilities.

In recent years, countries have begun to discuss the idea of "positive complementarity" – building up the domestic legal systems of countries in order to preclude the need for ICC involvement. The formal Review Conference event was a panel discussion moderated by Professor William Schabas alongside six panelists.<sup>5</sup> It was a spirited discussion of how the Rome Statute system could assist states to develop strong legal and judicial systems able to deal effectively with atrocity crimes.

The outcome of the stocktaking event on complementarity was a Review Conference resolution recognizing the key role of complementarity within the Rome Statute system and encouraging countries to exercise their domestic jurisdiction whenever possible to forestall the need for the ICC to act.<sup>6</sup> As noted above, the US also co-sponsored a side meeting on positive complementarity.

### *Victims and affected communities*

The drafters of the Rome Statute recognized that a permanent international criminal court would be uniquely and powerfully important to victims and affected communities which have suffered atrocity crimes. The ICC accordingly integrates victims into its proceedings, such as with outreach programs and through victim participation in prosecutions and trials. The Court intends in this way to make the most of the positive effects for victims of bringing to justice those who are accountable for the most horrific atrocity crimes.

The stocktaking about victims and affected communities brought to the conference the reality of those who have suffered from atrocity crimes. Radhika Coomaraswamy, the UN Secretary-General's Special Representative for Children and Armed Conflict, presented the keynote speech and discussed the importance of

<sup>3</sup> [http://www.icc-cpi.int/iccdocs/asp\\_docs/RC2010/RC-ST-CP-1-ENG.pdf](http://www.icc-cpi.int/iccdocs/asp_docs/RC2010/RC-ST-CP-1-ENG.pdf)

<sup>4</sup> [http://www.icc-cpi.int/iccdocs/asp\\_docs/Resolutions/Review Conference-Decl.2-ENG.pdf](http://www.icc-cpi.int/iccdocs/asp_docs/Resolutions/Review%20Conference-Decl.2-ENG.pdf)

<sup>5</sup> [http://www.icc-cpi.int/iccdocs/asp\\_docs/RC2010/Stocktaking/RC-ST-CM-INF.1-ENG.pdf](http://www.icc-cpi.int/iccdocs/asp_docs/RC2010/Stocktaking/RC-ST-CM-INF.1-ENG.pdf)

<sup>6</sup> [http://www.icc-cpi.int/iccdocs/asp\\_docs/RC2010/RC-ST-V-1-ENG.pdf](http://www.icc-cpi.int/iccdocs/asp_docs/RC2010/RC-ST-V-1-ENG.pdf)





the ICC in giving a voice to victims, especially children.<sup>7</sup> The panel that followed was moderated by Eric Stover, Director of the Human Rights Center at the University of California, Berkeley and included six panelists. The panelists emphasized the importance of including victims in the Rome Statute system of courts and discussed how best to achieve this goal. The outcome was a resolution calling on states, courts, international organizations and NGOs to increase victim outreach and participation in the process of international justice.<sup>8</sup>

### *Peace and justice*

It is often claimed that the Court's pursuit of atrocity criminals can conflict with or even damage peace negotiations in which these persons are important, thus forcing a dilemma of "peace versus justice." The formal discussion on peace and justice was in a panel of four speakers moderated by Kenneth Roth, executive director of Human Rights Watch. The stocktaking panel examined again whether the two goals of peace and justice complement or conflict with one another and considered their interaction within the Rome Statute system. In the second portion of the event, many government delegates reiterated their view that peace and justice are complementary. They refuted the idea that they fundamentally conflict with one another, but noted that the Court should be careful about the timing of its prosecutions in those situations. The outcome was a moderator's summary of the panel discussion and of the statements by delegates.

### Pledges

In the run-up to the Review Conference, the Assembly of States Parties decided to include the making of "pledges" in the conference.<sup>9</sup> It urged states and international inter-governmental organizations to pledge at Kampala further concrete actions to support and strengthen the Court and the general system of international criminal justice. Examples of pledges included ratifying the Agreement on Privileges and Immunities of the Court, contributing financially to the Trust Fund for Victims, and funding the study of international criminal law. The US was the only non-State Party country to make a pledge. The first of two American pledges stated that the US will renew its commitment to supporting rule-of-law and legal-capacity-building projects in other countries. The US also pledged that it will, as stated by President Obama on May 25, 2010, renew the US commitment and work to strengthen capabilities to protect and assist civilians caught in the atrocities of the Lord's Resistance Army's wake, to receive those that surrender, and to support efforts to bring the LRA leadership to justice.<sup>10</sup>

### Amendments

During the first week of the Review Conference delegations held initial and informal discussions on the proposals for amendments. The following week, states reached decisions on the three amendments before the Review Conference. First, they amended Article 8 and thus expanded the prohibition on the use of certain weapons as war crimes. Second, they decided to keep Article 124 of the Rome Statute, a temporary exemption

<sup>7</sup> [http://www.icc-cpi.int/iccdocs/asp\\_docs/RC2010/Stocktaking/RC-ST-Victims-VoiceOfVictims-UNSG-ENG.pdf](http://www.icc-cpi.int/iccdocs/asp_docs/RC2010/Stocktaking/RC-ST-Victims-VoiceOfVictims-UNSG-ENG.pdf)

<sup>8</sup> [http://www.icc-cpi.int/iccdocs/asp\\_docs/RC2010/RC-ST-PJ-1-Rev.1-ENG.pdf](http://www.icc-cpi.int/iccdocs/asp_docs/RC2010/RC-ST-PJ-1-Rev.1-ENG.pdf)

<sup>9</sup> <http://www.icc-cpi.int/Menus/ASP/ReviewConference/Pledges.htm>

<sup>10</sup> [http://www.amicc.org/docs/Review\\_Conference\\_Pledges\\_by\\_the\\_US.pdf](http://www.amicc.org/docs/Review_Conference_Pledges_by_the_US.pdf)





for new States Parties from war crimes prosecution. Third, on the crime of aggression, they adopted a definition, understandings on certain concepts, the elements of the crime, and conditions for the exercise of jurisdiction.

### *Article 8*

Prior to Kampala, Belgium had submitted to the Eighth Session of the Assembly of States Parties three proposals to amend Article 8 of the Rome Statute to expand the use of certain weapons as war crimes.<sup>11</sup> Of the three proposed amendments, the ASP decided that only the first of the proposals – which generally dealt with the criminalization of the use of poisons, asphyxiating gases, and expanding or flattening bullets in internal conflicts – would be submitted to the Review Conference. The use was already a war crime within the Rome Statute when committed during international conflicts, and the Belgian amendment would make it a crime also in internal conflicts.

This amendment of Article 8 was adopted late on the Thursday of the second week of the Review Conference. In addition, the conference interpreted the amendment provision Article 121(5) in such a way to treat alike non-States Parties and States Parties that have not accepted the amendment.<sup>12</sup> This means that the Court will not likely be able to extend its jurisdiction for these new war crimes to the nationals of non-States Parties such as the US.

### *Article 124*

The Review Conference also adopted a resolution which stated that it had reviewed Article 124 as required by the Rome Statute. Article 124 enables a country upon ratification of the Rome Statute to opt out of the Court's jurisdiction over war crimes for an initial period of seven years after the entry into force of the Rome Statute for that country. This article was highly controversial in Rome in 1998, but it has in fact been little used. The conference did not, however, delete the article as suggested by some delegations. As a compromise it decided to review the article again in five years at an ASP meeting, with a view to deleting it. The States Parties adopted the resolution on Article 124 by consensus.

### *The Crime of Aggression*

According to the Rome Statute, the ICC has jurisdiction over the crime of genocide, crimes against humanity, war crimes and the crime of aggression. However, as the Review Conference began, the Court was unable to exercise jurisdiction over the crime of aggression since the Rome Statute called for further negotiations to define the crime and establish jurisdictional conditions. To conduct these negotiations, the ASP established the Special Working Group on the Crime of Aggression (SWGCA) which functioned from 2003 until 2009.<sup>13</sup> The SWGCA was open to all UN member states on an equal footing.

The SWGCA met at ASP sessions and at informal inter-sessional meetings (known as the Princeton Process) to continue efforts to reach an agreement on the definition of the crime and the conditions for the exercise of the Court's jurisdiction. During each session, participating states introduced and debated different proposals, and

<sup>11</sup> [http://www.icc-cpi.int/iccdocs/asp\\_docs/ASP8/ICC-ASP-8-43-ENG.pdf](http://www.icc-cpi.int/iccdocs/asp_docs/ASP8/ICC-ASP-8-43-ENG.pdf)

<sup>12</sup> [http://www.icc-cpi.int/iccdocs/asp\\_docs/Resolutions/RC-Res.5-ENG.pdf](http://www.icc-cpi.int/iccdocs/asp_docs/Resolutions/RC-Res.5-ENG.pdf)

<sup>13</sup> <http://www.icc-cpi.int/Menu/ASP/Crime+of+Aggression/>





the chairman of the SWGCA narrowed down the list of options and incorporated those with the largest support into a working paper to be discussed at the next session. In 2009 the SWGCA proposed an amendment to be discussed in Kampala which contained a definition, elements of crimes, and conditions for the exercise of jurisdiction over the crime of aggression. The preparatory meetings for the conference further debated the proposal. The eventual draft amendment had an agreed text on the definition of the crime of aggression and alternative texts on the conditions for the exercise of jurisdiction.

The Review Conference focused on the crime of aggression during its second week. The conference worked through several proposals which attempted to bridge the gap between those countries seeking to limit the ways in which aggression could be brought before the Court and those seeking a more expansive approach to the Court's jurisdiction over the crime.

The week concluded dramatically after midnight of the final day of the conference with the adoption by consensus of the crime of aggression amendment.<sup>14</sup> This was followed by a long round of applause in the plenary hall recognizing the conference's achievement and finally the closing of the conference at 1:30am Kampala time.

The most relevant aspects about the final amendment package as adopted are:

- The **definition of the crime** is based on UN General Assembly Resolution 3314.
- There are **two triggers to the Court's jurisdiction** on the crime of aggression:
  - Referral by the **Security Council**, in which case the Prosecutor may proceed subject to other requirements of the Statute.
  - Referral by a **state or the Prosecutor** proceeding on his or her own initiative. In this case, if the Security Council has not made a determination that there is an act of aggression, the Prosecutor requires the authorization of all the judges of the Pre-Trial Division to proceed with the investigation.
- States Parties may **opt out** of the crime of aggression by lodging a declaration with the Registrar.
- The ICC will not have jurisdiction over the nationals or territories of **non-States Parties**.
- The jurisdiction over the crime of aggression may be activated at an ICC meeting **after January 1, 2017** using the procedures like those for the normal amendments. This may be done separately for the two types of jurisdictional triggers.
- There will be a review of the aggression amendments **seven years** after the beginning the Court's exercise of the jurisdiction.

**Definition of the crime.** The definition of aggression that emerged more than a year ago as a result of the work of the SWGCA was adopted together with related understandings.

The definition comprises two paragraphs. The first one defines the crime of aggression as the planning, preparation, initiation or execution of an act of aggression by a person in a position effectively to exercise

<sup>14</sup> [http://www.icc-cpi.int/iccdocs/asp\\_docs/Resolutions/Review\\_Conference-Res.6-ENG.pdf](http://www.icc-cpi.int/iccdocs/asp_docs/Resolutions/Review_Conference-Res.6-ENG.pdf)





control over or to direct the political or military action of a State. This act, by its character, gravity and scale, must constitute a manifest violation of the Charter of the United Nations. The second paragraph defines the act as the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State, or in any other manner inconsistent with the UN Charter. It also provides a detailed non-exhaustive seven-paragraph enumeration of acts that qualify as an act of aggression based on the UN General Assembly Resolution 3314.

**Understandings.** Early in the Review Conference, Ambassador Rapp stated that while the Special Working Group had produced a definition of the crime of aggression, key aspects of the definition were still ambiguous.<sup>15</sup> Later that week, Legal Adviser Koh declared that understandings about these aspects would be essential to minimize three undesirable risks: the risk of criminalizing lawful uses of force, the risk that the definition of the crime of aggression would not truly reflect customary international law, and the risk of unjustified aggression prosecutions of nationals of a country in other countries that incorporate the definition into domestic law.<sup>16</sup>

In order to address these issues, on the Monday of the second week, William Lietzau, a senior Pentagon official and veteran of the negotiation of the Rome Statute, suggested a few interpretative understandings which would make the definition more acceptable to the US. His statement seemed to take into account the atmosphere and activities at the conference and struck a more conciliatory tone than Koh's speech. Most notably, Lietzau said that the US recognized that it had been absent from the negotiations on aggression for eight years and must therefore live with the practical consequences of that failure to participate. This relieved anxiety that the US would try to reopen the agreement on the definition. The American understandings were discussed during the second week and versions of them were accepted as general understandings. The proposed understandings about the use of force were not accepted.

The first understanding aimed to make it clear that the amendments that address the definition of the act and crime of aggression apply only to the Statute. The second understanding was derived from UN General Assembly Resolution 3314 and deals with some concerns about the definition of act of aggression. The third understanding interpreted the word "manifest." The conference agreed that no one component (character, gravity and scale) of the act of aggression would be significant enough to satisfy the manifest standard by itself.

**Elements of the crime.** According to the Rome Statute, the elements of a crime are important provisions that may help the judges to interpret and apply the provisions of the Statute about the crime. The approval of the elements of the crime of aggression was not an especially controversial issue. The US delegation did propose postponing the discussions of the elements until after the Review Conference. It did not, however, press the point and the elements were included in the resolution adopting the aggression amendments.

**Conditions for the exercise of jurisdiction.** The conditions for the exercise of jurisdiction over the crime of aggression have long been the most difficult aspect of concluding negotiations on the crime. It was long

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<sup>15</sup> [http://www.state.gov/s/wci/us\\_releases/remarks/142520.htm](http://www.state.gov/s/wci/us_releases/remarks/142520.htm)

<sup>16</sup> <http://www.state.gov/s/l/releases/remarks/142665.htm>





foreseen as the most controversial and contentious question before the conference. At the center of the debate was the extent of the role of the UN Security Council.

A large number of states arrived at Kampala strongly determined to deny the Council any role whatever in the Court's jurisdiction. They believed that role would politicize the Court and compromise its independence and legitimacy. Other countries, such as, but by no means only, the Council's permanent members (including the US) began the conference equally dug in on the insistence that all situations about aggression should come to the Court only through the Council. They said that the question of an act of aggression is indeed political and that the Council is the right place in the international system to deal with it.

The role of the Security Council in the exercise of the ICC's jurisdiction over the crime of aggression had been one of the most critical issues before the SWGCA. In Kampala, quite a few countries were willing to give some, if not an exclusive, place for the Council in establishing the jurisdiction of the ICC over an alleged situation of aggression. There was considerable concern that the Court is not yet well enough developed institutionally and judicially to deal effectively with the special political and state action aspects of this crime. Almost all participants found the original text and most of the too many proposals made in Kampala very complex and technically difficult and often obscure. Unfortunately, the Statute's amendment procedures, generally considered to be among the worst drafted of its provisions, were important in these negotiations.

Probably the most important influence on the debate was the almost universal and intense determination of the participants to reach a final outcome there and now after eight years of negotiations in preparations. This was very clear in speeches by governments and in their side comments. Some of the proposals intended to ease a complete outcome showed their sponsors moving sharply away from their previously declared positions.

Argentina, Brazil and Switzerland presented a proposal (ABS proposal) at the end of the first week which those countries hoped would help bridge the gap between the five permanent members of the Security Council and their allies, on one hand, and the vast majority of other countries that did not want the ICC's jurisdiction over aggression to be controlled by the Security Council. This proposal used two different amendment procedures and it created two stages; first, the Court would have jurisdiction over aggression exclusively through a Security Council referral, and secondly, once seven eighths of all ICC States Parties had agreed, a State Party referral or a Pre-Trial Chamber approval of a Prosecutor-initiated investigation could have also brought an ICC situation within the Court's jurisdiction.

Canada forwarded a proposal that it described as "intended as contributing towards an eventual compromise package. As such it is compatible with other proposals that may assist in a consensus resolution, such as provision allowing for a delay in the ability of the court to exercise its jurisdictional competence." In the Canadian proposal all provisions would enter into force at the same time but the Prosecutor would proceed differently depending on whether there is a determination of an act of aggression by the Security Council, or not.

The Slovenian delegation tried to combine the Canadian and the ABS proposal which would have required the Prosecutor to fulfill two conditions to proceed. First, all the States concerned in the case would have needed to





accept the amendment and, second, an investigation would need to be authorized by the Pre-Trial Chamber. In any case, the Court could have jurisdiction by referral of the Security Council.

European countries, with a few exceptions (Switzerland and Greece, for example), and several others favored the requirement that the aggressor state accept the amendment before the act of aggression happened. African, Latin American and Caribbean countries generally considered a requirement of consent by the aggressor state to be unacceptable.

The coordinators of the negotiations on the crime of aggression, Ambassador Zeid Ra'ad Zeid Al-Hussein of Jordan and Ambassador Christian Weneweser of Liechtenstein, president of the conference and former chair of the SWGCA, continued to modify the original text of the amendment over the course of the conference in order to focus the discussion, accommodate changes and gradually narrow the options in the search for consensus. Finally, at 12:19 on the morning of June 12, the amendments to the Rome Statute concerning the definition and the exercise of jurisdiction over the crime of aggression were adopted by consensus. The ending to the conference was dramatic, and the outcome remained uncertain until the very end.

According to the final version, there are two possible scenarios under which the ICC could exercise jurisdiction over the crime of aggression. First, it could do so when a State Party refers a situation or the Prosecutor acts on his or her own initiative. In these cases, the Court could exercise jurisdiction over an act of aggression committed by a State Party unless it has previously declared that it did not accept such jurisdiction. The Prosecutor could only proceed when this has been authorized by the Pre-Trial Division of the Court. The Court will not be able to exercise jurisdiction over aggression committed by the nationals of a State that is not a party to the Statute. Secondly, the Court could exercise jurisdiction over the crime of aggression when the Security Council refers a situation. In this case, it would not be necessary that the State concerned has accepted the Court's jurisdiction. The Security Council may refer a situation involving a State that is not a State Party.

**Entry into force and delayed exercise of jurisdiction.** The amendments adopted in Kampala will enter into force according to Article 121(5), which means that the amendments will take effect for a state one year after it has ratified or accepted them. However, the new articles delay the exercise of the ICC's jurisdiction over the crime of aggression until some point after January 1, 2017. After this date and only if thirty states or more have ratified or accepted the amendments, the States Parties may authorize the exercise of jurisdiction under the same requirements necessary for the adoption of an amendment, either by a consensus decision of the ASP or, if there is no consensus, by a two-thirds vote. Under the amendment, it is possible that the ASP could decide to activate the trigger for the State Party referrals and Prosecutor-initiated cases separately from the Security Council trigger.

## The US-ICC relationship post-Kampala

The Review Conference was a success from the standpoint of the Obama Administration.<sup>17</sup> It included a successful stocktaking exercise, the inclusion of pledges by numerous countries – including two from the US – and the adoption of acceptable amendments on war crimes and the crime of aggression.

<sup>17</sup> [http://www.state.gov/s/wci/us\\_releases/remarks/143178.htm](http://www.state.gov/s/wci/us_releases/remarks/143178.htm)





The US pledges and its overall participation in stocktaking induced much goodwill and confidence about the US in member states of the ICC. It helped Kampala participants to engage with the US government in the later parts of the Review Conference – in the negotiations on the amendments. Legal Adviser Koh stated that “we think that with respect to the two new crimes, the outcome protected our vital interests.”<sup>18</sup> Under the agreed amendments, the Court will not be able to exercise jurisdiction over a US national in any way for the crime of aggression without prior American consent. In addition, the US successfully advocated for a number of understandings in the definition of aggression to make it acceptable to American interests.

Speaking about the past and future of US-ICC relations, Legal Adviser Koh recently declared that “after 12 years, I think we have reset the default on the U.S. relationship with the court from hostility to positive engagement. In this case, principled engagement worked to protect our interest, to improve the outcome, and to bring us renewed international goodwill.”<sup>19</sup>

*Researched and drafted by Douglas Dunbar and Julia Martínez Vivancos  
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<sup>18</sup> [http://www.state.gov/s/wci/us\\_releases/remarks/143178.htm](http://www.state.gov/s/wci/us_releases/remarks/143178.htm)

<sup>19</sup> [http://www.state.gov/s/wci/us\\_releases/remarks/143178.htm](http://www.state.gov/s/wci/us_releases/remarks/143178.htm)

