

## ***BASIC INFORMATION ABOUT THE REVIEW CONFERENCE OF THE ROME STATUTE OF THE ICC, MAY 31-JUNE 11***

States Parties to the Rome Statute of the ICC as well as other participants from non-States Parties and civil society will meet for a Review Conference in Kampala, Uganda from May 31 to June 11. They will discuss possible amendments to the Statute and evaluate the performance of the ICC and the international system of justice for atrocities of which the Court is the center.

### What is a Review Conference?

The mechanism of a review conference is usually used in many international treaties to examine and evaluate the implementation of the treaty or the performance of the organization created by a treaty, for example the Non-Proliferation Treaty (NPT) Review Conference that took place in New York, May 3-28, 2010.

As for the ICC, the Rome Statute provides that seven years after its entry into force, the Secretary-General of the United Nations shall convene a Review Conference.<sup>1</sup> It will take place in Kampala, Uganda from May 31 to June 11, 2010. The Review Conference is a special meeting of states parties to the ICC, distinct from the annual Assembly of States Parties (ASP). In November 2009, the ASP decided on issues to be considered at the Review Conference, both in terms of amendments (such as on the crime of aggression) and stocktaking.

### What Will be Discussed?

In Kampala, States delegations will consider amendments to the Rome Statute and will take stock of its implementation and impact.

There are **three amendment proposals** to the Rome Statute:<sup>2</sup>

#### *The crime of aggression*

According to the Rome Statute, the ICC has jurisdiction with respect to the crime of genocide, crimes against humanity, war crimes and the crime of aggression. However, the ICC may not exercise jurisdiction over the crime of aggression until the States Parties adopt a provision defining the crime and setting out the conditions under which the Court shall exercise jurisdiction with respect to this crime.

The proposal that the States Parties will consider in Kampala suggests the inclusion in the Statute of two new articles to be numbered with the designation “bis.” The first one, Article 8 bis, provides the definition of the crime of aggression. The second one, Article 15 bis, provides the conditions for the exercise of jurisdiction over the crime of aggression.<sup>3</sup>

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<sup>1</sup> <http://www.icc-cpi.int/Menus/ASP/ReviewConference/>

<sup>2</sup> <http://www.icc-cpi.int/Menus/ASP/ReviewConference/Rome+Statute+amendment+proposals.htm>

<sup>3</sup> [http://www.icc-cpi.int/iccdocs/asp\\_docs/RC2010/ICC-ASP-8-Res.6-AnxII-ENG.pdf](http://www.icc-cpi.int/iccdocs/asp_docs/RC2010/ICC-ASP-8-Res.6-AnxII-ENG.pdf)



**Definition:** The act of aggression generally speaking is the use of armed force by one State against the sovereignty, territorial integrity or political independence of another State, or in any other manner inconsistent with the Charter of the United Nations.

**Exercise of Jurisdiction:** According to the proposal, where the Prosecutor concludes that there is a reasonable basis to proceed with an investigation in respect of a crime of aggression, he or she shall first ascertain whether the Security Council has made a determination of an act of aggression committed by the State concerned. The draft provision then elaborates several alternatives and options on questions that have not yet been resolved, including what additional role, if any, the UN Security Council could play. The role of the Security Council may be one of the most controversial issues to be addressed at the Review Conference.

While the proposed definition seems to have consensus among the States Parties, the issue of the jurisdiction poses more doubts because there is no agreement on whether this previous determination is required before the Court may open an investigation.

### *Review of Article 124*

This article enables a State that ratifies the Statute to opt out of the war crimes jurisdiction for an initial period of seven years after the entry into force of the Statute for that State. This article was highly controversial in Rome in 1998 but its impact has been minimal because only two States (France and Colombia) have exercised the opt-out. Given its limited use, the States Parties will discuss its deletion but it remains unclear whether a consensus in favor of the deletion has emerged.

### *Expanding prohibition on use of certain weapons as war crime*

In Kampala, the States Parties will also consider the inclusion of the use of certain weapons such as poison or some kinds of bullets as war crimes in the context of a non international armed conflict.<sup>4</sup> The use of these weapons is already prohibited by Article 8 in case of an international armed conflict. This proposal has received broad support among the States Parties.

The ASP has also agreed to create a Working Group on Amendments that will continue discussions in the future on number of other proposals that did not gather sufficient support for their consideration at the Review Conference.

The Review Conference will also hold a number of **stocktaking** sessions that will be divided into four categories: victims outreach, state cooperation with the ICC, national prosecution capacity (known as complementarity) and peace and justice.<sup>5</sup>

- Victims outreach will focus on how the ICC can enhance its impact in victims' communities.<sup>6</sup>
- State cooperation with the ICC will focus on ways to improve the state cooperation with the ICC.<sup>7</sup>

<sup>4</sup> [http://www.icc-cpi.int/iccdocs/asp\\_docs/RC2010/ICC-ASP-8-Res.9-ENG.20April1600.ANNEX.VIII.pdf](http://www.icc-cpi.int/iccdocs/asp_docs/RC2010/ICC-ASP-8-Res.9-ENG.20April1600.ANNEX.VIII.pdf)

<sup>5</sup> <http://www.icc-cpi.int/Menus/ASP/ReviewConference/Stocktaking/Stocktaking.htm>

<sup>6</sup> [http://www.icc-cpi.int/iccdocs/asp\\_docs/RC2010/ICC-ASP-8-Res.9-Annex.VI-ENG.pdf](http://www.icc-cpi.int/iccdocs/asp_docs/RC2010/ICC-ASP-8-Res.9-Annex.VI-ENG.pdf)



- National prosecution capacity will focus in how the ICC and other states may actively support national jurisdictions in capacity building.<sup>8</sup>
- Peace and justice sessions will try to identify principles to guide efforts to seek international justice in areas with ongoing hostilities.<sup>9</sup>

## Participation of the US in the Review Conference

The Review Conference is an opportunity for the US to reassert its commitment to international justice. The United States will send a delegation that will likely include high-level officials from the State Department, Pentagon and other agencies. It will attend as an observer, with all rights but voting and making proposals. The US had not participated in ICC meetings between September 2001 and November 2009.

The US has already made a concrete proposal to meet with the Chief Prosecutor to find where it might make contributions. The United States will bring to Kampala political and moral support for the Court and the possibility to strengthen the cooperation with it in operations and logistics. It will also make clear its own interests and concerns about the Court.

The negotiations on the amendments on the crime of aggression will be the most sensitive issue for the US delegation. It will likely advocate for not activating the jurisdiction of the Court over this crime. However, if the States agree on activating its jurisdiction, the US may support a version of the Article 15 bis that requires the determination by the Security Council before the Court may open an investigation.

The Obama administration has not yet announced its formal policy towards the ICC. The announcement is expected this year. The Review Conference in Kampala might be a good opportunity to see developments in the US practical approach to the Court which will affect the final policy.

*Researched and drafted by Julia Martínez Vivancos  
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<sup>7</sup> [http://www.icc-cpi.int/iccdocs/asp\\_docs/RC2010/ICC-ASP-8-Res.9-Annex.III-ENG.pdf](http://www.icc-cpi.int/iccdocs/asp_docs/RC2010/ICC-ASP-8-Res.9-Annex.III-ENG.pdf)

<sup>8</sup> [http://www.icc-cpi.int/iccdocs/asp\\_docs/RC2010/ICC-ASP-8-Res.9-Annex.VII-ENG.pdf](http://www.icc-cpi.int/iccdocs/asp_docs/RC2010/ICC-ASP-8-Res.9-Annex.VII-ENG.pdf)

<sup>9</sup> [http://www.icc-cpi.int/iccdocs/asp\\_docs/RC2010/ICC-ASP-8-Res.9-ANNEX.II-ENG.pdf](http://www.icc-cpi.int/iccdocs/asp_docs/RC2010/ICC-ASP-8-Res.9-ANNEX.II-ENG.pdf)

