

# EQ: Equality of Arms Review

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SPECIAL EDITION KAMPALA REVIEW CONFERENCE



the global voice of  
the legal profession\*

## What did the ICC Review Conference achieve?

Lorraine Smith\*

For two weeks, from 31 May-11 June, the world's attention was focused on Kampala, Uganda as high-level delegates, international experts and observers gathered to review the Rome Statute system and to chart the course for the future of international criminal justice. A historic event, the likes of which has

not been seen since the Rome Statute creating the world's permanent international criminal court was adopted in 1998. Expectations were high, with States focused on finalising the definition and jurisdictional regime for the crime of aggression, and civil society engaged primarily in taking stock of the Court's contribution to international justice. Now that the Review Conference is complete, it is time to take stock of what exactly was achieved in Kampala.

### Aim of the Review Conference

The main objective of the Review Conference was to consider a limited number of amendments to the Rome Statute, focusing in particular on the crime of aggression; the



Opening Session of the Review Conference ©CICC

revision of Article 124 of the Statute; and the amendment to Article 8 of the Statute to include the use of certain weapons as war crimes in the context of a conflict of a non-international character. In addition, States Parties and the entire international community were to take stock of developments in the international legal system in four thematic areas: peace and justice; complementarity; the impact of the ICC on victims and affected communities; and cooperation.

From the outset, the Bureau of the Assembly of States Parties (ASP) was determined to limit the scope and number of amendments for fear of undermining the integrity of the Rome Statute. The success of the Review Conference did not necessarily depend on the number of amendments adopted; rather,

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# Welcome to EQ

Dear Colleagues,

The much-anticipated International Criminal Court (ICC) Review Conference is now history. 4,600 international experts, including two UN Secretaries-General, Heads of States, diplomats and members of civil society gathered alongside victims in Africa to critically examine the ICC and the system of justice created by the Rome Statute.

The Conference took place among a myriad of plenary sessions, offsite-events and bilateral meetings. The stocktaking sessions on peace and justice, impact on victims, complementarity and cooperation were of the highest quality and included rich discussions from a diverse perspective of international actors. The most significant, and surprising, feature of the Conference was undoubtedly the crime of aggression where deeply entrenched positions and intense negotiations culminated in a breakthrough at the very end of the conference.

The IBA was present in Kampala, attending plenary sessions and participating in side events. We organised a panel discussion to

formally launch the African leg of the joint IBA/ICC Campaign 'Calling African Female Lawyers', and an ICC Moot Court together with the Office of Public Counsel for Defence at the ICC.

Many of you made it to Kampala, some didn't. To commemorate this historic moment, we've put together a special Kampala Edition of *EQ*, featuring thought-provoking articles from distinguished experts like ICC President Sang-Hyun Song, Convenor of the Coalition for the ICC Bill Pace, Ugandan Ambassador Mirjam Blaak, Director of Legal Affairs at the Commonwealth Secretariat in London Akbar Khan, and prominent academics William Schabas and Dapo Akande, among others. Whilst this edition of *EQ* is not able to cover everything that took place during the Conference, we hope to have captured, at the very least, the spirit of the Conference.

Enjoy *EQ*!

**Mark Ellis**

*IBA Executive Director*

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a successful Conference would be one which effectively portrayed the developments at the Court and the consensus of States concerning international criminal justice. Mr Rolfe Fife, focal point for the Review Conference, said: 'the key criteria for the success of the Conference may [therefore] have less to do with amendments to the Statute than with what kind of overall message is conveyed to the international community at large about international justice.'<sup>1</sup>

The decision to host the Review Conference in Africa, the current focus of all ICC situations and cases, makes clear that the Conference was expected to achieve both symbolic and tangible results. The Review Conference was ideally placed to try to redress the prevailing negative perception that the ICC is a western construct focused on targeting Africa, rather than that Africa is a crucial partner in the development of international justice mechanisms to combat impunity.

### Amendments – Articles 8 and 124

#### Article 8

With such lofty, even idealistic goals in mind, the real question is whether the Review Conference could in retrospect be considered a major achievement.

The amendment to Article 8 of the Rome Statute, albeit a historic first for the Rome Statute, cannot really be considered the major victory of the Conference. The amendment criminalises the use of certain weapons, already prohibited in international armed conflict, to a conflict of a non-international character.

These include poison, poisoned weapons, asphyxiating, poisonous or other gases and all analogous liquids and bullets that expand or flatten in the body (so-called 'dum-dum' bullets). The resolution amending Article 8 also includes the relevant elements of crime. The amendment was passed with little conflict save for the intent element on the use of dum-dum bullets which was a point of contention for some States.

#### Article 124

The optional transitional provision, Article 124 of the Rome Statute was also subject to review at the Conference. Article 124 allows States to not accept the jurisdiction of the Court with respect to war crimes allegedly committed by its nationals or on its territory for a seven-year period after ratification. The Plenary was to decide whether to retain, reformulate or delete the provision. Ultimately, on 10 June 2010, the Plenary adopted a resolution retaining Article 124, but with an automatic review of the Article in five years' time.

Prior to the Conference, several NGOs insisted on the deletion of Article 124. They argued that its retention gives rise to impunity over war crimes and is contradictory to the purpose of the ICC. Some delegations argued for retention because in their view the clause facilitated additional ratifications of the Statute, and thus contributed to its universality. Japan was an ardent supporter of the clause, and so too were Egypt and other non-States Parties within the Non-Aligned Movement. Non-States Parties like China, Malaysia and the Philippines also spoke in favour of retention. This support is ironic, given that since its initial inclusion in the Statute, only France and Colombia had ever resorted to its use, and there was no evidence to support the claim that its retention promoted universality. Retaining Article 124 was definitely a missed opportunity to delete what has thus far proven to be a useless provision in the Rome Statute.

#### Single greatest achievement

On 11 June 2010, States Parties adopted by consensus amendments containing the definition, elements of crime and conditions for the exercise of the Court's jurisdiction over the crime of aggression. Hailed as the single greatest achievement of the Review Conference, the amendment to the Rome Statute formally defining the crime of aggression is the culmination of significant preparatory work



From left to right: Serge Brammertz, Prosecutor of the International Criminal Tribunal for the Former Yugoslavia, Navanethem Pillay, High Commissioner for Human Rights, Andries Carl Nel, Deputy Minister of Justice and Constitutional Development of the Republic of South Africa, Ambassador Thomas Winkler, Undersecretary for Legal Affairs, Ministry of Foreign Affairs, Denmark, Professor William A Schabas, Gail Ramautar, ASP Secretariat, Colonel Muntazini Mukimapa Toussaint, Deputy Auditor General, Kinshasa – DRC, and Karel Kovanda, Deputy Director General for External Relations at the European Commission at the stocktaking session on complementarity © CICC/Harrison Davis.

by the Special Working Group on the crime of aggression, and extensive negotiations during the Review Conference itself. The decision has changed the international legal landscape forever.

The definition of the crime of aggression has now been incorporated in the Rome Statute as Article 8 *bis*, which provides that ‘for the purpose of this Statute, “crime of aggression” means the planning, preparation, initiation or execution, by a person in a position effectively to exercise control over or to direct the political or military action of a State, of an act of aggression which, by its character, gravity and scale, constitutes a manifest violation of the Charter of the United Nations.’ An act of aggression is defined as the use of armed force by one State against the territorial integrity or political independence of another State, or in any other manner inconsistent with the Charter of the United Nations. The elements of the crime will operate to clarify some of the language used in the definition.

### Exercise of jurisdiction

The agreement on the conditions under which the Court will have jurisdiction over situations involving a crime of aggression was the most contentious part of the debate, particularly in relation to the role of the UN Security Council. The compromise position reached in Kampala is now codified in the Statute as the new Article 15 *bis* and Article 15 *ter*. State referrals and investigations commenced by the Prosecutor of his own will (*proprio motu*) are covered by Article 15 *bis*. Article 15 *ter* covers exercise of jurisdiction resulting from Security Council referrals. Similar to the current regime under Article 13(b) of the Statute, a referral by the Security Council authorises the Prosecutor to investigate crimes committed by nationals of States Parties and non-States Parties equally.

The Court may only exercise jurisdiction over aggression committed one year after 30 States have ratified the amendment. Further, the Court’s jurisdiction will only commence once a decision is made by two-thirds of States Parties to activate the jurisdiction after 1 January 2017. Therefore, assuming there are 30 ratifications, it will be nearly seven years before the aggression amendments become



From left to right: Judge Sang-Hyun Song, HE Mr Jakaya Kikwete, Mr Ban Ki-moon, HE Mr Christian Wenaweser, HE Mr Yoweri Museveni, Mr Kofi Annan, Mr Luis Moreno-Ocampo, Review Conference Opening Session © ICC-CPI.

operational. Given the contentious debates, the delayed entry into force can be said to be a fair compromise. It would have been all too easy to defer deliberations were it not for the commitment of States Parties to come to a resolution via consensus.

Academics have already started discussing the legal implications of the aggression decision and mulling over a number of issues such as the binding nature of the ‘understandings’, the interpretation of the phrase ‘manifest violation of the UN Charter’ and the significance of the ‘opt-out’ regime (discussed by Dapo Akande in this volume). The Court itself will also need to adjust its practice in light of the amendment in particular by developing procedures for the entire Pre-Trial Division to authorise an investigation.

### Stocktaking

The stocktaking segment of the Review Conference was considered to be a historic opportunity to assess and reflect upon the progress of the Court and the new system of international justice. Panel discussions which took place during the main plenary in the first week of the Conference were complemented by side-events organised by civil society. There is little consensus on its impact. For some observers it was hard to see the point of the stocktaking sessions which were described as ‘wide-ranging’, lacking in focus and unlikely to have material gains.<sup>2</sup> It was felt that the failure to delve into specifics and conduct close and detailed scrutiny of the technical aspects of the Rome Statute and the ICC’s progress to date diluted the potential impact of the exercise.<sup>3</sup> Others contend that to treat the crime of aggression as the ‘main event’ and the stocktaking segment as less important was a missed opportunity.<sup>4</sup>

The stocktaking exercise on developments in international justice was not a mere by-

line of the Review Conference. Each thematic issue was the subject of extensive preparatory work of the designated focal points and relevant experts on the issue. Delegates at the Conference benefitted from the expertise of representatives from the broadest spectrum of the international legal diaspora. The discussions not only brought attention to important issues but also provided concrete recommendations and sterling examples of best practice that may be utilised by the ICC in seeking to fulfil its mandate. It would have been an exercise in futility to delve into the minutiae of judicial and policy decisions of the Court at such an event. Admittedly, there were a number of critical issues that required much more time for thorough discussion. Indeed if the organisers should be criticised for anything it would be for having panels that were so extensive that very little time for feedback from the floor was allowed. This notwithstanding, stocktaking was perhaps one of the few opportunities for civil society, particularly from African countries, to be heard.

Four outcome documents were produced – the Kampala Declaration, the Resolutions on Complementarity and Impact on Victims and Affected Communities and the Declaration on Cooperation. Ultimately, extensive follow-up by civil society, the Court and the ASP will be required in order for the stocktaking exercise to have meaningful and sustained impact.



HRH Prince Zeid Ra'ad Zeid Al-Hussein and President Wenaweser © ICC-CPI.

## Pledges

Before and during the Conference, States were encouraged to submit 'specific, achievable, action-oriented' pledges aimed at facilitating the tangible assessment of the success of the Conference.<sup>5</sup> In order to ensure a measurable outcome, pledges with concrete objectives and specific timeframes were favoured.

The initial results, announced on the second day of the Conference at the pledging ceremony, were heartening for optimists: co-focal points Mr Ernst Hirsch Ballin, Minister of Justice of the Netherlands, and Mr Gonzalo Gutiérrez, Permanent Representative of Peru to the UN, announced that over 100 pledges had been made by 37 States – including one observer state – and an inter-governmental organisation. The most popular were pledges to contribute to the Trust Fund for Victims, made by a third of the pledging States. Several States recognised the importance of mainstreaming ICC support across their ministries and within regional and international organisations, and made pledges to this end. Four States pledged to create a national focal point for the ICC.<sup>6</sup> Eight States, three of which are African States Parties,<sup>7</sup> pledged to take steps to ratify or accede to the Agreement on Privileges and Immunities of the ICC. A further eight countries pledged to adopt specific national measures implementing the Rome Statute.

Apart from the adoption of the crime of aggression, the willingness of some States to make pledges of further support for the Court in specific ways is another successful outcome of the Kampala Review Conference. The limited number of States Parties to the Rome Statute – only one-third – who actually made pledges is nevertheless cause for concern. Close scrutiny of the pledges indicates that there were actually very few tangible pledges in areas of greatest concern to the Court.

## Clear oversight

If there was any clear oversight in Kampala, it was the failure to consistently address issues related to the defence. There was some effort to do this, notably by the Registrar of the International Criminal Tribunal for Rwanda, Adama Dieng, and Akbar Khan, Director of the Legal and Constitutional Affairs Division of the Commonwealth Secretariat, during their presentations on cooperation. However, States failed to make a single pledge that specifically addressed some of the concerns raised by the Court in relation to cooperation on defence

related matters. This is regrettable.

It should be recalled that the international community established the ICC to ensure that a credible, capable institution exists to bring to justice those persons alleged to have committed egregious crimes. This is aimed at stemming the tide of impunity for such crimes, which contributes to restoring the rule of law in many traumatised communities. The legitimacy of the ICC and the Rome Statute system will and should be judged by its ability to conduct fair and impartial proceedings at the international and national level. To have assessed the progress of the Rome Statute system without specifically considering the defence perspective was a major oversight of the Review Conference.

### Going forward – beyond Kampala

The deliberations in Kampala are now over and the real work has begun. The adoption of the crime of aggression demonstrated the sustained commitment of States to the establishment of a new international legal order – one in which impunity for egregious crimes will not

be tolerated. The stocktaking on international justice provided valuable insight into the ICC's contextual framework.

In reality, pledges, resolutions and declarations are mere words with limited weight unless the ASP implements strategic and systematic follow-up through its inter-essional mechanisms, working groups and during subsequent ASP meetings.

#### Notes

- \* Lorraine Smith is the Programme Manager for the IBA/ICC Monitoring and Outreach Programme in The Hague.
- 1 Review Conference: Scenario and Options, Progress Report by the focal point, Mr Rolf Einar Fife, ICC-ASP/6/INF, 3, 4 December 2007
- 2 Joanna Harrington, 'The End of Stocktaking and on to the Main Event', EJIL: Talk.
- 3 Daryl Robinson, ICC Review Conference: Taking Stock of Stocktaking, EJIL:Talk.
- 4 See Chandra Lekha Sriram, The ICC Review Conference: The Forgotten Issues, Jurist Legal News and Research, <http://jurist.org/forum/2010/06/icc-first-major-review-conference.php>.
- 5 Explanatory Note on Pledges, ICC-ASP/8/20/Add.1, p53.
- 6 Burkina Faso, Costa Rica, Italy, New Zealand.
- 7 Burkina Faso, Tanzania, Zambia.

# Reflections on the ICC Review Conference: perspectives of the ICC President

Judge Sang-Hyun Song\*

**E**ight years into the existence of the world's first permanent international criminal court, the Review Conference of the Rome Statute held in Kampala, Uganda, was a significant milestone. The international community gathered to review the interim results of the historic decision they had taken 12 years earlier with the adoption of the Rome Statute of the International Criminal Court (ICC).

It was an inspiring event which evoked the spirit of the Rome Conference of 1998 and reaffirmed the strong conviction of the majority of the world's states that a multilateral system aimed at ending impunity for the most serious crimes of international concern is highly necessary in today's world. The importance of the Rome Statute system for international peace, the rule of law and human rights was clearly confirmed in Kampala; the fact that the Review Conference came to an agreement on resolutions concerning the addition of new crimes to the Statute reflects the trust that the States Parties place in the role that the ICC plays. The concrete pledges made during the

Conference were another encouraging sign of the goodwill and resolve of States to continue supporting the development of the Rome Statute system and the functioning of the ICC.

## Maintaining momentum

From the point of view of the Court itself, perhaps the most important aspect of the Review Conference was the momentum that it created for improving the effectiveness of the Rome Statute system, particularly in the areas of cooperation and complementarity. The Conference highlighted the importance of concrete action by States in these areas, one key measure being the adoption of national implementing legislation. The stocktaking exercise conducted in Kampala provided an excellent opportunity to reflect on key areas of interest for the ICC's functioning.

One of the priorities of the ICC Presidency during the next year will be to help maintain the momentum generated by the Review Conference and to work with States Parties to ensure that the promises of Kampala become a reality.

## State cooperation is crucial

The importance of state cooperation for the ICC cannot be overstated. The ICC is an international court which exercises criminal jurisdiction over individuals in a world that is fundamentally based on the territorial integrity of sovereign states. The cooperation of States is crucial for the Court to be able to conduct investigations, to collect evidence, to enter alleged crime scenes, to locate and interview witnesses and to bring them to The Hague. Last but not least, the ICC is completely reliant on States Parties to carry out arrests of suspects and to surrender them to the Court.



President Sang-Hyun Song shakes hands with Former Secretary General, HE Kofi Annan at the opening of the Review Conference © ICC-CPI.



From left to right: HE Mr Ernst Hirsch Ballin, Judge Sang-Hyun Song, President Wenaweser and HE Mr Gonzalo Gutiérrez Reinol, Ceremony of Pledges © ICC-CPI.

Article 88 of the Rome Statute obliges States Parties to ensure that there are procedures available under their national law for cooperation with the ICC. Several States made pledges at Kampala to adopt national legislation and other measures to enhance their ability to cooperate effectively with the ICC. The Declaration on cooperation adopted by the Review Conference also emphasised the importance of compliance with requests for cooperation from the Court.

#### Sharing experiences to build capacity

The stocktaking discussion on cooperation generated several constructive ideas and showed that while several States Parties already have implementing legislation in place and are willing to share their knowledge, other States are interested in receiving assistance for their efforts to develop the necessary procedures. Besides States, intergovernmental bodies as well as non-governmental organisations may play a useful role in this respect. The Review Conference decided that the Assembly of States Parties should place a particular focus on sharing experiences in its consideration of the issue of cooperation.

As the Court's President, I will follow up on the issue of cooperation in communication with the Assembly of States Parties and individual States, as well as other interlocutors. The ability to provide swift and effective cooperation is important for all States, not only for those with active situations before the ICC. Witnesses,

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for instance, may be residing in countries that are located far away from the alleged crime scenes as well as relevant evidence. In the worst scenario, the unavailability of national procedures for cooperation could prevent a State from carrying out an arrest warrant in the case of a suspect crossing an international border. But even small delays in making witnesses available may have a significant impact in postponing court proceedings and creating unnecessary extra costs for the ICC.

#### Pledges

Besides national implementing legislation, the Agreement on Privileges and Immunities

*From the point of view of the Court itself, perhaps the most important aspect of the Review Conference was the momentum that it created for improving the effectiveness of the Rome Statute system, particularly in the areas of cooperation and complementarity.*

of the International Criminal Court (APIC) is an important instrument which facilitates the ICC's operations and I was encouraged by the intention expressed in Kampala by several States to accede to or ratify APIC in the near future. Some pledges were also made with respect to agreements on witness relocation and the enforcement of sentences, and I will encourage more States to consider extending these valuable forms of voluntary cooperation to the ICC. I am truly grateful to those that have already done so and I hope that others will join in order to share the responsibility.

### **Complementarity**

Complementarity was another focal issue at the Review Conference, which reiterated the primary responsibility of States to investigate and prosecute the most serious crimes of international concern. Again, the interaction, information sharing and mutual assistance between various actors was recognised as an important tool and the Review Conference requested the Secretariat of the Assembly of States Parties to facilitate the exchange of information between the ICC, States Parties and other stakeholders, including international organisations and civil society, aimed at strengthening domestic jurisdictions.

The Review Conference also stressed the need to achieve universality of the Statute as a means to end impunity. While the ratification of or accession to the Rome Statute is the sole decision of each sovereign state, I will continue to do my best to ensure the transparency of the Court's work and to promote understanding of

the Rome Statute system in all parts of the world with a view to dispelling any misconceptions that may exist.

### **What lies ahead**

Looking ahead after Kampala, we have to remember that the Rome Statute system is still young. States are in early stages of developing their national capacities and legislation to enable full domestic implementation of the Rome Statute. The ICC is yet to finish a full judicial cycle of one case from an investigation to a final judgement and some aspects of the proceedings, such as those relating to reparations, are yet to be tested in practice. Growing up is also about learning and the ICC is constantly looking into ways of improving the efficiency of its operations.

Therefore, much work lies ahead and, in many ways, the Review Conference served to renew focus on the Rome Statute and the ICC among States as well as civil society. It is crucial that we all continue our strong engagement in order to give full effect to the noble goals of the Statute. Otherwise, innocent men, women and children will continue to fall victim to horrendous crimes. Impunity can be ended but only with decisive action and consistent commitment. I have no hesitation in pledging my full commitment on behalf of the ICC and I urge States to do the same.

#### **Note**

\* Judge Sang-Hyun Song is President of the International Criminal Court.

# Ensuring justice for victims: what began in Rome is completed in Kampala

**Ambassador Mirjam Blaak\***

## Introduction

In 1945 when the UN was created, those present said that there should never be war again. In 1998 the world cried out in unison that ‘there would be no hiding place for those who had no regard for human dignity’. In June 2010, in Kampala, what 90-year old former Nuremberg Tribunal Prosecutor Professor Benjamin Ferencz termed ‘the supreme international crime’ was dealt its final blow when the crime of aggression was adopted into the Rome Statute as a punishable crime.

The Review Conference of the International Criminal Court (ICC) held in Kampala, Uganda – known as the pearl of Africa – was an opportunity for States Parties to the Rome Statute, the Court and the entire international community to ponder achievements and lessons learned in order to pave the way forward for international criminal justice. The Conference was expected to finalise the long-outstanding matter of the crime of aggression, consider other limited amendments to the Statute, and take stock of key developments in international criminal justice.

## The crime of aggression: a major battle

The second week of the Conference was dedicated to the crime of aggression. Although this crime was included among the list of crimes within the jurisdiction of the Court – the others being genocide, war crimes and crimes against humanity – the exercise of the Court’s jurisdiction was deferred because no consensus was reached on the definition and the conditions under which the Court may exercise jurisdiction.

The negotiations and debates on aggression were characterised by polarised and deeply entrenched positions, best described as the battle of the majority against the big and

powerful. Consensus appeared illusive. The US Government, which had signed the Rome Statute under President Clinton but ‘unsigned’ it during the Bush administration, had been conspicuously absent from discussions on the crime of aggression and sessions of the Assembly of States Parties (ASP) of the ICC until November 2009. That month, the US sent a delegation to The Hague, declaring that their new approach would include re-engaging with the Court, including discussing possible levels of cooperation, while making it clear that the US becoming a State Party in the near future was unlikely. In partnership with the other permanent members of the Security Council, they saw the inclusion of the crime of aggression into the ICC Statute as a direct encroachment on their Chapter VII, UN Charter mandate as the world police with exclusive power to determine when an act of aggression has been committed.

Against this seemingly unbreakable wall, the Non-Allied Movement, The Africa Group and



Ambassador Mirjam Blaak and Khiddu Makubuya, Attorney General and Minister of Justice of Uganda © ICC-CPI.



UN Secretary General Mr Ban Ki-moon unveiling the Wall of Freedom during his visit to the People's Space © ICC-CPI.

*The negotiations and debates on aggression were characterised by polarised and deeply entrenched positions, best described as the battle of the majority against the big and powerful.*

the Group of Latin America and Caribbean States discovered the 'power' of numbers and enabled the Conference to break the deadlock that had loomed over it during its last week. At the very last minute, at 1.45am on Saturday 12 June, the last day of the Review Conference, a compromise was reached adopting the definition of the crime of aggression and the trigger mechanisms for the exercise of jurisdiction but delaying the entry into force until 1 January 2017.

#### **Mixed reactions**

Reactions were mixed. The Japanese delegation described the consensus on the definition of the crime of aggression as 'committing legal suicide'. With world economic headlines that particular day highlighting Japan's economic

woes, their delegation suggested 'minimising' financial support to the ICC if it adamantly went ahead with adopting the crime of aggression.

The French delegation sought to be disassociated from the consensus reached, although they had chosen not to throw a spanner in the works when the proposals were tabled for the final decision. The UK delegation declared they would only cooperate for as long as the decisions reached do not 'encroach on the powers of the Security Council'. The US delegation saw the overall outcome as a success, as it reinforced their ongoing cooperation policy. Despite the naysayers, the general mood was one of exhausted triumph: victims of the crime of aggression are inching closer to being able to seek redress before the ICC.

#### **Other important matters**

The Review Conference was more than simply an opportunity to analyse the Court's legal texts. It was also a moment to take stock of international criminal justice, including sharing the experience that other ad-hoc tribunals such as the International Criminal Tribunals for the Former Yugoslavia and Rwanda, and the Special Court for Sierra Leone have had. Important decisions were made to strengthen cooperation, especially in the execution of outstanding arrest warrants. Despite the fact that African states have been involved with the Court since its inception, some Africans still think that the ICC is a European court to judge Africans. Indeed, recent developments at the African Union about the ICC's role in Africa demonstrate that there is further need for dialogue on the African continent in order to create greater understanding about international criminal law and the obligations of States Parties. The success in Kampala provided the beginning of this dialogue.

#### **ICC – Court of last resort**

Complementarity was among the issues discussed during the stocktaking session that highlighted the need to strengthen national structures that will work alongside the ICC in its pursuit to deliver justice to victims. The experience of the last eight years of the Court's existence clearly shows that the Court will only handle a limited number of cases; thus, if there is to be true universality of the fight against impunity, complementarity is the answer. As a host country, Uganda sought to lead by

example by enacting enabling law to create the Special War Crimes Division of the High Court to facilitate the investigation and prosecution of egregious crimes that victims have endured for over two decades at the national level.

Uganda became the fourth country (after Senegal, South Africa and Kenya) on the African continent to have domesticated the Rome Statute. Enacting national laws for implementation of the Rome Statute is only the beginning of a long process. For many countries, complementarity is a nebulous concept and its full scope is unclear. For example, States Parties are urged to have implementing legislation but the precise form of this legislation varies from country to country. Should each State adopt the Rome Statute wholesale, or are they only required to implement provisions codifying the core crimes and facilitating cooperation with the

been a priority of the organisers of the Review Conference. It was considered important to ensure that the Review Conference would not only address technical issues but would bridge the existing gap between victims and States Party representatives, many of whom make policy decisions about the Court.

In this regard, civil society organisations – No Peace Without Justice, the Human Rights Network (HURINET)-Uganda and the Uganda Coalition for the ICC – organised pre-conference visits to Uganda for diplomats and other delegates attending the Review Conference. The visits provided an opportunity for delegates to meet and interact with victims and persons from affected communities. The results of these visits exceeded all expectations. Most delegates had never seen or directly interacted with victims of atrocious crimes, nor had they ever travelled to Africa; yet

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*Against this seemingly unbreakable wall, the Non-Allied Movement, The Africa Group and the Group of Latin America and Caribbean States discovered the ‘power’ of numbers and enabled the Conference to break the deadlock that had loomed over it during its last week.*

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Court, without mimicking the Rome Statute in its entirety? Given the importance of this issue, the question arises as to whose responsibility it is to clarify what conditions are necessary for being fully complementary. This clarification entails advice, support in the form of training of legal professionals and government officials at the national level, and concrete recommendations as to the way forward. Since the Court is not directly mandated to assume such a role, it will be up to the ASP to assume this task as part of its remit.

### **Including victims**

Adopting the crime of aggression was not the only success of the Review Conference. Significant effort had been made by the Government of Uganda to ensure that the event was as inclusive as possible, in particular for victims and members of civil society. Including victims in the Review Conference had always

they are called upon to make far-reaching decisions about the ICC that could potentially adversely affect these victims. To share the victims’ stories, learn about their ordeals and tribulations, hear firsthand their expectations of the Court, and discuss their perspectives on important issues like peace and justice, was an unforgettable experience that changed many of the delegates’ outlook forever.

The day before the start of the Conference, UN Secretary-General Ban Ki-moon, Ugandan President Yoweri Museveni and others including ministers and ambassadors, played football shoulder-to-shoulder with victims at the National Stadium. For the victims, playing alongside such prominent people meant a lot and will remain a memorable experience that helps redefine them as survivors.

The Government of Uganda also facilitated the People’s Space, a special area designated for NGOs and other groups organised by the CICC to actively participate and contribute



UN Secretary General Mr Ban Ki-moon and Ugandan President Mr Yoweri Museveni took to the field with 15 minutes to the final whistle under a banner that read 'All are equal in the eyes of the referee' © ICC-CPI.

*For many countries, complementarity is a nebulous concept and its full scope is unclear.*

to the Review Conference. This initiative was hugely successful in giving a voice to victims and victims' groups during the Conference itself. Victims from throughout the region were also closely involved in the organisation of many side events.

### Conclusion

This significant event which appropriately took place on the African continent constitutes an important milestone in the history of

international criminal justice, particularly in relation to the crime of aggression and for victims. This successful review of the ICC and the Rome Statute system, created to put an end to impunity for serious crimes, can be summed up as follows:

*Rome is the place where the ICC Statute was adopted and Kampala the place where it was completed.*

### Note

\* Ambassador Mirjam Blaak is the Deputy Head of the Uganda Mission in Brussels.

# Cooperation between States Parties and the ICC: challenges and opportunities for improvement

Akbar Khan\*

The stocktaking session on cooperation during the ICC Review Conference aimed to provide a comprehensive overview of the challenges and achievements with regard to implementation of Parts 9 and 10 of the Rome Statute. The discussion was directed at fostering a common understanding of further steps needed to improve cooperation, in accordance with the provisions of the Rome Statute, between the Court and States Parties, the United Nations system, international and regional organisations, and other stakeholders. I was honoured to be among a distinguished panel of experts under the able chairmanship of former ICC President Judge Phillip Kirsch, tasked with leading a discussion on what could arguably be considered one of the ICC's most pressing challenges in effectively carrying out its mandate.

Without effective cooperation from States Parties in both mandatory and non-mandatory forms of cooperation identified under the Rome Statute, the ICC will fail. In practice, the Court cannot succeed without support across a variety of areas. Provision of such support is not only in the interests of States that created the Court, but more importantly to fulfil the very *raison*

*d'être* of the Court – justice for the victims of international crimes.

## A snapshot on cooperation

What is the picture regarding cooperation? The ICC's own April 2010 report indicates that the picture is promising but far from perfect. The report records that cooperation is generally forthcoming, with the Office of

the Prosecutor (OTP) receiving an 85 per cent response rate to cooperation requests. But the flip side of the cooperation coin is less promising, with eight arrest warrants outstanding; many Registry requests, including those concerning witness relocation failing to garner any response; no State Party having yet entered into an 'interim release agreement' with the ICC thereby rendering the right to bail essentially illusory while compromising the presumption of innocence; and

defence teams often failing to receive timely assistance from States, which is essential to achieving a fair trial through equality of arms.

The reasons for such uneven cooperation from States are often unclear. With a view to identifying and ultimately addressing some

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*With only 40 of 111 States Parties having some form of implementing legislation, can we afford to wait any longer now that the Court is fully operational? Implementing legislation is the most effective basis at the national level for ensuring cooperation with the Court.*

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*Competing and changing priorities can only be fully addressed through a coherent and coordinated dialogue between the Court, States and relevant stakeholders who are able to offer technical and capacity-building assistance to enhance State cooperation.*

of the possible challenges, the Bureau of the Assembly of States Parties (ASP) mandated the ASP Secretariat to administer a questionnaire through which States would detail their efforts at implementing legislation to facilitate cooperation with the ICC. Disappointingly, only 40-odd States Parties responded to the questionnaire – a lost opportunity for identifying current challenges and ameliorating the situation. Nevertheless, based on information from several sources including the Report of the Bureau on Cooperation, the Court’s report on cooperation, bilateral discussions with individual States, civil society and other stakeholders, the following challenges and solutions have been identified.

*Each national system is unique and States Parties are at different stages in developing their national legal systems to facilitate cooperation with the Court.*

Given this often overlooked fact, it is vital that States share experiences with each other in order to find innovative ways to overcome



Akbar Khan, Director, Legal and Constitutional Affairs Division of the Commonwealth Secretariat in London, United Kingdom © ICC-CPI.

differences in capacities to allow for effective cooperation. These might include the creation of a national focal point responsible for receiving and processing cooperation requests more efficiently, and/or the establishment of an ICC task force to help mainstream ICC obligations throughout domestic ministries in advance of cooperation requests being received, to ensure awareness and expedition. Such taskforces and focal points have already been effectively used by some States to raise awareness of the ICC at the national level and to reduce governmental inertia.

*The absence of implementing legislation*

States Parties are under a general obligation to cooperate with the Court and are required by Part 9 of the Rome Statute ‘to ensure that there are procedures available under their national law for all forms of cooperation’. From where I sit in the Commonwealth Secretariat, given the host of challenges facing States in implementing many types of international treaties, this task is easier said than done. But ICC States Parties need to understand that they are not alone in trying to do this. My organisation, for example (the Legal and Constitutional Affairs Division of the Commonwealth Secretariat in London, United Kingdom), has produced an ICC model law for Commonwealth States and assists with the provisions of legislative drafting, training of prosecutors, judges and other key justice actors in prosecuting complex transnational crimes. We also work with States to enhance their mutual legal assistance programmes to better support international cooperation on witness protection and sharing of information.

With only 40 of 111 States Parties having some form of implementing legislation, can we afford to wait any longer now that the Court is fully operational? Implementing legislation is the most effective basis at the national level for ensuring cooperation with the Court. The absence of implementing legislation does not remove the legal obligation to cooperate with the Court but only makes this obligation harder to fulfil.



Judge Sang-Hyun Song and HE Mr Jaakko Laajava Undersecretary, Ministry of Foreign Affairs of Finland, Ceremony on the Enforcement of Sentences © ICC-CPI.

### *What is the picture regarding cooperation? The ICC's own April 2010 report indicates that the picture is promising but far from perfect.*

Implementing legislation is the ultimate goal, and States must spare no effort to ensure that clear deadlines are set to achieve this objective. However, while working with other stakeholders to achieve implementation of the Rome Statute at the national level, States should in parallel enter into ad hoc arrangements and framework agreements with the Court to ensure timely cooperation.

#### **Conclusion**

States cannot sit on the fence over the issue of cooperation. As a key legal obligation, States should not act contrary to the good faith requirements of this obligation by signing up to declarations in other organisations which militate against cooperation with the ICC. This is just plainly unhelpful and undermines the ICC.

Non-cooperation also has a serious cost tag in monetary and reputational impact. For example, when States fail to cooperate to trace and freeze assets of allegedly 'indigent' detainees, this has a direct impact on the legal aid budget and reparations awards to victims of crime while the failure to arrest fugitives potentially diminishes the Court's deterrent effect.

Looking ahead, the dynamic nature of the ICC means that its priority needs regarding cooperation will change over time. Priority areas today include the execution of outstanding arrest warrants; sustained and timely cooperation, including with defence teams; and more framework agreements, including on enforcement of sentences, witness relocation and interim release. Competing and changing priorities can only be fully addressed through a coherent and coordinated dialogue between the Court, States and relevant stakeholders who are able to offer technical and capacity-building assistance to enhance State cooperation. A standing agenda item on cooperation at each ASP meeting therefore seems axiomatic to keep this issue alive; to help to understand where the challenges remain for States in providing cooperation; to discern and share best practice; and to help identify where assistance might be found.

#### **Note**

\* Akbar Khan is the Director of the Legal and Constitutional Affairs Division of the Commonwealth Secretariat in London, United Kingdom.

# First ICC Statute Review Conference: historic milestone in ICC evolution

William R Pace\*

**T**he Review Conference (RC) on the Rome Statute (RS) of the International Criminal Court (ICC) took place in Kampala, Uganda from 31 May to 11 June 2010. Mandated by the Statute adopted in 1998, the Conference would be the first time governments could consider amendments to the treaty, including completing the definition of the crime of aggression, and agreement on how the ICC would be able to exercise jurisdiction over this very politically-controversial, leadership-based transgression.

In a two-year campaign, the Coalition for the ICC (CICC), with the support of some government leaders, was able to convince the RS governing body, the Assembly of States Parties (ASP), to include a major institution and treaty building process in the RC. We did not want this major meeting to occur without the ASP considering other crucial challenges besides amendments. These were the 'stocktaking' issues of cooperation, complementarity, peace and justice, and the impact of the ICC on victims and their affected communities.

In spite of widespread, sceptical expectations, including among non-governmental organisations (NGOs), the RC was successful to the extent that States had never before and in such a forum been willing to highlight deficiencies within their domestic systems. Indeed, as the passing of time puts the Conference into clearer view, it is very possible that the RC will be recognised as a historic milestone in the evolution of the ICC and the new system of international criminal justice created by the RS. This will only prove to be the case, however, if those States who participated in discussions at the RC are able to capitalise on the discussions that ensued, and honour their responsibilities under the RS; the alternative will be a RC relegated to merely a talking shop. NGOs and the CICC in particular will play their part in reminding States of that responsibility. As in Rome 12 years ago, the vast majority of the international media ignored and missed a major world Conference.

## A great gathering of international justice experts

Since 1995, the Coalition has led the global civil society effort to create the ICC and an international justice system that mandates that there can be no impunity for the worst crimes. As the Coalition's Convenor, I have had the great honour to participate in virtually all of the preparatory meetings, the Rome Statute Conference, the ten United Nations (UN) preparatory commissions and eight years of ASP sessions. I believe the RC was the greatest gathering of international justice experts ever: experts from 120 governments, prosecutors, presidents and other leaders from almost all the ad hoc and special tribunals (the International Criminal Tribunal for the former Yugoslavia, International Criminal Tribunal for Rwanda, the Special Court for Sierra Leone, to name but a few). The Conference also included key leaders of the ICC, two Secretaries General of



William R Pace, CICC Convenor © ICC-CPI.

the UN, the High Commissioner for Human Rights, international justice experts of regional and other international organisations, leading academic experts, and more than 600 NGO members of the CICC.

Hundreds of CICC members, including the International Bar Association (IBA), played a crucial role in enhancing the dialogue on the RS system at the Review Conference. Through a large number of excellent and informative events – such as parliamentary assemblies, debates, roundtables, moot courts and press conferences – NGOs ensured that the voices of civil society and victims were heard. Once again in Kampala, the invaluable role played by the coalition and civil society was acknowledged in the plenary and in speeches by States and other experts, as well as in most side events and panels.

### Breakthroughs

While many NGOs were hesitant to hold the Conference in a situation country, I believe that holding the Conference in Uganda generated greater involvement of governments, NGOs and victims groups from the African continent – where all the Court’s first investigations are taking place, and where many communities have a direct interest in the success of the Rome Statute. It was very inspiring and encouraging to see this amazing turnout. There was no evidence of support for the RS opponents who supported certain anti-ICC resolutions in the African Union. Ugandan President Museveni announced that Omar Al-Bashir would not be allowed to come to the AU summit in Kampala in July. After years of destructive anti-ICC policies from the US Government, the Obama administration came to Kampala declaring its intentions for a new, constructive engagement with the RS and ICC.

The Uganda Coalition for the ICC, Human Rights Network Uganda, No Peace Without Justice and the ICC were also able to organise visits of States Parties delegates and other officials to northern Uganda and to ICC field offices in Uganda and DRC, enabling the interaction with affected communities and bringing the reality of the situations that the ICC is investigating closer to ASP leaders.

The Coalition believes that major breakthroughs occurred in the ASP – especially in recognising how much more work is needed to be achieved on cooperation and complementarity. And with just two or three months, notice, 112 pledges were made by 36 States and by the European Union



**Roundtable discussion: ‘Civil society taking stock: cooperation’**

From left to right: Moderator Richard Dicker, Human Rights Watch; Lorraine Smith, International Bar Association; Gerard Dive, Belgian Ministry of Justice; and Chris Hall, Amnesty International. (Georges Kampiamba, Association Africaine de defense des Droits de l’Homme, was also on the panel but is not pictured) ©CICC/Harrison Davis.

*Indeed, as the passing of time puts the Conference into clearer view, it is very possible the Review Conference will be recognised as a historic milestone in the evolution of the ICC and the new system of international criminal justice created by the Rome Statute.*

including commitments on implementation legislation, cooperation with the ICC, contributions to the Trust Fund for Victims, enforcement of sentences, protection of witnesses, capacity-building on national investigations and prosecutions, ratification of the Agreement on Privileges and Immunities (APIC) and on a host of other issues. The CICC will encourage additional states to make pledges at future ICC meetings and will work with governments to fulfil existing pledges.

### Intense negotiations on aggression

The negotiation on the definition and provisions for the ICC exercising jurisdiction for the crime of aggression (CoA) was for most the centrepiece of the RC. The Coalition and its members were criticised by many governments and a few ill-informed academics for strongly advocating for the ‘stocktaking’ issues in the RC. They thought the CICC was trying to divert attention from the CoA.

The reality was that the coalition members were even more divided over the different proposed amendments on the CoA than governments. Many of our critics apparently cannot or choose not to understand that the vast majority of the Coalition's 2,500 member organisations simply do not have a mandate that allows them to take a position on the legality of war or the CoA. I did not hear one government or academic criticise

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*Many of us had feared that the 'ICC community' could be seriously wounded or wrecked by this [aggression] negotiation. Instead, as has happened time and time again in the last 14 years, the ICC community not only held together but may have made history.*

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the International Committee of the Red Cross (ICRC) for not taking a position on the CoA, but the same understanding was not extended to CICC members.

The CoA negotiation was intense and tortuous. All of the veto-possessing members of the Security Council (P-5), 25 other non-State Parties including Iran, India, Pakistan, Israel and Egypt, and about 85 of the 111 States Parties participated. Constitutional issues of the UN Charter and international legal order were being negotiated. Many of us had feared that the 'ICC community' could be seriously wounded or wrecked by this negotiation. Instead, as has happened time and time again over the last 14 years, the ICC community not only held together but may have made history.

At 1am on the day after the Conference was to end, the small, middle-power and emerging democracies of the ASP agreed by consensus to a full amendment on the CoA. After hundreds of years of disagreement, the definition of aggression and the crime of aggression are now included in a major international treaty. The Security Council will have a primary but not exclusive role in triggering ICC jurisdiction. The Prosecutor and the judges will also be able to initiate an investigation. Russia, China, the US, Egypt, Iran, Pakistan and Israel all agreed to the consensus. This alone warranted international media attention.

### Dark sides of the amendments

Of course, there are darker sides to this historic achievement. Almost all Coalition members are opposed to the overreaching amendment provisions that exempt non-States Parties and their nationals, and which allows States Parties

to file a declaration not accepting ICC jurisdiction for this crime.

These terrible concessions could make the likelihood very remote that any leader, especially from a major power, will ever be tried for CoA by the ICC. And there will be the awful prospect that when future aggressors escape justice it will be the ICC that is criticised, not the governments' flawed

amendment.

The concessions on jurisdiction reveal what I and many others have stated over the past ten years – that the achievements in Rome would not be possible in today's political climate. It is unlikely that governments would agree to such strong provisions today. Thus, we must recommit ourselves to protecting the integrity of the RS going forward. We must fiercely oppose any weakening of the jurisdictional provisions for war crimes, crimes against humanity and genocide in the future.

Even with these concerns, the RC taken as a whole was an important success. In my closing comment to the plenary I was able to repeat what I said in Rome 12 years ago: 'Mr President, distinguished delegates, most of history is the story of wars won and peace lost. We hope and pray today that the Review Conference is again a historic moment in which peace has won and war has lost.'

#### Note

\* William R Pace has served as the Convenor of the Coalition for the International Criminal Court (CICC) since its founding in 1995. He is the Executive Director of the World Federalist Movement-Institute for Global Policy (WFM-IGP) and is a co-founder and Steering Committee member of the International Coalition for the Responsibility to Protect. He has been engaged in international justice, rule of law, environmental law, and human rights for the past 30 years. The Coalition for the ICC is a civil society network of 2,500 organisations in 150 countries advocating for a fair, effective and independent ICC and improved access to justice for victims of genocide, war crimes and crimes against humanity. For more information, see: <http://www.coalitionfortheicc.org/>.

The views expressed in this paper are those of the author and do not necessarily reflect the views of the CICC as a whole.

# An African perspective on the Review Conference in Kampala, Uganda

Oby Nwankwo\*

Participating in the first Review Conference of the International Criminal Court (ICC) held in Kampala, Uganda, with over 4,600 representatives of governments, international organisations and civil society organisations (CSOs) was an enriching and empowering experience. I, along with Mohamed Ndifuna of Human Rights Network (HURINET) Uganda, represent Africa on the Steering Committee of the Coalition for the International Criminal Court (CICC). We were proud that the first Review Conference of the ICC was held in an African country. With more than 30 States Parties to the Rome Statute, the largest from a single region, Africa has a strong history of engagement with the ICC. Given the current focus of ICC investigations in Africa, and with the Court located in Europe miles away from the victims and affected communities, it is significant that for the first

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*We were proud that the first Review Conference of the ICC was held in an African country.*

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time the Court and the entire international community came in situ to discuss the future of the Rome Statute system of justice.

Prior to the start of the Review Conference, on 27 and 28 of May 2010, HURINET and the Uganda Coalition for the ICC organised a civil society conference to discuss the upcoming Review Conference and in particular civil society participation during the event. The stocktaking themes of cooperation, complementarity, peace and justice, and the impact of the ICC on victims were extensively



Ms Binta Mansaray, Ms Carla Ferstman, Ms Elisabeth Rehn, Mr Eric Stover and Ms Gabrijela Filipovic discussing the impact of the Rome Statute on victims and affected communities © ICC-CPI.

*The most appropriate form of justice for every situation must be carefully examined without discounting the importance of initiatives to engender peace since the ultimate beneficiaries are victims and affected communities.*

considered. A significant feature of the CSO Conference was the formal recognition of the central position occupied by victims and the importance of treating them with respect, acknowledging their right to dignity and to have their views and concerns heard in the various processes they are involved in. As a gender activist, I emphasised that particular attention must be paid to women, victims of gender-based violence, minorities and victims with disabilities.

Divergent views were canvassed by the almost 100 NGOs in attendance. The Conference concluded with an outcome document in the form of a communiqué, an advocacy tool for civil society to lobby government delegates. The communiqué urged States Parties to the Rome Statute to incorporate legal provisions on victims, including those related to reparations, protection and support, participation, information, right to legal representation among others, into their national laws. It also urged States Parties to support the ICC in its efforts to conduct effective, responsive and targeted outreach initiatives at the earliest possible stages of investigations.

African civil society organisations were of the view, and correctly so, that the discourse on peace and justice must be informed by the historical, political and social context of crimes. The most appropriate form of justice for every situation must be carefully examined without discounting the importance of initiatives to engender peace, since the ultimate beneficiaries are victims and affected communities. Although there were deep divisions during discussions in the main plenary on the issue of peace and justice, the civil society position was clear – peace and justice are mutually reinforcing imperatives.

The complementarity discussion was useful in highlighting some general issues such as the continuing failure of several States Parties, including African States, to enact implementing legislation to allow them to prosecute grave international crimes at the national level. This is troubling because the Preamble to the Rome Statute makes it clear that States have the primary responsibility to prosecute international crimes and the ICC is a court of last resort. It is clear that this failure to enact relevant legislation is not due only to a lack of capacity on the part of some States – though this may also be a legitimate reason; in many cases, there is a dismal lack of political will! Undoubtedly one positive outcome from Kampala is that African civil society has been reenergised to intensify efforts to raise awareness about complementarity among government officials and other relevant stakeholders such as members of the legal profession at the national level.

The thorny issue of the so-called negative perception of the ICC in Africa and the reluctance of the African Union to cooperate with the ICC by agreeing to the establishment of the ICC Liaison office in Addis Ababa agitated many at the Conference. Thankfully, former UN Secretary General and a true African statesman, Kofi Annan addressed this issue during his opening speech in the plenary and again at a VIP panel discussion organised by the CICC. Mr Annan stated categorically that contrary to the erroneous perception of



David Tolbert, President, International Center for Transitional Justice and Oby Nwankwo, Executive Director, Civil Resource Development and Documentation Centre (CIRDDOC – Nigeria), at CICC Press Briefing © CICC.

*The Conference has ended but the work of African civil society has just begun as we must increase our advocacy efforts to ensure increased support for the ICC particularly among African Heads of States.*

a number of heads of state, the ICC was not targeting Africa, it was targeting impunity!

Some sceptics argue that there were no concrete outcomes from the stocktaking segment of the Review Conference. I disagree. The innovation of inviting States to make concrete pledges at the Conference resulted in more than 30 such pledges from States Parties. Admittedly, a number of the pledges were general in nature. But the pledging system initiated in Kampala provides an important avenue for ASP leadership in holding States accountable and ensuring that States Parties translate their commitment into action. This pledging initiative must become a permanent and continuous feature of future ASP meetings. States who declined to pledge in Kampala

must be encouraged to do so in subsequent ASP meetings and a mechanism should be organised to allow for reporting and follow-up on pledges.

The Kampala Review Conference presented a unique opportunity for African civil society to reflect on international criminal justice for the world's worst crimes. The Conference has ended but the work of African civil society has just begun as we must increase our advocacy efforts to ensure increased support for the ICC particularly among African Heads of States.

**Note**

\* Oby Nwankwo is Executive Director Civil Resource Development and Documentation Centre (CIRDDOC) Nigeria, and Member, Steering Committee, Coalition for the International Criminal Court (CICC).

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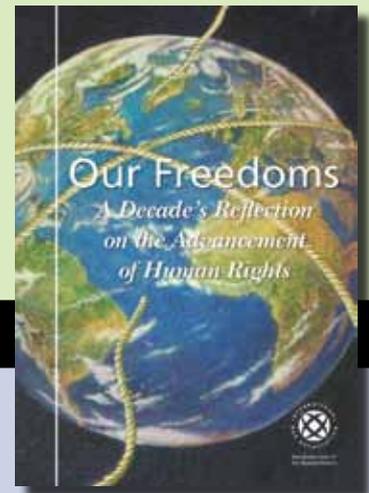
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# What exactly was agreed in Kampala on the crime of aggression?

Dapo Akande\*



Dapo Akande © University of Oxford.

**A**t the Review Conference held in Kampala in June 2010, the parties to the Statute of the International Criminal Court (ICC) decided, by consensus, to amend the ICC Statute so as to allow the Court to exercise jurisdiction over the crime of aggression. However, there seems to be some (significant) confusion as to what exactly was agreed on the crime of aggression in Kampala. There is also room for argument as to whether some of the decisions made in Kampala will have the legal effect that the drafters sought to achieve. This article will briefly set out what was agreed and highlight those areas where there is significant ambiguity surrounding the agreement. In particular I want to discuss issues surrounding the definition of aggression, when the aggression amendments will become operational, and most importantly who will be bound by the amendments.

## Definition of aggression

The definition of aggression will be set out in Article 8 of the Statute and will state that:

‘For the purpose of this Statute, “crime of aggression” means the planning, preparation, initiation or execution, by a person in a position effectively to exercise control over or to direct the political or military action of a State, of an act of aggression which, by its character, gravity and scale, constitutes a manifest violation of the Charter of the United Nations’.

The most contentious part of this definition was the qualifier, that is, the requirement that the act of aggression be a ‘manifest’ violation of the Charter. Does it require an obviously illegal violation, a violation with serious consequences, or a violation which is both obviously illegal and serious. This question

was not resolved in the text of the amendments but addressed in the understandings attached to the text. Two of those understandings read as follows:

‘6. It is understood that aggression is the most serious and dangerous form of the illegal use of force; and that a determination whether an act of aggression has been committed requires consideration of all the circumstances of each particular case, including the gravity of the acts concerned and their consequences, in accordance with the Charter of the United Nations.

‘7. It is understood that in establishing whether an act of aggression constitutes a manifest violation of the Charter of the United Nations, the three components of character, gravity and scale must be sufficient to justify a “manifest” determination. No one component can be significant enough to satisfy the manifest standard by itself.’

I read this to mean that a breach of the prohibition of the use of force will only amount to aggression where it is a grave violation with serious consequences. There can be debate about whether two of the three criteria of character, gravity and scale would suffice or whether all three are required. The first sentence of understanding 7 suggests that all three criteria must be at work while the second sentence appears to suggest that two will do. However, either way, one or both of gravity and scale must justify the conclusion that the use of force is a manifest violation of the Charter. So the seriousness of the consequences of the use of force must be considered.

### When will the aggression amendments become operational?

Throughout the negotiations on the crime of aggression there had been a debate as to whether the amendments should come into force under Article 121(4) or Article 121(5) of the Statute. The former requires ratification or acceptance by seven-eighths of the State Parties with the amendments then binding on all States Parties. On the other hand, the latter states that:

‘Any amendment to Articles 5, 6, 7 and 8 of this Statute shall enter into force for those States Parties which have accepted the amendment one year after the deposit of their instruments of ratification or acceptance. In respect of a State Party which has not accepted the amendment, the Court shall not exercise its jurisdiction regarding a crime covered by the amendment when committed by that State Party’s nationals or on its territory.’

The Review Conference, in the resolution that adopted the aggression amendments, decided that the amendments shall enter into force in accordance with Article 121(5). However, it is not clear that the ‘decision’ that the amendments shall come into force in accordance with Article 121(5) is in any way binding. A State can oppose this decision, or more likely, a defendant can challenge the ‘decision’, if it is Article 121(4) that actually applies. Arguably, all that was done in Kampala was the adoption of a text and under the law of treaties, the adoption of a text does not, of itself, create legal obligations on States (or indeed on the Court) that allows bypassing of the binding text of Article 121 as it exists. The alternative view – that even if Article 121(5) did not apply at face value, somehow the parties in Kampala have amended that Article such that it now applies – is legally problematic.

In any case, whether the Kampala ‘decision’ to bring the amendments into force by Article 121(5) is in itself binding or not, the view that Article 121(5) is the applicable provision is a reasonable one. Article 121(5) only applies to amendments to Articles 5,6,7 and 8 and the aggression amendments go beyond amendments to those provisions. However, I think a good case can be made that the amendments are all a package intended to bring into effect the ‘new’ crime, and that the intention behind Article 121(5) is that it applies to amendments dealing with the creation of new crimes.

Having decided that the amendments will come into effect under Article 121(5), the parties decided to impose additional conditions before the Court is able to prosecute for aggression. The Court may only exercise jurisdiction over aggression committed one year after 30 States Parties have accepted the amendments. Furthermore, the Court’s jurisdiction over aggression will only commence once a decision is made to that effect, after 1 January 2017, by the States Parties. These conditions apply to prosecutions commenced as a result of State Party referral and *proprio motu* prosecutions (Article 15 *bis*) as well as to prosecutions resulting from a Security Council referral (Article 15 *ter*).

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*The other significant features of Article 15 bis are that States Parties may opt out of ICC jurisdiction over aggression under this provision and the Court may not exercise jurisdiction over the crime of aggression when committed by a national of a non-State Party or on its territory.*

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### Trigger mechanisms for prosecutions for aggression

The aggression amendments make a distinction between the three trigger mechanisms that exist for ICC jurisdiction. Article 15 *bis* deals with referrals by States Parties and *proprio motu* prosecutions by the Prosecutor and Article 15 *ter* deals with Security Council referrals. Starting with the latter, all that is required is a referral of a situation by the Council and the Council need not have determined that an act of aggression has taken place.

Article 15 *bis* was the more controversial provision. It is significant to note that it was agreed that referrals by States Parties and *proprio motu* prosecutors can take place without a Security Council filter. In other words, the Security Council need not have determined that an act of aggression has taken place, though the Security Council can defer an investigation or prosecution under Article 16.

The other significant features of Article 15 *bis* are that States Parties may opt out of ICC jurisdiction over aggression under this provision and the Court may not exercise

jurisdiction over the crime of aggression when committed by a national of a non-State Party or on its territory.

### Who will be bound by Article 15 bis of aggression amendments?

The opt-out provision is the most confusing aspect of the aggression amendments. Who exactly is required to opt out? Once the requisite number of ratifications are reached and a decision is made in or after 2017 to activate the aggression provisions, are all States Parties to be regarded as bound, such that the ICC has jurisdiction over aggression committed by the nationals of all States Parties unless they opt out? Or does the ICC only have jurisdiction over nationals of States Parties who have accepted/ratified the amendment, unless that State Party opts out? This latter position would seem a better fit with Article 121(5): that the amendments only enter into force for those States that have ratified or accepted them. Further, that provision states that the Court may not prosecute with respect to the crimes committed by nationals of, or on the territory of, those who State Parties do not accept.

I am in doubt as to whether this issue was thought through in Kampala, and I doubt that if asked the specific question of who is bound by Article 15 *bis*, all delegations would have given a uniform answer. It is worth noting that the only part of the resolution that adopts the aggression amendments is not conclusive with regard to who needs to opt out. It states that: ‘any State Party may lodge a declaration referred to in Article 15 *bis* prior to ratification or acceptance’. By referring to opt outs prior to ratification or acceptance, it must be referring to those who have not yet ratified or accepted, and opens up the possibility that such States need to opt out. However, this clause may also be read as referring simply to the time within which a ratifying or accepting State must opt

out, if it wishes to do so. In other words, if a State Party ratifies or accepts the amendment and wishes to opt out, it needs to have done so before it ratifies or accepts. On this view, the opt outs could still be confined to those States Parties who ratify or accept.

However, it may be argued that if only those States Parties who ratify are bound, why have an opt out provision? Why would a State ratify the amendment only to opt out of jurisdiction? On this view, the opt-out provision must be included mainly in relation to those States Parties who do not ratify, otherwise it would be redundant. But this is not necessarily so. The opt out is not redundant even if only those who

ratify are bound. For one thing, ratification by 30 States is necessary for the Security Council referral mechanism to come into effect. So a State may wish to ratify to bring that part of the amendment into effect but to opt out of the state referral and *proprio motu* prosecution mechanisms. Secondly, a State may wish to bring the amendments into effect generally while excusing itself from prosecution.

It will be interesting to see how all of this plays out. In particular, it would be interesting to see what States

Parties do. It may well be that even those who don’t ratify play it safe, adopt a belt-and-braces approach and choose to opt out anyway. But to the extent that many States do this then this may be considered as practice indicating the view of the parties that those States who don’t opt out are bound. So States Parties are in a catch-22 situation: opt out and they may be taken as supporting the view that presumed consent is a valid way of binding States; don’t opt out and a court may find that it has jurisdiction over aggression committed by that State.

#### Note

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*So States Parties are in a catch-22 situation: opt out and they may be taken as supporting the view that presumed consent is a valid way of binding States; don’t opt out and a court may find that it has jurisdiction over aggression committed by that State.*

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# Incorporating the crime of aggression: a giant step for the Court, and for international law

William Schabas\*

The Kampala Review Conference concluded early in the morning of 12 June 2010 with the adoption, by consensus and without a vote, of several amendments to the Rome Statute that will enable the International Criminal Court (ICC) to prosecute the crime of aggression. It is the great achievement of the Conference. The additions to the Statute complete the work that began at Rome in 1998, providing the Statute with a holistic approach to international criminality that fulfils a logic that began at Nuremberg.

## From Nuremberg to Kampala

‘To initiate a war of aggression, therefore, is not only an international crime; it is the supreme international crime differing only from other war crimes in that it contains within itself the accumulated evil of the whole.’

This profound conception of international crime, expressed so eloquently in these famous words from the judgment of the International Military Tribunal at Nuremberg in 1946, is once again part of our common understanding.

The somewhat uncertain position of the crime of aggression dates back to the years that followed Nuremberg. While codification of genocide and grave breaches continued the work begun at the London Conference, reaching an agreed definition of aggression proved much more elusive. A text was finalised only in 1974, and even then it was not crafted with prosecution in mind. At the Rome Conference in 1998 consensus on aggression was out of reach. But when the Bureau attempted to drop any reference altogether, there was an unexpected rebellion of many delegations. Those who penned the final draft of the Rome Statute realised that aggression could not be ignored. They did no more than

leave a place-holder in Article 5. Kampala honoured this uncompleted agenda.

## War is the supreme evil

The message that the amendments help to deliver is that war is the supreme evil, lying at the heart of the human rights violations set out in the provisions on genocide, crimes against humanity and war crimes. Some atrocity crimes take place in the absence of armed conflict, but they are not many. The situations currently on the Court’s docket are closely related to major armed conflicts, with one exception. Most



Benjamin B Ferencz, Professor of International Law and former Nuremberg Prosecutor, making his keynote address at a roundtable discussion on the crime of aggression © CICC/ Harrison Davis.

non-specialists, including most victims, would be much surprised to learn that there has been some question as to whether international criminal justice should address the causes of conflict and not just the behaviour of those who engage in it.

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*That war is evil and unlawful, and that those who initiate it commit one of the most serious crimes of concern to the international community as a whole, is a message of fundamental importance.*

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Several factors explain the difficulty we have had in reaching agreement on the place of aggression in the system of international criminal prosecution. Currently, international law does not provide an adequate framework to address the source of conflict in civil wars, and these make up the bulk of modern conflicts. This is perhaps an issue to which we might now turn our attention.

In addition, there has been an enthusiasm in certain circles for the use of force to prevent violations of human rights. Generally, this ‘humanitarian intervention’ has been nothing more than a pretext, an afterthought, invoked by invaders as it was in 2003, when other justifications like the search for weapons of mass destruction are shown to be fraudulent. Every day, we are reminded of the misery and the suffering that wars of intervention have brought to the people of Iraq and Afghanistan.

### Missed opportunities

Most of the non-governmental organisations (NGOs) remained on the sidelines in the aggression debate, believing the question of unlawful war to be unrelated to their mandates. This resulted from a misunderstanding of human rights law and first principles. The preamble of the Universal Declaration of Human Rights highlights the importance of peace, and pledges ‘freedom from fear’. In one of its concluding provisions, Article 28, we are told: ‘everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realised’.

The rest of the Kampala Conference, though not insignificant, was a lacklustre affair. After a high-level segment with banal speeches from

politicians, there was a two-day ‘stocktaking’ that largely missed the point, concentrating on the obligations of States Parties rather than addressing the shortcomings and problems of the Court. An unimportant amendment prohibiting essentially archaic weapons when used in non-international armed conflict merely highlighted, once again, the inability to address the real issues of modern times: anti-personnel mines, cluster munitions, nuclear weapons, and so on.

The aggression amendments cannot enter into force until 2017, and only then if certain conditions are fulfilled. There must be 30 ratifications, but this will hardly be a challenge. Already, States like Germany have indicated that the wheels of ratification are turning. Similarly, a two-thirds vote of the States Parties should be a simple matter given the consensus at Kampala and the obvious will of so many countries to complete the work on aggression.

### The future of the crime of aggression

It is unlikely that many States, if any, will opt out of the jurisdiction on aggression, as the amendments permit. Politicians are likely to view the issuance of such a declaration as unnecessary, and something with the potential to provoke criticism in the media and among civil society. In any case, only a few States are seriously concerned that they could be charged with aggression.

What is likely, then, is that by early 2017 we will have a Court that is empowered to prosecute the crime of aggression anywhere in the world, providing this is authorised by the Security Council. When the Council does not act, prosecution may be initiated by a State Party or the Prosecutor in the case of aggression perpetrated by more than half the states in the world. That is no small accomplishment. It is one more step towards completion of the goal that we are all working towards: an international court of universal scope.

The Court may never actually prosecute the crime of aggression. The definition is narrower than many would have wanted. But that should not undercut the great significance of this codification. That war is evil and unlawful, and that those who initiate it commit one of



HRH Prince Zeid Ra'ad Zeid Al-Hussein during an informal consultation on aggression © ICC-CPI.

the most serious crimes of concern to the international community as a whole, is a message of fundamental importance. We may never be able to properly assess its deterrent effect. This contributes to, and in a sense completes, the prohibition on the use of force to settle international disputes that is set out in Article 2(4) of the Charter of the United Nations.

### Conclusion

The success in Kampala was due in no small measure to the determination of a handful of skilled diplomats: Christian Wenaweser, Prince Zeid, Stefan Barriga and Mirjam Blaak. In stark contrast with Rome, little credit can be given to the NGOs, who marginalised themselves. The voice of civil society was left to a handful of individuals, of whom Ben Ferencz, the legendary Nuremberg Prosecutor, stands out. He inspired delegates with a stirring address delivered on the eve of the Conference. Later he took the podium, at the invitation of Prince Zaid, to remind diplomats of their historic duties.

Above all, the adoption of the amendments is an important sign that the idea of the ICC is alive and well. It is no secret that the Court has not lived up to expectations in recent years, unable to complete relatively straightforward trials within a reasonable timeframe. As

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*The message that the amendments help to deliver is that war is the supreme evil, lying at the heart of the human rights violations set out in the provisions on genocide, crimes against humanity and war crimes.*

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concerns fester about its effectiveness, the ability of the Kampala Conference to complete the unfinished business of Rome is a much-needed indicator of health and dynamism. To have failed would have sent the opposite message.

#### Notes

- \* William A Schabas is Director of the Irish Centre for Human Rights at the National University of Ireland, Galway, where he also holds the professorship in human rights law. He is also a Professor at the University of Warwick School of Law, and professeur associé at the Université du Québec à Montréal. Professor Schabas holds post-graduate degrees in history and in law from universities in Canada. He is the author of 18 monographs and more than 275 articles dealing with international human rights law and international criminal law.

# The IBA in Kampala

The International Bar Association (IBA) was among those present at the historic International Criminal Court (ICC) Review Conference. Together with the Public Information and Documentation Section (PIDS) and the Office of Public Counsel for Defence (OPCD) of the ICC, the IBA organised two side events during the Review Conference – a panel discussion to formally launch the ‘Calling African Female Lawyers’ campaign in Africa, and a Moot Court to demonstrate typical ICC Confirmation of Charges proceedings. Both events were very well supported, particularly by Ugandan lawyers and the President and Executive

of the Ugandan Law Society. The IBA also participated in a training session on the ICC at the War Crimes Division of the Uganda High Court organised by the OPCD.

## ‘Calling African Female Lawyers’ Campaign

*Kampala, Uganda, 4 June 2010*

The ICC Review Conference presented the perfect opportunity to formally launch the ‘Calling African Female Lawyers’ campaign in Africa. A joint initiative of the IBA and the ICC, the campaign was first launched in The Hague in May 2010. The campaign is designed

to encourage qualified female African lawyers to apply for admission to the List of Counsel and Lists of Assistants to Counsel and ultimately increase the number of female lawyers admitted to practise at the Court.

The distinguished panellists included Justice Elizabeth Ibanda Nahamya, Judge of the Special War Crimes Division of the Ugandan High Court, Silvania Arbia, Registrar of the International Criminal Court and Bruce Kyerere, President of the Ugandan Law Society. Dr Athaliah Molokomme, Attorney General of Botswana, gave the keynote address. The event was chaired by Lorraine Smith, IBA/ICC Programme Manager.

In a stirring presentation, Dr Athaliah Molokomme, stressed the important role that female lawyers can play in international justice, noting that it is imperative to close the gender gap that currently exists on the Lists of Counsel authorised to represent defendants or victims at the ICC.

Judge Nahamya encouraged Ugandan women lawyers to accept the challenge to engage with the ICC given the significant under-representation of female counsel at the ICC. Citing her own life as an example, she pointed out that local women lawyers have to take advantage of every opportunity to be involved in international law

*The campaign is designed to encourage qualified female African lawyers to apply for admission to the List of Counsel and Lists of Assistants to Counsel and ultimately increase the number of female lawyers admitted to practise at the Court.*



Mr Xavier-Jean Keïta, Principal Counsel for the OPCD, assumed the role of the Accused, Deran Mostol © ICC-CPI.

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*‘Local counsel put their skills and knowledge of international criminal law to the test and brought the Court alive in the field’*

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including through training and internships at international and regional tribunals. In this regard, she encouraged the ICC to simplify the process through which young female lawyers could participate in internships and the visiting professionals programme at the Court. The ICC Registrar reiterated the important role that female lawyers play ensuring effective legal representation for victims and defendants at the Court. She indicated that applications submitted by qualified African women would be given priority until the end of the year. On behalf of the Ugandan Law Society, President Bruce Kyerere gave unqualified support and endorsement of the campaign.

A dynamic question and answer session followed the discussion, during which the audience of approximately 70 lawyers, delegates and other guests was given the opportunity to engage with the panel. While female lawyers attending the event appeared to be generally supportive of the initiative, some concern was expressed regarding the number of years of practising experience required for admission to the ICC List of Counsel.

**The Rome Statute in Action: Demonstration of Confirmation Hearing**

*Kampala, Uganda, 9 June 2010*

An audience of over 200 lawyers, delegates and observers gathered under the large tent at the People’s Space (the area reserved for civil society events at the ICC Review Conference) to see the Rome Statute in action. The IBA and the ICC’s OPCD jointly organised a moot court to demonstrate a confirmation of charges hearing at the ICC.

Local counsel put their skills and knowledge of international criminal law to the test and brought the Court alive in the field. The audience, many of whom were Ugandan, witnessed first hand how an actual ICC hearing might proceed. After the event, participants commented that not only was the exercise useful, but it highlighted how challenging this area of practice can be. Whether it was remaining vigilant to ensure that protected information was only disclosed in closed session, or struggling with the inherent uncertainties of a body of jurisprudence in flux, the participants left with the knowledge that a career in international criminal law may be difficult but is certainly fulfilling.



Moot Pre-Trial Chamber I. From left to right: Lorraine Smith, IBA Programme Manager (ICC), Justice Elizabeth Ibanda Nahamya, Special War Crimes Division of the Uganda High Court (Presiding Judge), Bruce Kawalisima Kyerere, President, Ugandan Law Society © ICC-CPI.



A well prepared team of Ugandan lawyers appeared as counsel in the moot. The prosecution was represented by Ms Joan Kagezi and Ms Jane Abodo; the Defence was represented by Ms Joyce Nalunga and Ms Janet Nakakande and the Legal Representatives of the Victims were Ms Eva Kawusa Luswata and Ms Jane Okuo Kajuga © ICC-CPI.

## The ICC Needs You!

### Calling African Female Lawyers

The International Criminal Court (ICC) and the International Bar Association (IBA) call on qualified African female lawyers to sign up to the ICC List of Counsel and ICC List of Assistants to Counsel. Their applications will be prioritised until the end of 2010.

Practicing at the ICC presents a unique opportunity for female lawyers, especially those from countries with situations under investigation before the Court, to meaningfully contribute to international criminal justice. At the same time, female lawyers are integral to the effective functioning of the ICC.

The IBA recognises the key role that female lawyers play at the Court and fully supports the ICC's efforts to increase the number of external female lawyers representing either defendants or victims in proceedings before the Court.

#### Signing up is a straightforward process:

**Comprehensive information packages will be distributed via national bar associations in African countries and ICC field offices. In addition, special information events will be organised by the ICC and national bar associations in both African and European countries.**

**Electronic copies of these information packages can be downloaded at [www.icc-cpi.int](http://www.icc-cpi.int) or requested at [femalecounsel@icc-cpi.int](mailto:femalecounsel@icc-cpi.int). Requests for further information may also be sent by post to the following address:**

Registry of the International Criminal Court  
 Counsel Support Section  
 (Ref: List of Counsel or List of Assistants to Counsel as applicable)  
 PO Box 19519  
 2500 CM The Hague  
 The Netherlands  
 Tel: +31 70 515 8787  
 Fax: +31 70 515 8555

# Capturing the spirit of the ICC Review Conference: a collage of Kampala memories in pictures

The first ICC Review Conference was a momentous event. UN Secretaries-General, heads of states, diplomats, academics, lawyers, civil society members and victims sat together in one venue to review the Rome Statute system of justice and craft the course for the future. Words alone cannot adequately describe some of the special moments of the Conference; for example, the feeling of

satisfaction of many Ugandan victims who played alongside UN Secretary-General Ban Ki-moon and Ugandan President Yoweri Museveni in a historic football match, or the enjoyment of delegates as they sampled the rich feast of African culture on display at the Gala event. EQ Highlights presents a collage of Kampala memories in pictures which we hope captures the spirit of the Review Conference.



Former Secretary General, HE Kofi Annan speaking with Ugandan President, Yoweri Museveni and Tanzanian President, Jakaya Kikwete at the opening of the Review Conference, Kampala, Uganda. Looking on, to the right, ICC Prosecutor Mr Luis Moreno-Ocampo and in the background, ICC President Judge Sang-Hyun Song © CICC.



Delegates at the opening of the Review Conference in Kampala, Uganda © CICC.

## Side event: Trust Fund for Victims



Side event organised by the Trust Fund for Victims and hosted by Chile and Finland ©ICC-CPI.

## War Victims Football Game

On 30 May 2010 the War Victims Day Football Game was organised by the Uganda Victims Foundation, African Youth Initiative Network and No Peace without Justice. Ambassador Christian Wenaweser, President of the Assembly of States Parties of the ICC,



Group of children at the War Victims Football Game, 30 May 2010 ©ICC-CPI.

delegates and members of the Ugandan National football team played alongside victims from countries where the ICC is investigating war crimes. In the last 15 minutes of the match, UN Secretary-General Ban Ki-moon and Ugandan President Yoweri Museveni joined in to show their solidarity with the victims.



UN Secretary-General Ban Ki-moon and Ugandan President Yoweri Museveni participating in the war victims day football match © CICC/Oriane Maillet.



The team of players during the War Victims football match © CICC/Oriane Maillet.



Group of Ugandan women victims march and sing before start of War Victims Football Game © CICC/Oriane Maillet.

### African Gala Night

On 6 June 2010, the Attorney General and Minister of Justice and Constitutional Affairs of Uganda hosted an African Gala Night to showcase traditional and contemporary performances of Uganda's 65 indigenous communities. Guests also enjoyed authentic Ugandan cuisine.



Delegates dancing during the African Gala Night © ICC-CPI.



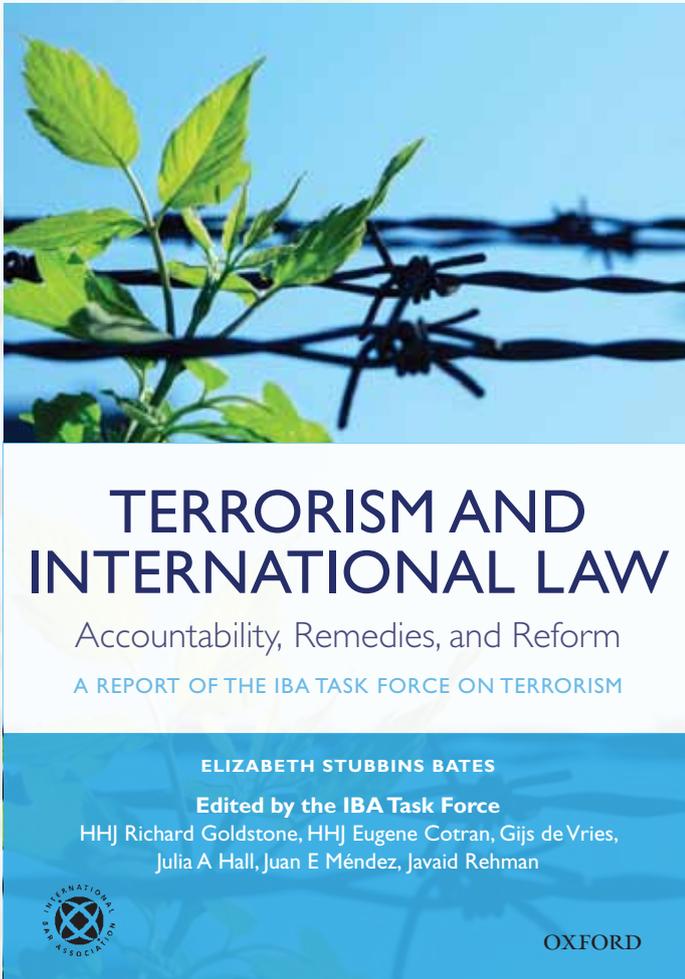
Mr Xavier-Jean Keïta, Principal Counsel, OPCD and Ozvaldo Zavala, CICC Secretariat lead the dancing during the gala event © ICC-CPI.



A beautiful display of Ugandan culture © ICC-CPI.

# Terrorism and International Law: Accountability, Remedies and Reform

## A Report of the IBA Task Force on Terrorism



The IBA's Task Force on International Terrorism was convened to examine the developments in international law and practice in this dynamic and often controversial area. The Task Force comprises world famous jurists and is chaired by Justice Richard Goldstone.\* This book provides a global overview of counter-terrorism, including but not restricted to the US-led 'war on terror', by considering case law and examples of state practice from all continents.

\*Other members: Professor Judge Eugene Cotran, Mr Gijs de Vries, Ms Julia A Hall, Mr Juan E Méndez and Professor Javaid Rehman, Elizabeth Stubbins Bates (author).

### Issues covered include:

- the framework of international conventions against terrorism
- international humanitarian law
- international human rights law
- the investigation and prosecution of terrorist crimes and of international crimes committed in the course of counter-terrorism
- reform in counter-terrorism
- victims' right to a remedy and reparations

The book closes with Conclusions and Recommendations from the Task Force focusing on how the international community can ensure respect for human rights and the rule of law when responding to the threat of terrorism.

TO REGISTER YOUR INTEREST AND RECEIVE INFORMATION ABOUT *TERRORISM AND INTERNATIONAL LAW: ACCOUNTABILITY, REMEDIES AND REFORM*, PLEASE COMPLETE THE ATTACHED FORM OR VISIT [HTTP://BIT.LY/CYGTUV](http://bit.ly/cygtuv) TO REGISTER ONLINE.

### Terrorism and International Law: Register Your Interest Form

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Please include your mailing address on all e-mails.

# The Kampala Declaration<sup>1</sup>

*We, high-level representatives of States Parties to the Rome Statute of the International Criminal Court, gathered in Kampala, Uganda, at the first Review Conference under this Statute, held from 31 May to 11 June 2010,*

*Guided* by a renewed spirit of cooperation and solidarity, with a firm commitment to fight impunity for the most serious crimes of international concern and to guarantee lasting respect for the enforcement of international criminal justice,

*Recalling* the aims and purposes of the Rome Statute and *recognizing* the noble mission and the role of the International Criminal Court in a multilateral system that aims to end impunity, establish the rule of law, promote and encourage respect for human rights and achieve sustainable peace, in accordance with international law and the purposes and principles of the Charter of the United Nations,

*Mindful* that despite progress in realizing the aims and purposes of the Statute and the mission of the Court, countless children, women and men continue to be victims of unimaginable atrocities that deeply shock the conscience of humanity,

*Recalling* the historic establishment and commencement of functioning of the International Criminal Court as an independent and permanent judicial institution complementary to national criminal jurisdictions,

*Welcoming* actions undertaken by States Parties to strengthen national criminal jurisdictions in accordance with the Statute,

*Appreciating* the invaluable assistance of civil society for the advancement of the International Criminal Court,

*Convinced* that there can be no lasting peace without justice and that peace and justice are thus complementary requirements,

*Convinced also* that justice and the fight against impunity are, and must remain, indivisible and that in this regard universal adherence to the Statute is essential,

*Stressing* the importance of full cooperation with the International Criminal Court,

*United* by the common bonds of our peoples, our cultures pieced together in a shared heritage,

*Together solemnly:*

1. *Reaffirm* our commitment to the Rome Statute of the International Criminal Court and its full implementation, as well as to its universality and integrity;
2. *Reiterate* our determination to put an end to impunity for perpetrators of the most serious crimes of international concern, with full respect for international fair trial standards, and thus to *contribute* to the prevention of such crimes that threaten the peace, security and well-being of the world;
3. *Emphasize* that justice is a fundamental building block of sustainable peace;
4. *Determine* to continue and strengthen our efforts to promote victims' rights under the Rome Statute, including their right to participate in judicial proceedings and claim for reparations, and to protect victims and affected communities;
5. *Resolve* to continue and strengthen effective domestic implementation of the Statute, to enhance the capacity of national jurisdictions to prosecute the perpetrators of the most serious crimes of international concern in accordance with internationally recognized fair trial standards, pursuant to the principle of complementarity;
6. *Express* our firm commitment to work actively during the Review Conference towards a satisfactory outcome on the amendment proposals included in resolution ICC ASP/8/Res.6, keeping in mind the mission the International Criminal Court is meant to accomplish in the international community;
7. *Further resolve* to continue and strengthen our efforts to ensure full cooperation with the Court in accordance with the Statute, in particular in the areas of implementing legislation, enforcement of Court decisions, execution of arrest warrants, conclusion of agreements and witness protection, and to *express* our political and diplomatic support for the Court;
8. *Express* our appreciation to the Court which has become fully operational as a judicial institution in accordance with the provisions of the Rome Statute;
9. *Express* our appreciation to the Secretary-General of the United Nations for the cooperation extended to the International Criminal Court by the United Nations system;
10. *Welcome* the fact that 111 States from all regions of the world have now become Parties to the Rome Statute of the International Criminal Court and *invite* States that are not yet parties to the Statute to become parties as soon as possible, and *reiterate* our commitment to proactively promote universality and full implementation of the Statute;
11. *Acknowledge* the pledges made by States Parties and by non-States Parties and other organizations to promote the aims and purposes of the Rome Statute;
12. *Decide* to henceforth celebrate 17 July, the day of the adoption of the Rome Statute in 1998, as the Day of International Criminal Justice.

Notes

- 1 Declaration RC/Decl.1 adopted at the 4th plenary meeting of the ICC Review Conference in Kampala, Uganda on 1 June 2010, by consensus.

# IBA/ICC Monitoring and Outreach Programme

The **International Bar Association** (IBA), established in 1947, is the world's leading organisation of international legal practitioners, bar associations and law societies. The IBA influences the development of international law reform and shapes the future of the legal profession throughout the world. It has a membership of 40,000 individual lawyers and 197 bar associations and law societies spanning all continents. The IBA has considerable expertise in providing assistance to the global legal community.

## IBA/ICC Monitoring and Outreach Programme

In 2005, the IBA commenced an International Criminal Court (ICC) Monitoring and Outreach Programme through funding provided by the John D and Catherine T MacArthur Foundation. The mandate of the Programme is to monitor proceedings and developments at the ICC as well as promoting awareness and deepening understanding of the Court within the broader landscape of international justice.

### *The monitoring component*

The monitoring component of the Programme analyses and reports on the work and proceedings of the ICC within the context of international human rights standards, in particular issues affecting the fair trial rights of the accused. To ensure the highest standards of integrity, the IBA monitor will regularly engage in high-level consultations with key stakeholders both within and outside the ICC. The published reports provide in-depth objective analysis and are widely disseminated to the Court, the legal profession, the public and the media.

### *The outreach component*

The outreach component of the Programme works in partnership with bar associations, lawyers and civil society organisations disseminating information and promoting debate on the ICC through the IBA's membership network and in key jurisdictions. Regular sessions about the ICC are held during IBA Annual Conferences and targeted activities are designed for IBA bar leaders. Findings and recommendations from the Programme are fed back to the Court with a view to creating a dialogue between targeted groups and the Court.

## IBA/ICC Programme publications

The IBA/ICC Programme produces periodic reports commenting on current proceedings and developments at the ICC with detailed recommendations. The programme also issues thematic position papers on key matters of relevance to the Court and publishes an e-magazine, the *Equality of Arms Review (EQ)*, covering news, opinion pieces and information designed to spark discussion about and increase awareness of the ICC.

For more information about the IBA/ICC Monitoring and Outreach Programme visit the IBA website at <http://tinyurl.com/monitoring-and-outreach> or contact the IBA Programme Lawyers in The Hague:

Any comments or feedback about *EQ* can be sent to Lorraine A Smith.

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A large, light gray, stylized globe graphic is centered in the background of the page. The globe is composed of several curved, overlapping segments that form a spherical shape. The top of the page features a solid dark blue horizontal bar.

**International Bar Association's ICC Monitoring and Outreach Programme**

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