

What Happened in Kampala

At the historic 2010 International Criminal Court Rome Statute Review Conference, stocktaking, two proposed amendments on war crimes, and the crime of aggression were all on the agenda. Of the 111 States Parties, 84 gathered in Kampala, Uganda, including 30 Observer states, to make critical decisions regarding the Court's future.

STOCKTAKING

In the stocktaking exercises, States considered the overall successes and impact of the Rome Statute system in regards to complementarity, co-operation, the impact of the Rome Statute System on victims and affected communities, and peace and justice. Many observers and States Parties made pledges in support of the Court.

ARTICLE 124

This article of the Rome Statute allows new states-parties to the ICC to declare that the Court cannot investigate and prosecute war crimes committed by its nationals for the first seven years. By agreement, this provision was included in the Rome Statute on the condition that it would be reviewed again at the Kampala Conference. It was decided in Kampala that article 124 would remain in the Statute and would be considered again in five years.

THE BELGIAN AMENDMENT

This amendment proposed to extend the criminalization of the use of poison, poisoned weapons, asphyxiating, poisonous or other gases and all analogous liquids, materials or devices as well as the use of bullets that expand or flatten in the body ("dum dum bullets") to international armed conflicts. At the Review Conference, all of these weapons were extended, except for dum dum or "hollow-point" bullets when used by policing forces.

CRIME OF AGGRESSION

In Kampala, in an historic move by the ICC, the crime of aggression was defined, basically, as the planning, preparation and implementation of an act of aggression, by the head of state or military, which clearly violates the UN Charter. Additionally, States Parties to the ICC formally agreed, for the first time, to a process by which the crime itself could be prosecuted in the future. The process includes examining an act of aggression that must be very serious, in its character, gravity and scale, for it to rise to the level of consideration by the ICC. This act must also involve the use of force by one State against the sovereign, territorial and political independence of another State.

The way that this could work in practice, as laid out in the Review Conference, is that an investigation can be started by the UN Security Council (which the US is a part of), the ICC Prosecutor or a State Party. When the Prosecutor decides to act, s/he must wait 6 months for the UN Security Council to decide if they want to take action. If the UNSC hasn't acted within 6 months, then the Prosecutor may go ahead. If the UNSC has any more concerns once the Prosecutor acts, they can delay the case from moving forward for one year, and renew it annually (Article 16).

When it came to the timing of when the ICC could start prosecuting the crime of aggression, the U.S. and other permanent members of the U.N. Security Council [United Kingdom, France, China and Russia], wanted to postpone the decision. Therefore, it was decided in Kampala that as early as January 1, 2017, States will meet together to discuss the act of aggression again and have, in essence, a Kampala II. If 2/3rds of States parties vote in favor of the inclusion of aggression at that time, then States need to formally agree to be bound by the amendment. When 30 states parties make such a formal notification, there will be a one year ramping up period, until the date the Court may begin prosecuting aggression.

Beyond timing, there are other concerns as to how prosecutions of aggression may look in the future. States Parties can elect to opt out of aggression jurisdiction and non States parties *and their citizens* are excluded from aggression jurisdiction.