

What happened in Kampala

At the 2010 International Criminal Court Review Conference, stocktaking, the inclusion of Article 124, an amendment proposal to Article 8, and the crime of aggression were all on the agenda. The following are the results of what happened at the meeting.

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.

ARTICLE 124

This article of the Rome Statute allows states to declare that the Court cannot investigate and prosecute war crimes committed by its nationals for the first seven years. This had been initially included as a transitional provision in Rome on the condition that it would be reviewed at the Review Conference in Kampala. At the Review Conference this article was extended and will 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 armed conflicts not of an international character. At the Review Conference, all of these weapons were criminalized except for dum dum bullets.

CRIME OF AGGRESSION

In Kampala 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. The act itself must be very serious, in its character, gravity and scale, for it to rise to the level of consideration by the ICC. The 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's *proprio motu* function or a State Party. The Prosecutor must then wait 6 months before s/he can act, to give the UN Security Council time to look at whether they want to look at a situation, and take action. If the UNSC hasn't acted in-time, 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], worked very hard in Kampala to postpone the decision. In no less than 7 years the States will meet together to discuss the act of aggression again and have, in essence, a Kampala II. Only if a positive decision is made at the next Conference would the International Criminal Court be allowed to prosecute and convict heads of state who commit acts of aggression. As a result, the ICC will not be able to investigate the illegal act of aggression for at least seven more years.