

Roundtable Discussion

**Approaching the Review Conference in Kampala:
The International Criminal Court – Achievements and
challenges**

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Informal summary

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The Assembly of States Parties (ASP)

The ASP is composed by all the 110 States Parties (on 23 March, 2010 Bangladesh ratified the Rome Statute bringing the total number to 111). According to article 112 of the Rome Statute the Assembly is the body providing management oversight to the four organs of the ICC, meaning the Registry, the Office of the Prosecutor, the Presidency and the Chambers. Among its main functions the Assembly approves the annual budget of the Court, elects the judges, the prosecutor and the deputy prosecutor and adopts the Rules of Procedures and Evidence.

The Bureau assists the Assembly in the discharge of its responsibilities and consists of a President, two Vice-Presidents and 18 members. The intersessional work of the Assembly is carried out by the New York and the The Hague Working Group under the umbrella of the Bureau. The Vice-Presidents, one located in New York, the other one (Lomónaco) located in The Hague, are the coordinators of the respective working groups.

The Assembly is also the inter-governmental organ competent to agree on policies and to discuss political issues such as those related to governance, cooperation or non-cooperation of Member States with the Court and in general the implementation of the Rome Statute. As the legislative body it is also responsible to consider and adopt amendments to the Rome Statute.

The Review Conference in Kampala

What are the origins of the Review Conference? Why are we having the Review Conference?

During the negotiations of the Rome Statute the drafters gave the ICC jurisdiction over crimes against humanity, genocide and war crimes. They also intended the Court be given jurisdiction over the crime of aggression. However due to the lack of agreement on a legal definition and on conditions for the exercise of jurisdiction, the crime of aggression was included in the Rome Statute in the understanding that the jurisdiction of the Court over this crime would remain non-operational until the adoption of a legal definition. The idea of postponing the discussion on the issue to a later stage was instrumental in allowing the adoption of the Rome Statute at the Rome conference in 1998.

This is the main reason why the drafters included in the Rome Statute a provision convening a Review Conference seven years after the entry into force of the Statute.

If the main purpose of the Review Conference was to address the question of the crime of aggression, the Review Conference also has been considered an opportunity to re-introduce proposals that did not receive enough support in Rome or were too controversial. Of all the proposals only one, the Belgian one, was forwarded for consideration to the Conference, which is an amendment to incorporate the employment of certain chemical weapons as a war crime.

The Review Conference was also seen by Civil Society and member States as an unique opportunity to take stock of the international criminal system and in particular the Rome Statute system after 10 years of its establishment. The question of whether a stocktaking exercise should be in the agenda of the Review Conference was thoroughly discussed by member States. It was decided that such an exercise could launch a process focusing on the implementation of the Rome Statute, boosting cooperation of the States with the Court and developing the legal and political tools to consolidate the Rome Statute System. The stocktaking exercise to be held in Kampala will address four issues: Complementarity, cooperation, the impact on victims and affected communities and peace and justice.

In conclusion, the Review Conference will have three components, referring to them in a reverse order of relevance:

- Other issues: The transitional provision on article 124 of the Statute that gave States Parties the possibility to opt out on accepting the Courts jurisdiction on war crimes for seven years. We need to discuss that because it is a transitional article. And the Norwegian proposal,

transformed into a decision on implementation of enforcement of sentences.

- The second element: the stocktaking exercise. If it succeeds, it could be the starting point of a process aimed at addressing the challenges that the ICC faces including questions of cooperation and non-cooperation of Member States, implementation of the Rome Statute and issues related to governance, institutional consolidation of the Court and a successful implementation of the One-Court-principle.
- The third component: the negotiations on the crime of aggression. An agreement on the definition of the crime and even more so on the conditions to exercise jurisdiction will constitute a groundbreaking step in the development of international criminal law. The complexity of the issue and the legal and political implications of any solution that we may reach are so far reaching, that there is no guarantee that we will succeed. However, the progress made on the issue so far and the progress which is likely to take place during the Review Conference is already and should be considered already a success story on its own.