



**Cour  
Pénale  
Internationale**

**International  
Criminal  
Court**

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# The Review Conference



## 1. What is the Review Conference

The Review Conference is a significant milestone for the International Criminal Court (ICC). It will be the first opportunity for the States Parties to the Rome Statute to make amendments to the Statute since its entry into force on 1 July 2002. It will also be a unique opportunity for States and other stakeholders, such as international organizations and NGOs, to assess and reflect on the progress of the Rome Statute and the International Criminal Court, and reaffirm their commitment to combat impunity for the most serious crimes of concern to the international community, namely, genocide, crimes against humanity and war crimes.

The Review Conference will be held in Kampala, Uganda from 31 May to 11 June 2010.

### 1-1 Why organize a Review Conference of the Rome Statute?

The Rome Statute provides for a Review Conference after seven years of its entry into force in order to consider proposals of amendments, including but not limited, on the crime of aggression and the transitional provision contained in article 124. Other proposals commanding very broad support could also be considered.

Additionally, at its seventh session, in November 2008, the Assembly of States Parties recommended the Review Conference should be also an occasion for a “stocktaking” of international justice in 2010.

### 1-2 Who may participate in the Review Conference?

The Rome Statute provides that the Review Conference shall be open to those participating in the Assembly of States Parties and on the same conditions, i.e., observer States, States not having observer status, intergovernmental organizations and other entities.

The Review Conference shall be open to participation by civil society, including non-governmental organizations and representatives of victims’ organizations; their participation is key to successful outreach for the Court and the Review Conference.

It is also provided specifically for the participation of the President of the Court, the Prosecutor and the Registrar, as well the United Nations.

### **1-3 What issues are being considered at the Review Conference?**

The Review Conference will consider the following:

- a) Amendments to the Rome Statute
- b) A stocktaking of international criminal justice
- c) Other outcomes

## **2. Amendment Proposals**

### **2-1 Deletion of article 124**

In accordance with article 124 of the Statute, a State, on becoming party to the Statute, may declare that, for a period of seven years after the entry into force of the Statute for that State, it does not accept the jurisdiction of the Court with respect to war crimes allegedly committed by its nationals or on its territory. Article 124 stipulates that the provisions of this article shall be reviewed at the Review Conference.

Article 124 was adopted in 1998 to facilitate adherence to the Rome Statute. The question facing the Review Conference is whether such a clause, adopted at a specific historical moment, is still necessary to promote universality of the Rome Statute or whether its retention will give rise to impunity.

### **2-2 Definition of the crime of aggression, elements of the crime, conditions of the exercise of the jurisdiction by the Court**

An act of aggression in general terms is considered to be the use of armed force by a State against another, without previous authorization of the United Nations Security Council and without self-defense justification. In the amendment proposal, an individual in a leadership position is criminally responsible for the crime of aggression when planning, preparing, initiating or executing the crime.

The crime of aggression was included in the Rome Statute at the Rome Diplomatic Conference in 1998 among the crimes under the Court's jurisdiction; however the definition of this crime and the conditions under which the Court can prosecute those committing it were not agreed upon.

Extensive preparatory work on this issue by States Parties concluded in July 2009 and has achieved substantial progress on the definition of the crime. Yet, there is still no agreement on the exercise of jurisdiction by the Court, which mainly concerns the role, if any, that the United Nations Security Council should play in determining whether an act of aggression has been committed before investigations or prosecutions can take place.

The Review Conference offers a renewed attempt to deal with this extremely important and sensitive issue.


### **2-3 Proposal of amendment to article 8**

This proposal concerns changes to the provisions of article 8, on war crimes, to include among the acts which constitute war crimes the use of certain weapons (poisoned weapons, gases and certain kind of bullets) in internal armed conflicts. The use of these weapons in international armed conflicts already constitutes war crimes, under the Rome Statute.

## **3. Stocktaking Exercise**

The Review Conference will include a stocktaking exercise during which the overall success and impact of the Rome Statute will be considered in relation to the following four topics:

- a) Complementarity;
- b) Co-operation;
- c) The impact of the Rome Statute system on victims and affected communities; and
- d) Peace and justice.



The discussions will be organized in the form of panels, in some instances followed by a roundtable or a question and answer session. As outcomes of the discussions, resolutions are expected to be adopted on complementarity and victim issues, and an additional resolution or a report/summary of the discussions will be adopted on the issue of co-operation. A moderator's summary will be the outcome of the discussions on peace and justice.

During the preparation process, States Parties have been open to inputs from the Court and civil society.

The Court will actively participate in the stocktaking in Kampala:

- The ICC President, Judge Sang-Hyun Song, will participate as a key note speaker on Co-operation, introducing the sub-topic of co-operation with the United Nations and other intergovernmental bodies, including regional bodies; Judge Song will also give remarks on the discussions on complementarity;
- The ICC Prosecutor, M. Luis Moreno-Ocampo, will give remarks on the discussions on complementarity;
- The ICC Registrar, Ms. Silvana Arbia, will participate as a panelist to the discussions on the impact of the Rome Statute system on victims and affected communities.

### **3.1 Complementarity**

Under the principle of complementarity, the Court only acts where States are unwilling or unable to credibly investigate and prosecute international crimes. If States ensure that they deal with these crimes, the Court will not need to act. Even where the Court has territorial jurisdiction, it only has a mandate and capacity to deal with the most serious of accusations. Lesser perpetrators would fall under the jurisdiction of States. In other words, States retain primary responsibility for trying the perpetrators of international crimes.

The discussions in Kampala will focus on the practical application of the principle of complementarity in the Rome Statute system, as well as possible activities and actions that States can undertake in order to strengthen and enable other States' capabilities to conduct investigations and trials of international crimes (concept known as "positive complementarity").

### **3.2 Co-operation**

States Parties have the obligation to cooperate with the Court under the Rome Statute regarding several aspects such as arrests and surrenders, freezing of assets, tracing of assets, protection of victims, and witnesses, etc. States Parties also need to adopt specific implementing legislation to facilitate Co-operation with the Court in these areas.

The discussions will focus on the States Parties' experiences in relation to Co-operation, including challenges and good practices, implementing legislation, agreements, arrangements and other forms of Co-operation and assistance, Co-operation of the Court with the United Nations and other organizations, and ways of enhancing knowledge, awareness and support for the Court.

### **3.3 Impact of the Rome Statute system on victims and affected communities**

Under the rules and regulations governing the Court, victims can send information to the Prosecutor concerning crimes within the jurisdiction of the Court. Also, for the first time in the history of international criminal tribunals, victims have the right to participate in proceedings and request reparations. This means that they may not only testify as witnesses, but also present their views and concerns at all stages of the proceedings.

The discussion will focus on the impact of the Rome Statute in recognizing victims' rights to justice, participation and reparation, as well as the role of outreach in impacting victims' expectations.

A review will also be conducted on how the Trust Fund for Victims has contributed towards individual dignity, healing, rehabilitation, and empowerment of victims, and areas in which its work could be enhanced.

The Trust Fund was established by the Assembly of States Parties in 2005 for the benefit of victims and their families.



### **3.4 Peace and Justice**

Individuals suspected of involvement in international crimes may at times play a role in peace negotiations and in peace-building contexts. Questions arise about when and what kind of accountability is appropriate in different situations.

As it is now commonly acknowledged, peace cannot be separated from justice, there is a need to discuss ways in which justice efforts and peace efforts can be integrated, the role of the Court and truth-telling and reconciliation processes in facilitating peace efforts and transitions, and the need to safeguard the interests of victims in any post-conflict situation.

### **4. Other expected outcomes of the Review Conference**

A high-level declaration will be adopted after the general debate.

States Parties, Observer States and other States are expected to make pledges to reaffirm their commitment to the fight against impunity.

A resolution will also be adopted to call upon States to cooperate with the Court regarding enforcement of the Court's sentences of imprisonment.

### **5. People's Space**

Alongside the official Review Conference, many NGOs will organize parallel events in Kampala at the "People's Space", a showcase of their work related to the Court and human rights, the Court and victims, as well as situations before the Court.