



**Gesellschaft für Völkerstrafrecht e.V.
International Criminal Law Society**

German Section:
Berliner Allee 54
13088 Berlin
Deutschland
Tel. +49 30 92 70 68 0
Fax +49 30 92 70 68 99
organisation@icls.de

Dutch Section:
van Bleiswijkstraat 35
2582 KZ Den Haag
The Netherlands

www.icls.de

The Review Conference in Kampala – Short summary

by Kirstin Janssen-Holldiek

The Review Conference of the Rome Statute, which took place from May 31 to June 11, 2010 in Kampala, took stock of the current work of the Court and reviewed the Rome Statute by examining possible amendments, in particular on the crime of aggression.

True to the motto of this Conference, "A stronger ICC for a safer world," several efforts were undertaken in strengthening one's commitment to the ICC through individual statements, as well as in a collective manner by adopting the Kampala Declaration. Furthermore, pledges and specific contributions were made by many countries. Germany, for example, promised financial support for the Victims Trust Fund, as well as for projects related to the promotion of accession to or implementation of the Rome Statute.

The Stocktaking of International Criminal Justice focused on the following: The impact of the Rome Statute system on victims and affected communities, peace and justice, cooperation, and complementarity. The discussion was extremely fruitful and revealed further potential for improvement and in particular stressed the need for a guide on "best practice". In this regard, having chosen Kampala as the conference venue was particularly apt to this task. The presence of many NGOs from the conflict regions and the strong appearance of the African State Parties to the ICC enabled a very enriching exchange.

The most important outcome of the Review Conference is the adoption of the amendment on the Crime of Aggression which included a definition and the conditions under which the Court would exercise jurisdiction, as well as a list of understandings. The agreed definition is based on the definition of the crime of aggression on UN General Assembly resolution 3314 (1974). To qualify as a crime, an act of aggression “which, by its character, gravity and scale, constitutes a manifest violation of the Charter of the United Nations” must have taken place. Furthermore, this crime – unlike the other three crimes in the Rome Statute - is defined as a leadership crime, and as such it must have been committed by a political or military leader in the position to plan, prepare, initiate and executive such crime.



The exercise of jurisdiction is based on the trigger mechanisms already common in the Rome Statute: The Security Council, acting under Chapter VII, can refer a situation to the ICC. As decisions under Chapter VII are binding to all states any state might be involved, irrespectively whether it has accepted the jurisdiction or not.

In the absence of such determination by the Security Council, the prosecutor can also initiate an investigation upon request from a State Party and on his own in-

initiative under certain preconditions. The prosecutor must first “ascertain whether the Security Council has made a determination of an act of aggression committed by the State concerned”. If there is no such determination the prosecutor has to wait six months after his notification to see whether such determination will be made. He can then proceed with an investigation of an alleged crime of aggression when being authorized by the Pre-Trial Division. Regarding those two mechanisms, the reach of the ICC is only among those State Parties that have ratified the amendment on the Crime of Aggression and have not previously made a formal declaration (Opt-out) not to accept this jurisdiction.

The actual exercise of the jurisdiction over the Crime of Aggression, however, needs to be confirmed by a majority (2/3 majority as required for the adoption of the amendment) at an Assembly of States Party that will take place after January 1, 2017. The entry into force will come to effect one year after the 30th ratification, however again not before 2017.

The negotiations were extremely intensive, in particular between the permanent members of the Security Council and the Non-Aligned Group, as well as several Western Countries. In fact, it was uncertain until the very end whether an outcome could be achieved. Despite the various positions, with the adoption of this crime the international community sends a clear signal to potential perpetrators and victims alike: the planning or conducting of an act of aggression will invoke individual criminal liability.

Apart from the Crime of Aggression, two proposed amendments were discussed. The Belgian proposal on extending the Court’s jurisdiction over the crimes in Article 8 also to armed conflicts not of an international character was adopted. As no consensus could be found in withdrawing Article 124, that gives states the possibility to opt-out from war crimes for a period of seven years, it was decided to retain this article.

Altogether, the Review Conference has left us with more aspirations and more work to do - for states, as well as for the civil society. The next seven years can be devoted to foster the ratification and implementation process not only of the

Rome Statute but also of the new amendment of the Crime of Aggression and to persuade states not to opt-out on that crime. Moreover, it will be important to raise awareness on the possible prosecution of this crime so that any development in this regard will be observed closely and hopefully deter future crimes of aggression.

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August 2010

Kirstin Janssen-Holldiek is Associate Fellow in the Transatlantic Program at the German Council on Foreign Relations (DGAP) and teaches at the Free University of Berlin on international criminal law.