

**REVIEW CONFERENCE
OF THE ROME STATUTE OF THE
INTERNATIONAL CRIMINAL COURT**

KAMPALA, 31 MAY – 11 JUNE 2010

OFFICIAL RECORDS

Note

Symbols of documents of the Assembly of States Parties to the Rome Statute of the International Criminal Court are composed of capital letters combined with figures. Mention of such a symbol indicates a reference to a document of the Assembly of States Parties to the Rome Statute of the International Criminal Court. Resolutions of the Assembly bear the letters “Res.”, while its decisions bear the letters “Decision”.

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RC/9/11
International Criminal Court publication
ISBN No. 92-9227-198-9

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Printed by Ipskamp, The Hague

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Part I Proceedings

A. Introduction

1. In accordance with article 123 of the Rome Statute, the Secretary-General of the United Nations, on 7 August 2009, convened the Review Conference of the Rome Statute (hereinafter “the Conference”). The Secretary-General invited all States Parties to the Rome Statute to participate in the Conference. Other States that had signed the Statute or the Final Act were also invited to participate in the Conference as observers.

2. In accordance with the decision of the Assembly at its eighth session,¹ the Review Conference was held in Kampala, Uganda, from 31 May to 11 June 2010, for a period of ten working days.

3. The Bureau of the Assembly, having been elected at the seventh session of the Assembly of States Parties for a term of three years, served as the Bureau of the Conference and was composed as follows:

President:

Mr. Christian Wenaweser (Liechtenstein)

Vice-Presidents:

Mr. Jorge Lomónaco (Mexico)

Mr. Zachary D. Muburi-Muita (Kenya)

Rapporteur:

Mr. Marko Rakovec (Slovenia)²

Other members of the Bureau:

Australia, Brazil, Burkina Faso, Estonia, Gabon, Georgia, Japan, Jordan, Nigeria, Norway, Romania, Samoa, South Africa, Spain, Trinidad and Tobago, United Kingdom of Great Britain and Northern Ireland and Venezuela (Bolivarian Republic of).

4. In accordance with rule 69 of the Rules of Procedure, invitations to participate in the Conference as observers were also extended to representatives of intergovernmental organizations and other entities that had received a standing invitation from the General Assembly of the United Nations pursuant to its relevant resolutions,³ as well as to representatives of regional intergovernmental organizations and other international bodies invited to the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court (Rome, June/July 1998), accredited to the Preparatory Commission for the International Criminal Court or invited by the Conference.

5. Furthermore, in accordance with rule 70 of the Rules of Procedure, non-governmental organizations invited to the Rome Conference, registered to the Preparatory Commission for the International Criminal Court, or in consultative status with the Economic and Social Council of the United Nations, whose activities were relevant to the activities of the Court or that had been invited by the Conference, attended and participated in the work of the Conference.

¹ *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, Eighth session, The Hague, 18-26 November 2009* (ICC-ASP/8/20), vol. I, part II, resolution ICC-ASP/8/Res.6, para. 2.

² Mr. Marko Rakovec (Slovenia) acted as Rapporteur for Ms. Simona Drenik (Slovenia).

³ General Assembly resolutions 253 (III), 477 (V), 2011 (XX), 3208 (XXIX), 3237 (XXIX), 3369 (XXX), 31/3, 33/18, 35/2, 35/3, 36/4, 42/10, 43/6, 44/6, 45/6, 46/8, 47/4, 48/2, 48/3, 48/4, 48/5, 48/237, 48/265, 49/1, 49/2, 50/2, 51/1, 51/6, 51/204, 52/6, 53/5, 53/6, 53/216, 54/5, 54/10, 54/195, 55/160, 55/161, 56/90, 56/91, 56/92, 57/29, 57/30, 57/31, 57/32, 58/83, 58/84, 58/85, 58/86, 59/48, 59/49, 59/50, 59/51, 59/52, 59/53, 61/43, 61/259, 63/131, 63/132, 64/3, 64/121, 64/122, 64/123, 64/124, and decision 56/475.

6. In addition, in accordance with rule 71 of the Rules of Procedure, the following States were invited to be present during the work of the Conference: Bhutan, Democratic People's Republic of Korea, Equatorial Guinea, Grenada, Kiribati, Lao People's Democratic Republic, Lebanon, Maldives, Mauritania, Micronesia (Federated States of), Myanmar, Niue, Palau, Papua New Guinea, Rwanda, Somalia, Swaziland, Tonga, Turkmenistan, Tuvalu and Vanuatu.

7. The list of delegations to the Conference is contained in document RC/INF.1.

8. The Conference was opened by the President of the Conference, Mr. Christian Wenaweser (Liechtenstein). At the 1st meeting, on 31 May 2010, a high-level segment was held, in which statements were delivered by Mr. Ban Ki-moon, United Nations Secretary-General; by Judge Sang-Hyun Song, President of the Court; by Mr. Luis Moreno-Ocampo, Prosecutor of the Court; by former United Nations Secretary-General, Mr. Kofi Annan; and by H.E. Yoweri Museveni, President of Uganda. H.E. Mr. Jakaya Kikwete, President of the United Republic of Tanzania, delivered a statement during the general debate.

9. At its 2nd meeting, on 31 May 2010, in accordance with rule 14 of the Rules of Procedure, the following States were appointed to serve on the Credentials Committee:

Costa Rica, Estonia, Ireland, Lesotho, Netherlands, Republic of Korea, Serbia, Suriname and Uganda.

10. The Director of the Secretariat of the Assembly, Mr. Renan Villacis, acted as Secretary of the Conference. The Conference was serviced by the Secretariat.

11. At its 1st meeting, the Conference observed one minute of silence dedicated to prayer or meditation, in accordance with rule 32 of the Rules of Procedure.

12. At its 2nd meeting, the Conference adopted the following agenda (RC/1):

1. Opening of the Conference.
2. Silent prayer or meditation.
3. Adoption of the Rules of Procedure.
4. Adoption of the agenda.
5. Credentials of representatives of States at the Review Conference:
 - a) Appointment of the Credentials Committee;
 - b) Report of the Credentials Committee.
6. Organization of work.
7. General debate.
8. Stocktaking of international criminal justice.
9. Consideration of proposals for amendment of the Rome Statute:
 - a) Review of article 124 of the Rome Statute;
 - b) Proposals for a provision on the crime of aggression;
 - c) Other proposals.
10. Strengthening the enforcement of sentences.
11. Other matters.
12. Closure of the Conference.

13. The annotated list of items included in the provisional agenda was contained in a note by the Secretariat (RC/1/Add.1).

14. At its 2nd meeting, on 31 May 2010, the Conference agreed on a programme of work and decided to meet in plenary session as well as in the working group format. Pursuant to rule 67 of the Rules of Procedure, and on the recommendation of the Bureau, the Conference established a Working Group on the crime of aggression and a Working Group on other amendments.

15. H.R.H. Prince Zeid Ra'ad Zeid Al-Hussein (Jordan) was appointed to chair the Working Group on the crime of aggression. Mr. Marcelo Böhlke (Brazil) and Ms. Stella Orina (Kenya) were appointed to chair the Working Group on other amendments.

16. Also at its 2nd meeting, the Conference, on the recommendation of the Bureau and pursuant to rule 67 of the Rules of Procedure, established a Drafting Committee, with the mandate to make recommendations aimed at ensuring the linguistic accuracy of and consistency between the various language versions of draft amendments to the Rome Statute as well as the respective draft elements of crime, prior to their adoption in plenary sessions of the Conference.

17. At its 9th meeting, on the recommendation of the Bureau, the Conference appointed Ms. Concepción Escobar Hernández (Spain) as Chairperson of the Drafting Committee and appointed the following States as members of the Drafting Committee: France, Gabon,⁴ Jordan, Russian Federation, Slovenia, Spain and the United Kingdom of Great Britain and Northern Ireland. Following the invitation by the President of the Conference, China served as a member of the Committee. The Conference agreed that membership in the Committee would be limited to up to three delegations per language, that meetings of the Committee would be open to any interested delegation, including observers, and that the input of non-States Parties would be welcomed.

B. Consideration of issues on the agenda of the Review Conference

1. Adoption of the Rules of Procedure

18. At its 2nd meeting, on 31 May 2010, the Conference adopted the Rules of Procedure of the Review Conferences, which had been endorsed by the Assembly at its sixth session.⁵

2. States in arrears

19. At the 9th and 10th meetings, held on 8 and 10 June 2010, respectively, the Conference was informed that article 112, paragraph 8, first sentence, of the Rome Statute was applicable to eight States Parties. Five States Parties had submitted a request for an exemption from the loss of voting rights, which the Conference approved at its 9th and 10th meetings.

3. Credentials of representatives of States Parties at the Review Conference

20. At its 12th meeting, on 11 June 2010, the Conference adopted the report of the Credentials Committee (see annex I to this report).

4. General debate

21. At the 1st, 2nd, 3rd and 4th meetings, on 31 May and 1 June 2010, statements were made by the representatives of Argentina, Australia, Austria, Bangladesh, Belgium, Bolivia (Plurinational State of), Botswana, Brazil, Bulgaria, Burkina Faso, Canada, Central African Republic, Chile, China, Colombia, Congo, Costa Rica, Côte D'Ivoire, Cuba, Czech Republic, Democratic Republic of the Congo, Denmark, Ecuador (also on behalf of UNASUR, Union of South American Nations), Egypt (also on behalf of the Non-Aligned Movement), El Salvador, Estonia, Fiji, Finland, France, Gambia, Georgia, Germany, Ghana, Greece, Guinea, Guatemala, Hungary, Holy See, India, Indonesia, Ireland, Iran (Islamic Republic of), Italy, Japan, Jordan, Kenya (also on behalf of the African States Parties), Kuwait, Lesotho, Liechtenstein, Luxembourg, Mauritius, Mexico, Montenegro,

⁴ Gabon had been designated by the Bureau at its ninth meeting, held on 29 April 2010, to be part of the Drafting Committee.

⁵ *Official Records ... Sixth session ... 2007* (ICC-ASP/6/20), vol. I, part III, ICC-ASP/6/Res.2, para. 58 and annex IV, reissued as RC/3.

Namibia, Netherlands, New Zealand, Nigeria, Norway, Paraguay, Peru, Philippines, Poland, Portugal, Republic of Korea, Romania, Russian Federation, Samoa, Senegal, Sierra Leone, Slovakia, Slovenia, South Africa, Spain (also on behalf of the European Union), Suriname, Sweden, Switzerland, The former Yugoslav Republic of Macedonia, Trinidad and Tobago, Turkey, Uganda, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, United States of America, and Venezuela (Bolivarian Republic of). Statements were also made by the representative of Palestine and by representatives of the African Union, the Asian-African Legal Consultative Organization, the International Committee of the Red Cross, the International Criminal Tribunal for Rwanda, the International Humanitarian Fact-Finding Commission, the League of Arab States, and the Organisation internationale de la Francophonie, and by representatives of the following non-governmental organizations: Action des Chrétiens Actives des Droits de l'Homme à Shabunda, Amnesty International, Coalition for the International Criminal Court, Comisión Andina de Juristas, Fédération internationale des ligues des droits de l'Homme, Human Rights Network-Uganda (HURINET-U), Human Rights Watch, No Peace Without Justice, and Women's Initiative for Gender Justice. A statement was also made by the Chair of the Committee on Budget and Finance, Mr. Santiago Wins.

5. Stocktaking of international criminal justice

22. At its 5th, 6th, 7th and 8th meetings, on 3 and 4 June, respectively, the Conference conducted a stocktaking exercise of international criminal justice, focusing on four topics; The impact of the Rome Statute system on victims and affected communities; Peace and justice; Complementarity; and Cooperation. The topics were considered in panel discussions or roundtable format.

(a) The impact of the Rome Statute system on victims and affected communities

23. At its 5th meeting, on 2 June 2010, the Conference held a panel discussion on "The impact of the Rome Statute system on victims and affected communities". The discussions of the panel focused on victims' participation and reparations, including protection of witnesses; the role of outreach; and the important role of the Trust Fund for Victims, which was reaffirmed. The importance of victims' participation and the need to reinforce the position of victims as stakeholders and beneficiaries of the Rome Statute were recognized and reaffirmed. The need for appropriate protection of victims and witnesses, as well as intermediaries was highlighted. In addition, it was agreed that a robust outreach programme was necessary in order to make the Court known, understood and reachable for the affected populations, with a special focus on remote communities.

24. At the 9th meeting, held on 8 June 2010, the Conference adopted a resolution on the impact of the Rome Statute system on victims and affected communities (see Part II.A), recognizing the victims' right to equal and effective access to justice, protection and support; adequate and prompt reparation for harm suffered; and that access to relevant information concerning violations and redress mechanisms are essential components of justice. The resolution further encouraged the Court to continue to optimize its strategy in relation to victims, as well as its field presence in order to improve the way in which it addresses the concerns of victims and affected communities, paying special attention to the needs of women and children. It also underlined the need to continue to optimize and adapt outreach activities. In addition, it called upon States Parties, international organizations, individuals and other entities to contribute to the Trust Fund for Victims to ensure that timely and adequate assistance and reparations can be provided to victims in accordance with the Rome Statute.

(b) Peace and justice

25. At the 6th meeting, on 2 June 2010, the Conference considered the topic “Peace and justice” under the format of a panel discussion. Several written contributions had been made available as background material for the discussions, as well as some other additional contributions. A moderator and four panelists made short presentations, followed by an interactive segment with States, international organizations and civil society. Among the conclusions of the debate, the discussions made clear that the establishment of the International Criminal Court had brought about a paradigm shift, in which amnesty was no longer an option for the most serious crimes under the Rome Statute. There was now a positive relationship between peace and justice although tensions between the two remained that needed to be acknowledged and addressed. Other issues debated at the panel were the sequencing of peace and justice, the role of mediators in peace processes, the effects of international justice, non-judicial mechanisms, and the views of victims.

26. At its 9th meeting, held on 8 June 2010, the Conference took note of the summary of the moderator (see annex V(b)).

(c) Taking stock of the principle of complementarity: bridging the impunity gap

27. At its 7th meeting, on 3 June 2010, the Conference held a panel discussion on complementarity, in which six panelists were invited to speak on “Taking stock of the principle of complementarity: bridging the impunity gap”. The panelists indicated their views on the principle of complementarity. The need for assistance in strengthening the capacities of States to implement their obligation under article 17 of the Statute to investigate and prosecute the crimes within the jurisdiction of the Court, which would contribute to closing the impunity gap, was noted. The implementation of the principle of complementarity was considered and experiences and efforts at the national, regional and international levels to assist States to enhance their ability to comply with their obligations under the Statute were highlighted.

28. At its 9th meeting, on 8 June 2010, the Conference adopted a resolution by which it, inter alia, recognized the need for additional measures at the national level and for the enhancement of international assistance to effectively prosecute perpetrators of the most serious crimes of concern to the international community and encouraged the Court, States Parties and other stakeholders to further explore ways in which to enhance the capacity of national jurisdictions to investigate and prosecute serious crimes (see Part II.A).

(d) Cooperation

29. At its 8th meeting, on 3 June 2010, the Conference held a roundtable discussion on the issue of cooperation. Five panelists had been invited to address the following issues: implementing legislation, supplementary agreements, challenges encountered by States Parties in relation to requests for cooperation, cooperation with the United Nations, and enhancing knowledge and awareness of the Court.

30. At its 9th meeting, held on 8 June 2010, the Conference took note of the summary of the roundtable discussion (see annex V(d)). Furthermore, the Conference adopted a Declaration on Cooperation (see Part II.B), in which it emphasized that all States under an obligation to cooperate with the Court must do so. Particular reference was made to the crucial role that the execution of arrest warrants played in ensuring the effectiveness of the jurisdiction of the Court. Moreover, the Conference encouraged States Parties to continue to engage in seeking to enhance their voluntary cooperation and to provide assistance to States seeking to enhance their cooperation with the Court.

6. Consideration of proposals for amendment of the Rome Statute

(a) Review of article 124 of the Rome Statute

31. At its 11th meeting, on 10 June 2010, the Conference took note of the Report of the Working Group on other amendments (annex IV). The Conference also adopted resolution RC/Res.4 by which it decided to retain article 124 in its current form and to further review its provisions during the fourteenth session of the Assembly of States Parties to the Rome Statute.

(b) Proposals for a provision on the crime of aggression

32. At its 13th meeting, on 11 June 2010, the Conference adopted the Report of the Working Group on the crime of aggression (see annex III). At the same meeting the Conference adopted resolution RC/Res.6 (see Part II.A) by which it amended the Rome Statute so as to include a definition of the crime of aggression and the conditions under which the Court could exercise jurisdiction with respect to the crime. The actual exercise of jurisdiction is subject to a decision to be taken after 1 January 2017 by the same majority of States Parties as is required for the adoption of an amendment to the Statute, and one year after the ratification or acceptance of the amendments by 30 States Parties, whichever is later. By the same resolution, the Conference adopted amendments to the Elements of Crimes related to the crime of aggression as well as understandings thereof.

33. The Conference based the definition of the crime of aggression on United Nations General Assembly resolution 3314 (XXIX) of 14 December 1974, and in this context agreed to qualify as aggression, a crime committed by a political or military leader which, by its character, gravity and scale constituted a manifest violation of the Charter.

34. As regards the Court's exercise of jurisdiction, the Conference agreed that a situation in which an act of aggression appeared to have occurred could be referred to the Court by the Security Council, acting under Chapter VII of the United Nations Charter, irrespective of whether it involved States Parties or non-States Parties. Moreover, while acknowledging the Security Council's role in determining the existence of an act of aggression, the Conference agreed to authorize the Prosecutor, in the absence of such determination, to initiate an investigation on his or her own initiative or upon request from a State Party. In order to do so, however, the Prosecutor would have to obtain prior authorization from the Pre-Trial Division of the Court. Also, under these circumstances, the Court would not have jurisdiction in respect to crimes of aggression committed on the territory of non-States Parties or by their nationals or with regard to States Parties that had declared that they did not accept the Court's jurisdiction over the crime of aggression.

(c) Other proposals

Amendment to article 8 of the Rome Statute and the Elements of Crimes

35. At its 12th meeting, on 10 June 2010, the Conference adopted the report of the Working Group of other amendments (see annex IV), and resolution RC/Res.5 (see Part II.A), by which it amended the Rome Statute to bring under the jurisdiction of the Court the war crimes of employing poison or poisoned weapons, employing asphyxiating, poisonous or other gases, and all analogous liquids, materials and devices, and employing bullets which expand or flatten easily in the human body, when committed in armed conflicts not of an international character.

36. By the same resolution, the Conference adopted the relevant elements to be added to the Elements of Crimes in respect of the war crimes included in article 8, paragraph 2 (e), of the Rome Statute.

7. Strengthening the enforcement of sentences

37. At its 9th meeting, on 8 June 2010, the Conference adopted a resolution on strengthening of the enforcement of sentences (see Part II.A). The Conference called upon States to indicate to the Court their willingness to accept sentenced persons in their prison facilities and confirmed that a sentence of imprisonment may be served in prison facilities made available through an international or regional organization, mechanism or agency.

8. Other matters

(a) High-level declaration

38. At its 4th meeting, on 1 June 2010, the Conference adopted the Kampala Declaration, (see Part II.B), pursuant to the decision of the Assembly of States Parties at its resumed eighth session. The Kampala Declaration afforded States the opportunity to reaffirm their commitment to the Rome Statute and its full implementation, as well as its universality and integrity. States reiterated their determination to put an end to impunity for perpetrators of the most serious crimes of international concern, emphasized that justice is a fundamental building block of sustainable peace and declared that they would continue and strengthen their efforts to promote victims' rights under the Statute. States also decided to henceforth celebrate 17 July, the day of the adoption of the Rome Statute in 1998, as the Day of International Criminal Justice.

(b) Pledges

39. At its 3rd meeting, on 1 June 2010, the Conference held a pledging ceremony pursuant to the decision of the Assembly at its resumed eighth session,⁶ in which States affirmed their commitment to national implementation of the Rome Statute, their willingness to provide assistance or support to such efforts by other States, or their commitment to cooperate with the Court. The Conference held a pledging ceremony where the co-focal points for pledges, H.E. Mr. Ernst Hirsch Ballin (Netherlands) and H.E. Mr. Gonzalo Gutiérrez (Peru) presented the pledges received to the President of the International Criminal Court, Judge Sang-Hyun Song, and the President of the Conference, H.E. Mr. Christian Wenawesser. The co-focal points announced that 112 pledges had been received from 37 States and regional organizations representing all regions of the world.

40. The pledges presented covered a variety of topics such as entering into agreements or arrangements with the Court on the enforcement of sentences, relocation of witnesses or other cooperation issues, becoming a party to the Agreement on Privileges and Immunities of the International Criminal Court, promoting universality of the Rome Statute, financial support to the Trust Fund for Victims and the Trust Fund for the participation of least developed countries and other developing States in the sessions of the Assembly of States Parties, as well as the designation of national focal points.

(c) Drafting Committee

41. The Drafting Committee held four meetings, on 9, 10, and 11 June 2010, to consider the draft amendments to the Rome Statute contained in the documents listed in annex II and ensure the linguistic accuracy of and consistency between the various language versions.

(d) Trust Fund for the participation of the least developed countries and other developing States in the work of the Conference

42. The Conference expressed its appreciation to Australia, Croatia, Finland, Germany, Ireland, Luxembourg, Netherlands and Poland for their contributions to the Trust Fund for the participation of the least developed countries and other developing States in the work of the Conference.

43. The Conference noted with satisfaction that 25 delegations had made use of the Trust Fund to attend the Conference.

⁶ *Official Records ... Resumed eighth session ... 2010* (ICC-ASP/8/20/Add.1), part II, ICC-ASP/8/Res.9, para. 1.