



PGA's Campaign

for the Universality and Effectiveness of the Rome Statute of the ICC

Sample Parliamentary Questions concerning the upcoming Review Conference of the Rome Statute of the International Criminal Court (ICC), Kampala, Uganda, 31 May-11 June 2010

Below: ICC President Judge Song addresses the PGA Round-table in the European Parliament on 15 Oct. '09 at the presence of PGA Pres. Sen. Ewa-Henshaw (Nigeria), MEPs Jo Leinen (Germany), Vittorio Prodi (Italy) and Marietje Schaake (NL), as well as Swedish EU Presidency Representative Elinor Hammar skjöld

Distinguished
Parliamentarian:

The International Criminal Court (ICC) is the first permanent Tribunal with jurisdiction over the most serious international crimes, namely, genocide, crimes against humanity and war crimes.



An essential building-block in the creation of a “Rules-Based International Order”, the goal of the ICC is to put an end to impunity for the gravest violations of human rights and international humanitarian law that rise to the level of international crimes and, in so doing, contribute to the prevention of atrocities and to the maintenance of international peace and security.

The ICC was established in 1998 in Rome with the adoption of the Rome Statute of the ICC, its founding treaty, which entered into force in 2002 upon its ratification by 60 States. As of April 2010, 111 States agreed to be Parties to the Rome Statute.

The ICC Statute and the “Rome Statute system”, which consists of the primary jurisdictions of States Parties and the complementary jurisdiction of the ICC itself, will be reviewed for the first time at the Review Conference of the Rome Statute that will take place in Kampala, Uganda, from 31 May to 11 June 2010.

The agenda of this important Inter-Governmental conference includes, but is not limited to:

1. Reflections on the advances and challenges in the new system of international criminal justice (“stocktaking” exercise)
2. The opportunity for States to pledge to take actions to advance the effectiveness of the ICC and “Rome Statute system” (such as by adopting relevant national legislation by a particular date)
3. Consideration of including in the Statute a definition of the crime of aggression and the conditions for the exercise of jurisdiction by the ICC over this crime
4. Consideration of other proposed amendments to the Rome Statute, particularly in connection with war crimes

Notably, the “stocktaking” exercise will focus attention on several key issues in international criminal justice: the impact of justice on victims and affected communities, state cooperation, strengthening national capacity to conduct trials under the complementarity principle, and peace and justice. The conference therefore offers an exceptional opportunity to engage in and shape key policies surrounding the investigation and prosecution of the most serious crimes at the international and national levels in the years to come.

Parliamentarians have a key role to play in encouraging governments and regional organizations to realize the potential of the Review Conference as a watershed moment in the fight against impunity. This is important as Parliaments can ensure that their respective States or regional organizations fully cooperate with the ICC (for example, in the execution of 8 pending Arrest Warrants), that their National legal systems are adapted to the norms and principles contained in the Rome Statute, and that their Law Enforcement and Judicial systems are effectively equipped to fight impunity and preclude their territories from becoming safe-heavens for suspected criminals and/or would-be criminals.

Against this background, the Kampala Review Conference has the potential to reinforce the global movement to promote human rights, protect victims and foreclose the possibility of the reoccurrence of atrocities.

Parliamentarians for Global Action (PGA) is therefore glad to share with you a list of *sample parliamentary questions* for your Governments, which you may use to insert this important item in the agenda of your Parliament. Please note that Human Rights Watch gave assistance in developing questions and explanatory material contained herein, especially with regard to the stocktaking exercise and pledging. Please feel free to adapt these questions to your own National and regional realities.

SAMPLE PARLIAMENTARY QUESTIONS ON STOCK-TAKING AT THE KAMPALA REVIEW CONFERENCE

1) Active engagement in the general debate and stocktaking exercise at the review conference will be an important demonstration of commitment to the fight against impunity for grave international crimes and to the ICC: How is the government developing interventions and positions for these segments? Are inter-departmental or inter-ministerial consultations envisaged?

The high-level general debate to open the Review Conference represents a key moment for States to express their support for the Rome Statute system and the fight against impunity overall. As underscored at the recent resumed eighth session of the ICC’s Assembly of States Parties (ASP) (New York, 22-25 May 2010), the stocktaking exercise will also provide opportunities to advance thinking on critical issues regarding justice for the worst crimes through panel discussions and outcome documents, including resolutions on certain topics.

Preparing constructive interventions for the general debate and the stocktaking topics well in advance of Kampala will be essential to make the most of these opportunities and ensure time is spend productively. We believe one key way to generate valuable material for interventions is by holding inter-departmental discussions across relevant ministries (including justice, foreign affairs and development ministries). A significant by-product of such discussions could be the further mainstreaming of the ICC within government agendas, which can, in turn, result in a deeper engagement and support for the fight against impunity well beyond 2010.

2) States Parties to the Rome Statute are invited to make pledges that would enhance their support and cooperation with the International Criminal Court and taking an active, engaged part in the Rome Statute system. What pledges will the government make at the Review Conference?

Generating concrete outcomes where appropriate can help ensure that constructive and fruitful discussions that take place during the Review Conference aimed at increasing the ICC’s effectiveness have a life and meaning beyond Kampala. To this end, pledges by States to undertake particular actions on the stocktaking topics (such

as to adopt implementing legislation by a particular date) are crucial. Pledges must be submitted by May 24, 2010, to the focal points on this issue (The Netherlands and Peru): This deadline means that time is short for your government to develop its pledges. Pledges may be kept confidential until Kampala, but we believe it would be useful to encourage your government to make its pledges public well in advance as a way to encourage robust pledges by other governments.

It is of great importance that pledges reflect achievable, concrete objectives and be time-specific. For example, pledges could include:

- Appointing a national ICC focal point or constituting an intra-agency task force;
- Implementing the Rome Statute at the domestic level;
- Contributing to arrest operations and the execution of outstanding ICC warrants;
- Ratifying the Agreement on Privileges and Immunities;
- Concluding agreements with the ICC on the enforcement of sentences, witness relocation and/or interim release of defendants;
- Making [annual] contributions to the soon-to-be-established special fund for witness relocation;
- Adopting national policies directed towards the mainstreaming of ICC support across ministries and within regional and international organizations, including with regard to support for the enforcement of court decisions; and
- Adopting or revising common positions in support of the ICC within regional organizations.

Parliament can and should play a fundamental role of oversight to ensure that your Government's pledges are actually followed by concrete and meaningful action, including legislative and administrative action.

3) Ministerial attendance and support for a ministerial declaration at the review conference are two ways to give strong support to the ICC. Will [y]our government and/or regional organization provide high-level attendance at the Review Conference and support a ministerial declaration? Will [y]our National delegation include a parliamentary component?

To demonstrate clear, strong government support for the ICC, attendance by government officials at the ministerial level – at least during the general debate and stocktaking exercise in the first week – is essential. It will be important for your government to confirm representation by senior officials at the Review Conference as soon as possible. We also urge your government and regional organizations to communicate, as soon as possible, its plans to send senior officials to Kampala to other governments so as to encourage them to do the same. If your Parliament decides to send a delegation of Lawmakers to the Kampala Review Conference, this will certainly contribute to the high-level representation of your country.

As for the ministerial declaration, the ASP Bureau has identified Mexico as a focal point to push the initiative forward. As such, support for adoption of the declaration is another means for your government to demonstrate support for the ICC.

4) How does the government intend to follow-up on and advance the discussions and conclusions arising from the stocktaking exercise in Kampala?

The key to long-term success of the conference will of course be ensuring that its outcomes are taken forward in concrete ways.

SAMPLE PARLIAMENTARY QUESTIONS ON AGGRESSION AND OTHER AMENDMENTS OF THE ROME STATUTE IN THE AGENDA OF THE KAMPALA REVIEW CONFERENCE

5) Article 5 of the Rome Statute contains the list of the “core crimes” under international law (most serious international crimes): these are (i) genocide, (ii) crimes against humanity, (iii) war crimes, and (iv) the crime of aggression. While the first three categories of offences have been defined in the Rome Statute in 1998, aggression has been referred to the agenda of the first Review Conference of the Statute, to be held 7 years after its entry into force. What is [y]our Government’s position on the inclusion in the Rome Statute of the definition of the crime of aggression?

6) What is [y]our country [Government] position with respect to the delicate relationship between the ICC, an independent judicial institution, and the United Nations Security Council, a political organ of the UN, on the issue of the determination that an *act* of aggression has occurred, bearing in mind that only the ICC may have the authority to determine whether there is individual criminal responsibility for the crime of aggression?

In 1945, the Charter of the International Military Tribunal held in Nuremberg included the category of “crimes against the peace”, in addition to war crimes and crimes against humanity. The same provisions were inserted in the Charter of the International Military Tribunal for the Far East (the Tokyo Tribunal). Leaders found individually responsible for the “aggressive wars” that took place in the context of World War II were convicted in Nuremberg and Tokyo.

While the jurisdiction of the ICC is operational with respect to genocide, crimes against humanity and war crimes, the crime of aggression is listed in article 5 of the Rome Statute among “the most serious crimes of concern to the international community as a whole” but the Court cannot exercise jurisdiction over it. In 1998, States could not agree on the definition of aggression and relevant jurisdictional conditions. The matter was referred to the first Review Conference of the Rome Statute and language was included in article 5 of the Statute to ensure that “a provision [on the crime of aggression] shall be consistent with the relevant provisions of the Charter of the United Nations”, which allows the lawful use of military force in self-defence (article 51, UN Charter) or as enforcement measure (Chapter VII, UN Charter).

During more than 7 years of negotiations, an open-ended Working Group on the Crime of Aggression of the ICC Assembly of States Parties made substantive progress on the definition and other substantive elements that characterize the crime or aggression, but left a number of options open with respect to the modalities for the attribution of jurisdiction to the ICC regarding this international crime (see www.icc-cpi.int/iccdocs/asp_docs/Resolutions/ICC-ASP-8-Res.6-ENG.pdf).

7) What is [y]our country [Government] position with respect to the amendments to the Rome Statute that are aimed at expanding the list of prohibited weapons in internal armed conflicts (“Belgian proposal”) within the definition of war crimes?

8) What is [y]our country [Government] position with respect to the deletion from the Rome Statute of article 124, the transitional provision that allows ratifying States to exempt themselves from the jurisdiction of the Court over war crimes allegedly committed by their nationals or on their territories?

Article 8 (“War Crimes”) of the Rome Statute of the ICC contains a long list of war crimes committed in international armed conflicts or in non-international armed conflicts (civil war). The prohibited conduct under these distinct categories of conflict do not coincide entirely, due to the different levels of protection that relevant Conventions on international humanitarian law have afforded to victims. However, the Rome Statute of 1998 and the recent practise of States and International Organisations, including International Ad Hoc Tribunals, attest to the effort of States (the “Lawmakers” in the international legal system) to increase the level

of protection for victims of civil wars to the one that is currently available to civilians and other protected persons in inter-State conflicts. The so-called “Belgian proposal”, supported by a group of like-minded States from all continents, aims at bringing the list of prohibited weapons in civil wars in line with the one applicable in international armed conflicts.

Article 124 (“Transitional Provision”) of the Rome Statute was included in this Treaty to facilitate its adoption at the Rome Diplomatic Conference in June-July 1998. It has been widely criticised, because it has allowed States that decided to ratify the Statute to avoid the Court’s jurisdiction for a non-renewable term of 7 years in respect war crimes allegedly committed by their nationals or on their territories. Only two States made declarations upon ratification through which they requested the exemption allowed by article 124 (Colombia and France). Given that article 124 has lost its historic significance, that it sends a wrong signal concerning the risk of “underestimating” war crimes vis-à-vis the other international crimes contained in the Statute and, above all, that its possible application may bring to a violation of the principle of equality of all individuals before the law, the deletion of Article 124 has been inserted in the agenda of decisions to be taken by the Kampala Review Conference.

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Parliamentarians for Global Action (PGA) would be pleased to receive information concerning your Parliamentary Questions, so that we can publicize, as appropriate, through our website and other ad hoc communications to the media and other stakeholders. This will also serve to maximize the impact of your “parliamentary” contribution to the success of the first Review Conference of the Rome Statute of the ICC.

*The PGA ICC Team
New York/The Hague, April 15, 2010*

For more information on the Review Conference please visit:
www.icc-cpi.int/Menu/ASP/ReviewConference

For more information on the PGA’s initiatives ahead of the Review Conference, please visit:
www.pgaction.org/CAPVI.html

Vision of PGA: To contribute to the creation of a Rules-Based International Order for a more equitable, safe and democratic world

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