

**Statement by Stephen J. Rapp, U.S. Ambassador-at-Large for War Crimes
Review Conference of the International Criminal Court
Kampala, Uganda
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Thank you Mr. President.

It is an honor to address you on behalf of the United States of America on this historic occasion, which is a milestone in the global effort, first launched in Nuremberg and carried forward in recent decades, to bring to justice those responsible for crimes of staggering scale and brutality and to bring recognition and relief to their victims. We have gathered here to advance beyond what we have already achieved so that we may better protect future generations from the savageries of centuries past and present, from crimes that have seared our collective conscience.

I wish to express my delegation's appreciation to Uganda for its hospitality. It is fitting that this conference is being hosted by Uganda, the first country to turn to the

Court to protect its citizens from crimes against the basic code of humanity. Today, citizens in northern Uganda are enjoying greater freedom than they have known in decades from the Lord's Resistance Army, whose forces have taken the lives of thousands of innocent men and women and stolen the youth of countless children.

At the same time, however, we are acutely aware of the challenges before us. Even as the LRA has retreated from northern Uganda, for example, its leaders who have been summoned to account before the ICC are fugitives from justice, and LRA forces continue to exact an intolerable toll in neighboring countries. Last week President Obama underscored the importance meeting this challenge when he signed into law an act to disarm the LRA and help Northern Uganda recover from the destruction it has wrought, stating "that we must all renew our commitments and strengthen our capabilities to protect and assist civilians caught in the LRA's wake ...

and to support those efforts to bring the LRA leadership to justice.” This is but one of many challenges confronting the Court that we will take up during the stocktaking programs in the days ahead:

- How can we better ensure that perpetrators of the most savage crimes known to humankind are brought before the bar of justice?
- How can we ensure that justice *fortifies* peace when it may seem challenging to reconcile these two aims, peace and justice, —and yet, we know, are both essential?
- What more can we do to assist countries whose courts have been shattered by lawless violence to rebuild and strengthen the rule of law?
- And how can we ensure that the justice that unfolds in a courtroom in The Hague

transforms the daily lives of peoples in countries that have been wracked by violence—the sort of violence that thrives in places beyond the reach of law and conscience?

These questions evoke but hardly exhaust the difficulties the Court has faced in its early years, and which this conference will be tackling. My Government welcomes the recognition of their importance, and the commitment to addressing them, reflected in the stocktaking programs of this conference.

Our delegation looks forward to participating in each of these programs, and will co-sponsor, with Norway and the Democratic Republic of the Congo, a side event on positive complementarity. [We hope that this program, along with others that will take place in the days ahead, will spawn new ideas and initiatives to strengthen the

work of the ICC and of its partners on the frontlines of justice, national courts.]

Mr. President, in the period leading up to this conference, we have had many occasions to discuss the question, "what will success in Kampala mean?" For my government and, I know, many others, the answer is clear: If this gathering can make real progress in addressing the challenges I have noted, our time here will be a singular success.

Those challenges form the backdrop to the other major agenda of this conference—considering proposed amendments to the Rome Statute, including amendments that would enable the Court to prosecute the crime of aggression.

Mr. President, as my government has noted before, we have deep respect for the work on this issue undertaken by the Special Working Group on the Crime

of Aggression. At the same time, in recent months we have repeatedly been reminded that many issues concerning the crime of aggression remain to be resolved, including core questions that the Special Working Group identified when it concluded its work last year. These issues are not of marginal significance, they are elemental: What conditions must be satisfied before the ICC can exercise jurisdiction over the crime of aggression, for example? How will any aggression amendments that might be adopted enter into force?

One year after the Special Working Group finished its work, the Eighth Session of the Assembly of States Parties ended without bringing its members close to resolving those questions. Instead, the session ended on a note that highlighted wide divisions, and this is not surprising. The questions the Special Working Group could not resolve after years of effort are inherently

difficult and touch upon matters that have long elicited divergent answers.

And while the Special Working Group did produce a definition of the crime of aggression, key aspects of the definition are *still* uncertain. For example, what impact might the proposed definition, if adopted, have on the use of force that is undertaken to end the very crimes the ICC is now charged with prosecuting? Our conversations with many delegations and a review of the Group's working papers have revealed divergent interpretations.

As members of our delegation have explored these ambiguities and uncertainties, some of our interlocutors have expressed confidence that they will be clarified by the Court itself. Yet a fundamental principle of legality is that individuals must know whether conduct crosses the line into that which is forbidden *before* they act and not learn the answer in the crucible of trial.

Other questions have come into sharper focus in the months leading up to this Conference. What impact would adoption of aggression amendments to the Rome Statute have on national jurisdiction—an issue whose importance is helpfully recognized in a paper circulated by the Chairman for this conference? Would adding a crime that would run against senior leaders enhance or obstruct the prospects for state cooperation with the Court at this time in its development?

In a letter concerning the crime of aggression, leading civil society organizations from every region of the world have now called on States parties, in their words, “to tak[e] more time to strengthen the Court, to consider this matter further, and to achieve broader agreement on the outstanding issues,” which “will benefit the ICC in the long-term.” While many bring lofty aspirations for this conference, these organizations’ plea is also one of caution, care and regard for the Court at this early stage.

We will have further opportunities to explore these issues in the days ahead. For now, let me ask the questions that my government believes to be of overarching importance: What impact would moving forward in the absence of clarity and consensus—*real* consensus, not expedient compromise—on these fundamental questions have on the Court itself? Will States parties enhance the prospects for universality by moving to adopt this crime at a time when there is genuine disagreement on core issues, or by placing the prosecutor in a position where he must make decisions — whether to pursue aggression charges in particular cases — that organizations such as Human Rights Watch have cautioned "may well give rise to perceptions of political bias and instrumentalization — even if such perceptions are ... unfounded"? And will they enhance the prospects for consolidating the Court's role in ensuring that those who perpetrate war crimes, crimes against humanity or genocide are held to account?

Twelve years ago, the Statute of the ICC was adopted despite deep divisions among negotiating States on several issues. Yet even then, those gathered in Rome recognized that it was a matter of fundamental importance to adopt the definitions of crimes on the basis of consensus. That commitment provided a stable foundation upon which the Court has been able to stand up, move forward, and inspire confidence. We believe that moving forward now on the crime of aggression *without* genuine consensus could undermine the Court.

Although the United States is not a party to the Rome Statute, we too have an abiding interest in seeing the Court successfully complete the prosecutions it has already begun. Mr. President, as President Obama's recently released national security strategy so clearly stated: "the end of impunity and the promotion of justice are not just moral imperatives; they are stabilizing forces in international affairs." Our national security strategy

recognizes, and I quote again, that “those who intentionally target innocent civilians must be held accountable, and we will continue to support institutions and prosecutions that advance this important interest.”

That is why we have been meeting with Court officials to examine specific ways we might assist the Court in successfully completing the prosecutions already underway. We owe it to those who have endured crimes of epic scope and savagery to do all we can to ensure that the Court can bring those cases to a successful end, to hold the perpetrators to account, to provide recognition and relief for the victims, and by doing so, to create a future of greater safety and security.