

Lawyers' Rights Watch Canada

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INTERNATIONAL CRIMINAL COURT REPORT on the December 4-14, 2017 MEETING of the ASSEMBLY OF STATES PARTIES

by
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Between December 4-14, 2017, the Assembly of State Parties to the ICC (ASP) met at UN headquarters in New York for their annual meeting. Newly elected ASP President, Judge O-Gon Kwon, opened the assembly noting the upcoming 20th anniversary of the Rome Statute and the difficult road that the Court will continue on in the promotion of the rule of law and accountability for the gravest international crimes. Six new judges were elected, five of whom were female and one, Kimberly Prost, Canadian.

Included in this year's agenda were the usual topics including universality of the Rome Statute, cooperation of States Parties with the Court and the Court's budget. William Pace, Convener of the Coalition for the ICC passionately spoke out against the 7 States Parties, which included Canada, that traditionally push for zero nominal growth of the budget. Noting the restrictions caused by this zero growth policy in a time when the Court is being asked to do more, to investigate more difficult situations and expand its reach, Pace labelled the policy of these States Parties a noose around the Court's neck. Ultimately the States Parties agreed to a very nominal budget increase.

In addition to discussions on challenges the Court faces, the ASP succeeded in reaching a consensus on the activation of the crime of aggression. While listed as one of the four crimes the court would have jurisdiction over in the original text of the Rome Statute, no formal definition was drafted until a 2010 review conference was held in Kampala, Uganda during which it was decided that the crime would mean "the planning, preparation, initiation or execution, by a person in a position effectively to exercise control over or to direct the political or military action of a State, of an act of aggression which, by its character, gravity and scale, constitutes a manifest violation of the Charter of the United Nations." Unlike the three other crimes listed in the Statute, (genocide, war crimes and crimes against humanity), the crime of aggression specifically targets those in a position of authority, namely heads of state or military leaders.

Since 2010 all that was required was the ratification of this crime by 30 States Parties and the majority vote of 2/3 of States Parties. While significant debate continues to surround the court's jurisdiction over this crime, consensus was achieved such that those 35 states that have ratified the Kampala Amendments will be subject to the Court's jurisdiction. At this stage, it is unclear in

what circumstances other states could be subject to it. Canada was among the states arguing against the Court's jurisdiction over states that have not ratified the Amendments.

Another achievement was the agreement to update the list of war crimes to include laser technology causing blindness, release of toxic weapons, and the use of weapons causing injuries by fragments which in the human body escape detection by X-rays. However, many were disappointed that the use of anti-personnel land mines were not included in the final resolution that was drafted.

Finally, the Office of the Prosecutor's (OTP) request that the Pre-trial Chamber authorize an investigation into Afghanistan was also high on the list of discussion topics. The investigation calls into question the actions of the US military and the CIA, but neither Canada nor the UK are discussed in the OTP's report. The US response was predictable: the US representative reminded the General Assembly that it was not a signatory to the Rome Statute and would not consider the OTP's investigation as having authority over its nationals, especially since the information relied upon by the OTP came from investigations the US government had already completed. No decision has been made by the Pre-trial chamber at this time.

The ASP meeting was a very successful ASP and also left much to look forward to in 2018.