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US Opposes ICC Bid to Make 'Aggression' a Crime Under International Law

By Howard LaFranchi
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The Obama administration has resisted efforts by the International Criminal Court to include 'aggression' as a crime, mainly because it could impact US military operations abroad.

Washington — The United States under the Obama administration has developed an increasingly close working relationship with the International Criminal Court in The Hague. But that growing engagement with a controversial institution of international law was unable to prevent the ICC from expanding the scope of its work to include the murky crime of "aggression," a move the US had vehemently opposed.

At the 111-nation ICC's first review conference that wrapped up last week in Kampala, Uganda, delegates decided to expand the international court's purview to include the crime of aggression – a crime that only the US has successfully tried, in the post-World War II tribunals in Nuremburg and Tokyo.

State Department officials say the US, which is not a signatory to the ICC, was able to mitigate the drawbacks of such an expansion of the court's reach, primarily by putting off any prosecution of the newest international crime until at least 2017.

But some critics say the US failure to stop the enshrining of "aggression" as an international crime demonstrates the limits of President Obama's multilateralist vision – and sets the US on a collision course with the ICC when the issue comes up again later in the decade.

"The fact remains that the Obama administration's vaunted 'engagement' strategy was only able to check the ICC's move towards defining 'aggression,' not stop it entirely," says Brett Schaefer, an expert in international institutions at the Heritage Foundation in Washington. "And it sets the US up for another battle in 2017 when the ICC's advocates will make another push to activate the ICC's jurisdiction over 'aggression.'"

The US confirmed its new footing with the world's first permanent court for trying war crimes and crimes against humanity, US officials say, although they acknowledge that the US did not get everything it wanted in Kampala. The Rome Statute establishing the ICC was finalized in 1998, but the court did not begin to function until 2002, when the minimum 60 countries ratified it.

US participation in the Kampala conference "reset US relations with the court from hostility to positive engagement," says State Department legal adviser Harold Koh. He says the US focus at the review conference was on efforts to "strengthen justice on the ground" in countries so that eventually their judicial systems will be strong enough to take on the kinds

of human-rights work the ICC addresses.

Mr. Koh says that focus was particularly well-received in Africa, “where there is a strong desire to have these cases tried at the national level.”

Some ICC critics have also noted that the court has only taken up two cases so far, both involving African countries – one involving the Democratic Republic of the Congo and Uganda, and the other regarding Sudan – and they dismiss the largely European-Union funded court as a colonial institution pressing Western interests.

But the US increasingly sees the value of the ICC, especially as it has tried cases that begged for international intervention.

“If it weren’t for the ICC [in cases like Sudan or Uganda] you would have had to set up a special tribunal,” says Stephen Rapp, the State Department’s coordinator for war crimes issues.

One of the main US concerns in seeing “aggression” added to the ICC’s jurisdiction was the impact it could potentially have on US military operations abroad. But Koh says the US successfully negotiated the “aggression” statute’s wording so that US forces won’t be susceptible to it.

“No US national can be prosecuted for ‘aggression’ while the US is not a signatory” to the ICC, he says.

Articles by: **Howard LaFranchi**