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Opt out system risks undermining ICC

Allowing states to protect their leaders from prosecution for the crime of aggression risks undermining the credibility of the International Criminal Court (ICC), Amnesty International said today, following the Review Conference in Kampala.

States that met during the two-week Conference, which ended on 11 June, adopted a mechanism that effectively allows them to opt out from the ICC's jurisdiction over the crime of aggression, when they commit an act of aggression.

"Governments have effectively created a two-tier system of international justice where they can choose to stand above the law, retreating from the principles established in Rome twelve years ago," said Christopher Keith Hall, Senior Legal Adviser at Amnesty International.

The governments also failed to remove Article 124 of the Rome Statute, the treaty which established the ICC. This article will continue to give states the right to declare that the ICC cannot investigate and prosecute war crimes committed by their nationals for seven years from the declaration.

Use of weapons that have long been regarded as illegal when conflicts cross borders is now included in the list of war crimes when the weapons are used in internal armed conflict, under Article 8 of the Rome Statute.

However, in the resolution that adopted this change, states attempted to exempt nationals of countries that are not party to the Rome Statute from charges for these crimes when committed in the territory of state parties.

On a positive note, states from all regions of the world reaffirmed their commitment to the ICC during the conference's stock-taking sessions and they made positive statements about the work of the Court over the past eight years.

"We have missed an opportunity to strengthen the framework of the ICC. What we need is for the commitments made in Kampala to be transformed into concrete action," said Christopher Keith Hall.