

(check against delivery)

Statement by H.E. Mr. Ichiro Komatsu  
Special Envoy of the Government of Japan  
Ambassador Extraordinary and Plenipotentiary of Japan  
At the Review Conference of the  
Rome Statute of the International Criminal Court (ICC)  
4 June 2010, Kampala

Thank you, Mr. Chairman.

On behalf of the new administration of Japan, allow me to express our strong appreciation to the excellent work you have conducted as the Chairman of the Working Group.

It is not my intention to repeat our position on the substance of the issue in detail. Let me, instead, emphasize once again how much Japan considers it important for the ICC to become able to exercise its jurisdiction over the crime of aggression. There is a historical for this. Japanese nationals were convicted of crime against peace and of war crimes by the International Military Tribunal for the Far East. Japan solemnly accepted its judgments by virtue of the San Francisco Peace Treaty. As a country with an ingrained memory of the history and lessons learned therefrom, Japan firmly believes that ICC should be able to exercise its jurisdiction over the crime of aggression. And international criminal tribunals should not be operated on the basis of *ex post facto* law. Any criminal suspect should be prosecuted and punished based on the principle of legality including due process of law. I am saying this at the outset, because for Japan, this is a matter of “principle”, and I believe that this must be the case for all those who are dealing with criminal law.

Mr. Chairman,

Japan is firmly resolved to bring a success to this Review Conference. And for the Conference to be a success, it should result in strengthening the Court and not in impairing the unity of the State Parties. This is the most essential point that our government values. Japan is ready to make its utmost effort to forge consensus. In this context, I would like to express my delegation’s highest and sincere tribute to the excellent document provided by the Chair to facilitate a consensus, as well as to those State Parties making invariable efforts to that end, particularly through making concrete proposals

including that explained today. Japan is more than ready to be as flexible as possible on policy issues.

This being said, when it comes to the domain of legal interpretation of the existing treaty, however, I must say that there is a limit to flexibility or creativity. We are discussing this issue in the framework of the Rome Statute which is not a political document but a treaty. The task we have before us is amending an existing treaty, the Rome Statute, and not drafting a brand new treaty on a white sheet of paper. Such an amendment can only be made based on an appropriate application of the amendment clause of the existing treaty. Here, we should not forget that, above all, the Rome Statute is about criminal law. This means that a most stoic and restrained attitude is required in interpreting it. It is an absolute “must”, therefore, that we restrain ourselves from falling into a temptation of stretching the law, however policy intention is laudable. “Interpretation of convenience”, if I might say, no matter how creative it is, will do harm to the Rome Statute, because it hurts the legal credibility of the Statute and the whole system it represents. This is also a matter of “principle” for Japan, for the same reason I have mentioned earlier.

Mr. Chairman,

If we are to consider the amendment of the provision with regard to the crime of aggression, we consider that the Article 121-5 with its negative understanding is the correct legal interpretation. In light of the Article 31 of the Vienna Convention on the law of treaties<sup>1</sup>, Japan is convinced that there is no room for Article 121-4 to step in. The only possibility in order to obtain another outcome would be an amendment to Article 121 itself, which everybody knows is not a realistic option. The Rome Statute is a treaty that Japan concluded after getting the approval by the Diet according to our constitutional requirement. I am therefore obliged to say that there is absolutely no possibility for my delegation to agree at this Review Conference to an amendment procedure which is different from the current one stipulated in the Statute.

Let me emphasize that we cannot just “paper over” the fundamental difference of view regarding the basis of amendment. Doing so would result in a serious divergence of view among the State-Parties on the interpretation of the amended Statute, especially on its entry into force and application among them. This will surely cause a dispute which should be settled based on the

---

<sup>1</sup> 1. A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.

provisions of Article 119<sup>2</sup> of the Statute. We all know that it will not offer any helpful solution to us.

We understand, on the other hand, the legitimate concerns of those countries which favor the use of Article 121-4. We believe that their concern can be taken care of by stating clearly in the enabling resolution that all the States are urged to accept the amendment as soon as possible. The acceptance of the amendment should be done prior to any case of aggression. Contrary to what some people tend to believe, it is unlikely to see a situation where a State Party that has committed an aggression will ponder after the aggression whether it should accept the amendment. By expressing the strongest of political will of the State Parties in the form of a resolution calling for an early acceptance of the amendment, we will be able to overcome this legal conundrum, accommodating at the same time the legitimate policy concern.

In conclusion, Mr. Chairman, Japan believes that we must have a concrete outcome to be adopted on a consensus basis for this Review Conference to be a success. At the same time, the outcome should be a convincingly explainable one, not only to the international but also to the domestic audience, based upon a sound interpretation of law. Therefore, Mr. Chairman, my delegation would like to reiterate that in the negotiations from now on, we all try to be as flexible as possible with the assumption that the amendment is to be made based on the Article 121-5.

Thank you, Mr. Chairman.

---

<sup>2</sup> 2. Any other dispute between two or more States Parties relating to the interpretation of application of this Statute which is not settled through negotiations within three months of their commencement shall be referred to the Assembly of States Parties. The Assembly may itself seek to settle the dispute or may make recommendation on further means of settlement of the dispute, including referral to the International Court of Justice in conformity with the Statute of the Court.