

SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS
BUDGET ESTIMATES 2017

Attorney General's Department

Program: 1.1 AGD Operating Expenses - Civil Justice and Legal Services

Question No. BE17-024

Senator Ludlam asked the following question on 24 May 2017:

Senator LUDLAM: Can I take it that, if those amendments were adopted by consensus, Australia was happy to see them come into force?

Mr Reid: I would have to take that on notice. I am not sure what position we took at the Kampala meeting. I was not there and I am not sure what the voting was at the time.

Senator LUDLAM: They were adopted by consensus. So we either abstained or—we certainly did not block them. But if you are not sure—

Mr Reid: Just let me take on notice how it was adopted.

Senator LUDLAM: Yes, if you could. This question might have to go through the Attorney, then. I would have assumed that there was implied support—if that is something you want to go back and check. Senator Brandis, does Australia support the prohibition of the illegal use of force—that is, creating an international crime of aggression?

Senator Brandis: Generally yes, of course we do. But if you are asking me about a particular international instrument, then obviously I would have to take that on notice. As a general proposition, of course Australia has been one of the most forward-leaning countries in the world in this respect.

Senator LUDLAM: I would not dispute that.

Senator Brandis: But on any particular instrument which you would perhaps say seeks to apply or extend that general principle, I would have to either refer to Mr Reid or take it on notice.

Senator LUDLAM: Okay, thank you. My understanding is that more than 30 countries have ratified the amendment since then. Is Australia intending to ratify it anytime soon?

Senator Brandis: I will take that on notice.

Senator LUDLAM: I also understand that, because the requisite number of countries have ratified the amendments, they will come into force later this year if all goes to plan—and that would presumably be whether Australia adds its signature or not.

Mr Reid: That is right.

Senator LUDLAM: Do you have any insight as to when those amendments may come into force?

Mr Reid: I would have to take that on notice. I do not have the information in my head.

The response to the honourable Senator's question is as follows:

1.1 – Australia's position on the adoption of the amendments.

The crime of aggression and war crimes amendments (together, the ‘Kampala amendments’) to the Rome Statute of the International Criminal Court were adopted by consensus at the first Review Conference of the International Criminal Court (ICC) in Kampala, Uganda, from 31 May to 11 June 2010. Australia participated in the Review Conference and supported the Kampala amendments’ adoption.

1.2 – Is Australia planning to ratify the amendments?

Australia is considering ratification of the crime of aggression amendments in accordance with its usual domestic processes.

1.3 – When will the amendments come into force?

The amendments will enter into force for those States Parties that have accepted them, one year after the deposit of their instrument of ratification or acceptance.

In addition, the ICC may exercise jurisdiction (1) only with respect to crimes of aggression committed one year after the ratification or acceptance of the amendments by thirty States Parties; and (2) subject to an ‘activation’ decision, to be taken after 1 January 2017 by a two-thirds majority of States Parties.

As at 11 June 2017, information from the depository for the Rome Statute of the International Criminal Court is that 34 States Parties have deposited an instrument of ratification or acceptance. The Assembly of States Parties is expected to consider whether to activate the ICC’s jurisdiction at its meeting on 4-14 December 2017 in New York.