



PERMANENT MISSION
OF THE PRINCIPALITY OF LIECHTENSTEIN
TO THE UNITED NATIONS
NEW YORK



GLOBAL INSTITUTE FOR THE
PREVENTION OF AGGRESSION

Crime of aggression: experiences of early ratifiers

Side-Event to the twelfth session of the Assembly of States Parties to the Rome Statute
22 November 2013

Summary Report

The side event focused on the experiences of States that have already ratified the Kampala amendments on the crime of aggression. Speakers emphasized that the early ratification of the amendments expressed a public commitment to the International Criminal Court, the Rome Statute and the rule of law. States had chosen different paths regarding implementation, and it was emphasized that ratifying first and implementing later may be a good way to proceed, especially given the delayed activation of the amendments. Speakers emphasized the usefulness of various resources related to the Kampala amendments during the domestic process, in particular the Handbook available on www.crimeofaggression.info.

Opening Remarks:

HE Mr Christian Wenaweser, Permanent Representative of Liechtenstein to the United Nations
Mr Don Ferencz, Convenor, Global Institute for the Prevention of Aggression

Panelists:

HE Dr Athaliah Molokomme, Attorney-General, Botswana
HE Mr Pascal Hector, Deputy Director General for Legal Affairs, Foreign Office, Germany
HE Mr Roman Kirn, Ambassador of Slovenia to the Kingdom of the Netherlands
HE Mr Gerald Thompson, Ministry of Foreign Affairs, Trinidad and Tobago
HE Dr Maria del Lujan Flores, Legal Adviser, Ministry of Foreign Affairs, Uruguay

Moderator:

Mr Stefan Barriga, Deputy Permanent Representative of Liechtenstein to the United Nations

Participants considered the **reasons and significance of ratification** for their countries. Speakers noted their own countries' traditional commitment to the rule of law at the international level and commented that each ratification brought the activation of the amendments closer. Ratification was also seen as a public demonstration of commitment to both the Rome Statute and the International Criminal Court. The amendments completed the 1998 Rome Statute and ensured that the crime of aggression finally had the appropriate place as one of the four core crimes over which the Court may exercise jurisdiction. Practically, the early ratifying countries benefitted from of the necessary political will at the domestic level and good coordination and understanding amongst the relevant actors involved, including government departments, ministers and parliamentarians.

Unsurprisingly, the early ratifying States had few **problems in ratification**. Indeed, the Kampala amendments were seen as a catalyst to pushing outstanding issues relating to the Rome Statute,

such as domestic implementation of the Statute as a whole. In some States, domestic implementation of the amendments was a prerequisite to ratification. This process can serve to front-load problems of inter-ministerial coordination, rendering the subsequent ratification process easier.

States have chosen different paths regarding **implementation** of the amendments. Some States are obliged by their own laws to implement before ratifying. Other States do not, and indeed, some emphasized that, since the amendments cannot be activated before 2017, ratifying first was a good way to ensure that the 30 necessary ratifications are reached as soon as possible.

Indeed, there is no obligation to transpose the **definition of the crime** into domestic criminal legislation emanating from the Rome Statute or its amendments. Some of the ratifying States therefore had not incorporated the definition at all, others already had pre-existing definitions and chose not to change them (yet). Others incorporated the Kampala definition first and subsequently embarked upon ratification. States also adopted different approaches regarding the jurisdictional basis for the domestic criminalization of the crime of aggression: some applied universal jurisdiction (though with some procedural safeguards, such as an authorization requirement by the executive branch for individual investigations), whereas adopted narrower approaches.

It was further highlighted that there was an obligation to create the legal basis for **cooperation** with the Court also as pertains to the crime of aggression. This obligation emanated directly from the Rome Statute (Article 86) and applied to all States Parties to the Rome Statute, not just those that ratified the amendments.

The question was raised whether the issue **humanitarian intervention** had been the object of domestic discussions in the various ratifying States. Speakers noted no particular controversy in this regard in their respective countries, in particular since the amendments did not specifically address the issue. It was highlighted that the definition, including the threshold clause, as well as the understandings would ensure that only the most serious and manifestly illegal instances of the use of force would qualify as crimes of aggression.

In closing, speakers pointed towards existing resources to help States to ratify the amendments, such as the Handbook, many of which are collected on www.crimeofaggression.info. Speakers urged other States to ratify as early as possible and, if necessary, to leave time-consuming considerations like implementing legislation until later.