



Preventing Aggression in the African context

At the June 2010 Review Conference of the Rome Statute of the International Criminal Court, held in Kampala, Uganda, African ICC States Parties joined in the consensus adoption of amendments to the Statute on the crime of aggression. African States Parties had strongly supported the process for the adoption of these amendments over the years, and in doing so had always advocated for the highest standards of accountability for perpetrators, as well as full independence of the ICC in investigating and prosecuting them. In particular, African States Parties ultimately prevailed in rejecting proposals that the ICC should only be competent to adjudicate crimes of aggression once the Security Council has actively determined that an act of aggression by one State against another has taken place.

African States had already been advocating for the inclusion of the crime of aggression prior to and at the 1998 Rome Diplomatic Conference that adopted the Statute. They did so against the backdrop of the historic experience of multiple inter-state conflicts on the African continent, as well as the history of colonization. Criminalizing the illegal use of force by one State against another, and using the international criminal justice to deter and prosecute such offences, was only a consequent demand. The demand was not fully met in 1998, as the original Rome Statute did not yet include a definition of the crime of aggression. It was thus fitting that the breakthrough came on African soil, at the 2010 Review Conference in Kampala.¹

But the process is not over. At least 30 States Parties must now ratify the amendments for the Court to start exercising its jurisdiction over the crime. On 15 April 2013, at a meeting of African States Parties to the ICC in Gaborone, President H.E. Mr. Lieutenant General Seretse Khama Ian Khama signed the ratification instrument for Botswana – the first African country to ratify the amendments. It is expected that in the coming months and years, further African countries will take the same step.

Regional commitments to preventing aggression

The illegal use of force by one State against another has not only been outlawed by the United Nations Charter (Article 2, para. 4), but also at the regional level in Africa.

The Constitutive Act of the African Union (2001) highlights among its objectives to “defend the sovereignty, territorial integrity and independence of its Member States” (Article 3b) and lists

¹ For further details on the definition and the conditions for the exercise of jurisdiction, please consult www.crimeofaggression.info, including the Handbook available on the website.



among its principles the “prohibition of the use of force or threat to use force among Member States” (Article 4f). Members recognize that the scourge of conflicts in Africa constitutes a major impediment to the socio-economic development of the continent and therefore established a regional collective security system.

In 2004, the AU agreed upon a Solemn Declaration on a Common African Defense and Security Policy. In 2005, the AU adopted the African Union Non-Aggression Common and Defense Pact, which entered into force in 2009. The Pact contains what is so far the most elaborate political commitment of African States not to commit aggression against each other. It defines aggression on the basis of the 1974 UN General Assembly Resolution 3314 (XXIX).

The proposed African Court of Justice and Human and People’s Rights (Draft Protocol of May 2012) would empower the future court to adjudicate the crime of aggression. The definition is based on the 2010 Kampala definition of the crime of aggression, while adding further elements, such as the use of force by non-State actors.

Sub-regional commitments to preventing aggression

The actions taken by the AU were preceded and complemented by initiatives at the sub-regional level, such as the 1978 ECOWAS Protocol on Non-Aggression. SADC recognized and reaffirmed the strict respect for non-aggression in its preamble of the Protocol on Politics, Defense and Security Cooperation of 2001. The 2006 Protocol on Non-Aggression and Mutual Defense in the Great Lakes Region states that “an act of aggression shall be individually punishable as an international crime against peace as set out in the regional and international legal instruments defining such a crime.” (Article 3, para. 5)

A call for action

Given the role of African States in criminalizing aggression and developing mechanisms to hold perpetrators accountable, the Global Institute for the Prevention of Aggression appeals to all African States Parties to the Rome Statute to ratify the Kampala amendments on the crime of aggression without delay. Contributing to the activation of the amendments will help enforce the prohibition of the illegal use of force as contained in the UN Charter, and as reflected in various African legal instruments adopted at the highest level. With 34 States Parties to the International Criminal Court, Africa forms the largest regional constituency and can thus alone bring about the 30 ratifications required to activate the Court’s jurisdiction. African States Parties thus have it in their hands to fulfill the promise that was given in Kampala.

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