

For immediate release:

Media Advisory

Workshop: Universality of the Rome Statute of the International Criminal Court and the Kampala Amendments on the Crime of Aggression

Press Conference: 5 MARCH 2014 at 17.00 at the RYDGES HOTEL, AUCKLAND

- **Ambassador Christian Wenaweser**, Permanent Representative of Liechtenstein to the UN
- **Hon Judge Sang-Hyun Song**, President of the International Criminal Court

On 6–7 March 2014, representatives of Pacific States and of States from the surrounding Asian region will come together at the invitation of the Government of New Zealand to discuss the Rome Statute of the International Criminal Court and the Kampala Amendments, with a special focus on the crime of aggression. The purpose of the workshop is to advance the goal of universality of the Rome Statute by discussing reasons for ratification as well as challenges and available resources.

This workshop is supported by Liechtenstein and the Global Institute for the Prevention of Aggression and forms part of the global campaign for ratification and implementation of the Kampala amendments on the crime of aggression (see: www.crimeofaggression.info). Speakers at the workshop also include the **Hon Judith Collins MP**, Minister of Justice, New Zealand, **Tuiloma Neroni Slade**, Secretary General, Pacific Islands Forum Secretariat, as well as State representatives from the Pacific region, prominent academics, judges and representatives of civil society.

Logistical Details:

6 – 7 March 2014
Rydges Hotel
59 Federal St Cnr Kingston St,
Central City, Auckland, New Zealand

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Programme:

<http://crimeofaggression.info/events/upcoming-events/>

Background:

The International Criminal Court is a permanent, treaty-based court located in The Hague, Netherlands. It was founded in 1998 with the adoption of the Rome Statute and brings to justice those individuals most responsible for the worst crimes under international criminal law, including genocide, crimes against humanity, war crimes and the crime of aggression. 122 countries are States Parties to the Rome Statute, including 18 from the Asia-Pacific region.

At the Review Conference in Kampala, Uganda, in June 2010, States Parties adopted amendments that will allow the ICC to investigate and prosecute those most responsible for committing the crime of aggression committed by leaders of States involved in the illegal use of force against other States.

Thirty ratifications by States Parties are needed for the ICC to be able to exercise its jurisdiction. To date, 13 States have ratified the amendments. The Assembly of States Parties to the Rome Statute must also decide to activate the jurisdiction, which it may do no earlier than 2017. The ICC will then become **the first international court since the post-World War II trials at Nuremberg and Tokyo able to investigate and prosecute individuals for the crime of aggression.**



**Cour
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Court**

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The ICC at a Glance



Facade of the temporary premises
of the Court
Photo: ICC-CPI/Wim Van Cappellen

The International Criminal Court (ICC), governed by the Rome Statute, is the first permanent, treaty-based, international criminal court established to help end impunity for the perpetrators of the most serious crimes of concern to the international community. The ICC is an independent international organisation, and is not part of the United Nations system. Its seat is at The Hague in the Netherlands. Although the Court's expenses are funded primarily by States Parties to the Rome Statute, it also receives voluntary contributions from governments, international organisations, individuals, corporations and other entities.

The international community has long aspired to the creation of a permanent international court and, in the 20th century, it reached consensus on definitions of genocide, crimes against humanity and war crimes. The Nuremberg and Tokyo trials addressed war crimes, crimes against peace, and crimes against humanity committed during the Second World War. In the 1990s after the end of the Cold War, tribunals like the International Criminal Tribunal for the former Yugoslavia and for Rwanda were the result of consensus that impunity is unacceptable. However, because they were established to try crimes committed only within a specific time-frame and during a specific conflict, there was general agreement that an independent, permanent criminal court was needed. On 17 July 1998, the international community reached an historic milestone when 120 States adopted the Rome Statute, the legal basis for establishing the permanent International Criminal Court. The Rome Statute entered into force on 1 July 2002 after ratification by 60 countries.

Jurisdiction

The ICC has jurisdiction over the most serious crimes of concern to the international community as a whole,

namely genocide, crimes against humanity and war crimes, when committed after 1 July 2002. Each of these crimes is clearly defined in the Rome Statute and other relevant texts. The Court will also have jurisdiction over the crime of aggression once the conditions adopted at the Rome Statute Review Conference held at Kampala (Uganda) in 2010 are fulfilled. The Court may exercise jurisdiction over such international crimes only if they were committed on the territory of a State Party or by one of its nationals. These conditions, however, do not apply if a situation is referred to the Prosecutor by the United Nations Security Council, whose resolutions are binding on all UN member states, or if a State makes a declaration accepting the jurisdiction of the Court.

The Court is intended to complement, not to replace, national criminal justice systems. It can prosecute cases only if national justice systems do not carry out proceedings or when they claim to do so but in reality are unwilling or unable to carry out such proceedings genuinely. This fundamental principle is known as the principle of complementarity.

The Prosecutor can initiate an investigation or prosecution in three different ways:

- States Parties to the Statute of the ICC can refer situations to the Prosecutor;
- the United Nations Security Council can request the Prosecutor to launch an investigation;
- the Office of the Prosecutor may initiate investigations *proprio motu* (on its own initiative) on the basis of information received from reliable sources. In this case, the Prosecutor must seek prior authorisation from a Pre-Trial Chamber composed of three independent judges.



No immunity

Acting in an official capacity as a head of state, member of government or parliament or as an elected representative or public official in no way exempts a person from prosecution or criminal responsibility. Superiors or military commanders may be held responsible for criminal offences committed by persons under their effective command and control or effective authority and control. However, the ICC cannot prosecute persons who were under the age of 18 at the time a crime was allegedly committed.

Rights of victims and accused

Under the rules and regulations governing the ICC, victims can send information to the Prosecutor concerning crimes within the jurisdiction of the Court. For the first time in the history of international criminal justice, victims have the right to participate in proceedings and request reparations. This means that they may not only testify as witnesses, but also present their views and concerns at all stages of the proceedings. Participants may receive legal representation and, potentially, legal aid.

The Registry assists victims and witnesses to exercise their rights, assists them throughout the judicial process and, if required, takes measures for their protection. The Court may order various types of reparation for victims which may include restitution, rehabilitation and compensation.

The States Parties to the Rome Statute have established a Trust Fund for Victims and families of victims of crimes within the jurisdiction of the Court, to make possible some form of reparation even when the convicted person does not have sufficient assets to make such reparation.

Protecting the rights of the accused is essential to ensure a fair trial and effective justice. The Registry, which is responsible for defence issues, has opened a list of counsel with a view to making sure that, in accordance with the Rules of Procedure and Evidence, lawyers practising before the Court are competent and adhere to the Code of Professional Conduct for Counsel throughout proceedings. The ICC provides logistical assistance and, if necessary, financial aid to defence teams.

The Organs of the Court

The Presidency

The Presidency is comprised of the President and two Vice-Presidents. They are elected from among the 18 judges of the ICC. The Presidency is responsible for the proper administration of the Court, except for the Office of the Prosecutor. However, it coordinates with and seeks the agreement of the Prosecutor on all matters of mutual concern. The responsibilities of the Presidency also include judicial functions and external relations.

The Divisions

Eighteen judges make up the three Divisions of the Court: Pre-Trial, Trial and Appeals. Recognised for their high moral character and integrity, they are chosen from candidates from throughout the world by the Assembly of States Parties, on the basis of their competence in criminal law and procedure or relevant areas of international law, such as international humanitarian law and human rights. The judges are responsible for ensuring that the trials are fair and that justice is properly administered.

The Office of the Prosecutor (OTP)

The Office of the Prosecutor is headed by the Prosecutor, who is assisted by a Deputy Prosecutor. Both are elected by the Assembly of States Parties. The mandate of the Office is to receive and analyse referrals and communications in order to determine whether there is a reasonable basis to investigate, to conduct investigations into genocide, crimes against humanity and war crimes and to prosecute persons responsible for such crimes. The OTP is an independent organ of the Court.

The Registry

The Registry is headed by the Registrar, who is assisted by a Deputy Registrar. Its core functions are to provide administrative and operational support to the judiciary and to the Office of the Prosecutor. It also provides support for its own activities concerning defence, victims, communications and security. It helps to service the Court and to develop effective mechanisms to assist victims, witnesses and defence with a view to safeguarding their rights in accordance with the Statute and the Rules of Procedure and Evidence.

The Assembly of States Parties (ASP)

The Assembly of States Parties is the Court's management oversight and legislative body and is composed of representatives of the States which have ratified or acceded to the Rome Statute. The Assembly of States Parties has a Bureau, consisting of a President, two Vice-Presidents and 18 members elected by the Assembly for a three-year term, taking into consideration equitable geographic distribution and adequate representation of the world's principal legal systems. It has a permanent secretariat at the seat of the Court in The Hague. The Assembly of States Parties makes decisions on various issues, such as the adoption of normative texts and the budget, the election of the judges and the election of the Prosecutor and Deputy Prosecutors.

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TO THE UNITED NATIONS
NEW YORK



GLOBAL INSTITUTE FOR THE
PREVENTION OF AGGRESSION

The Crime of Aggression in the Rome Statute of the International Criminal Court

Historic development

After World War II, German and Japanese leaders were tried for “**crimes against peace**,” as the crime of aggression was known then, at the **Nuremberg and Tokyo tribunals**. Since then, no international court has had jurisdiction over this crime. The crime of aggression was included in the **Rome Statute in 1998** as one of the four core crimes, but its definition and the conditions under which the Court could exercise jurisdiction were left for later negotiation. In 2010, at the **first ICC Review Conference in Kampala**, Uganda, States Parties to the Rome Statute adopted, by consensus, provisions on the **definition the crime of aggression and the conditions for the exercise of the Court’s jurisdiction**. These amendments completed the Rome Statute. They must be ratified by at least 30 States Parties and can become operative only after 1 January 2017.

Why ratify

By ratifying the amendments on the crime of aggression, a State recommit itself to the prohibition of the illegal use of force, a key provision of the Charter of the United Nations. While certain restrictions apply, ratifying the amendments means that the State concerned benefits from the protection of the law from acts of aggression. Ratification helps deter the illegal use of force, contributes to the rule of law at the international level and demonstrates States’ support for the ICC and the fight against impunity.

When to ratify

States should ratify the amendments as soon as possible and preferably no later than 2015, in order to enable activation of the Court’s jurisdiction in early 2017. While 30 ratifications are required as a minimum for the activation, the goal is widest possible ratification of the amendments.

Definition

The **actions of the individual** are defined as the “planning, preparation, initiation or execution” of an act of aggression.

Criminal responsibility is limited to persons in leadership positions (“in a position effectively to exercise control over or to direct the political or military action of a state”).

The **(State) act of aggression** is based on the definition adopted by the UN General Assembly:¹ “the use of armed force by a State against the sovereignty, territorial integrity or political independence of

¹ Contained in United Nations General Assembly Resolution 3314 (XXIX)

another State, or in any other manner inconsistent with the Charter of the United Nations” and a list of the acts that fit this general definition.

According to the **threshold clause**, the act in question must “by its character, gravity and scale” be a “manifest violation of the Charter of the United Nations” to qualify as an act of aggression.

Triggers and Jurisdiction

The crime of aggression can be investigated based on a **State referral or the Prosecutor’s own motion (*proprio motu*)**, if the **act of aggression is committed by one State Party to the Rome Statute against another**. Should the Prosecutor wish to open an investigation concerning a crime of aggression, he or she must notify the UN Security Council, which then has six months to determine whether an act of aggression has occurred. Failing such determination, the Prosecutor can request permission to proceed from the ICC’s Pre-Trial Division.

None of the specific requirements listed above apply to situations referred to the ICC by the **Security Council**.

Activation

In order for the Court to be able to exercise its jurisdiction over the crime, two conditions must be met: the amendments must have entered into force for at least 30 States Parties. Also, the Assembly of States Parties must with a onetime two-thirds majority decision of all States Parties activate the Court’s jurisdiction. This decision can take place no earlier than 1 January 2017.

Opting out

A State Party can exempt its nationals from prosecution for the crime of aggression by lodging a declaration with the Registrar of the Court stating that it does not accept the Court’s jurisdiction over the crime. It can be lodged and withdrawn at any time. Such a declaration only applies to investigations arising from a State referral or a *proprio motu* investigation and has no effect in case of a Security Council referral.

See also

Global campaign for the ratification and implementation of the Kampala Amendments on the Crime of Aggression: www.crimeofaggression.info

Handbook on the ratification and implementation of the Kampala Amendments: <http://crimeofaggression.info/documents/1/handbook.pdf>