

SPECIAL SESSION ON THE REVIEW OF THE AMENDMENTS ON THE CRIME OF AGGRESSION

Lessons learnt from the Kampala amendments, ratification procedures and their implementation

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Statement by the following NGOs:

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We welcome the ratification by 49 States of the Kampala crime of aggression amendments, making it the most widely ratified amendment to the Rome Statute.

At the same time, we note with concern that a significant number of States still have not ratified the Kampala amendments.

We have seen that the current jurisdictional framework presents a significant barrier, or even an obstacle, to ratification for many States. The complete exclusion of any crime of aggression involving the territory or nationals of non-States Parties and the ability of States Parties to opt out of the Court's jurisdiction over the crime of aggression significantly limit the protection that ratification of the aggression amendments can provide.

The jurisdictional limitations agreed upon in Kampala—such as the opt-out mechanism and the exclusion of the nationals of, and crime committed on the territory of, non-States Parties—were compromises to reach consensus but have, in reality, created serious accountability gaps. Therefore, the future amendment should aim to remove these gaps.

Such gaps undermine the principle of equality before the law, equal access to justice for victims, while weakening the deterrent effect of the Court. Consequently, States that ratified the amendment are compelled to pursue accountability for the crime of aggression through alternative mechanisms, such as a Special Tribunal outside the Rome Statute framework.

What about the domestic level? While a number of ratifying States Parties have incorporated the crime of aggression into their national legislations, several significant obstacles remain for

a State to prosecute the crime of aggression before its national courts. These challenges arise primarily from the crime's status as a leadership crime and its complexity. A State is unable to undertake such a prosecution as to another states' high-level leaders (the "troika") due to the application of personal immunities.

The ICC is demonstrating in many different situations worldwide that it is in a position to investigate, to issue arrest warrants, and to prosecute the crimes under its jurisdiction. We expect this would equally apply to the crime of aggression in situations that fall under the Court's jurisdiction.

As a result of the stock-taking and lessons learnt from the Kampala amendments, we urge States to work together to agree on:

- an improved jurisdictional regime for the crime of aggression, in harmonization with the three other core crimes;
- to support the ICC as the single permanent international criminal tribunal;
- to encourage universal ratification of the Kampala amendments by States.