

Strategic meeting on the ratification and activation of the Kampala Amendments on the crime of aggression

Held at Princeton University on 29 and 30 June 2015

Report and Action Points

(prepared by the organizers)

I. Purpose of the meeting and background

On 29 and 30 June 2015, State Party representatives, academics and representatives of civil society, at the invitation of Liechtenstein, met at the Liechtenstein Institute on Self Determination at Princeton University for a strategic discussion on the ratification and activation of the Kampala Amendments on the crime of aggression.

The crime of aggression is one of the four core crimes of the Rome Statute. It was included in the Statute in 1998, but was left undefined. The 2010 Review Conference in Kampala, Uganda, adopted a definition of the crime of aggression by consensus and agreed on the conditions for the ICC's exercise of jurisdiction. As part of the compromise it was agreed that the Court would exercise jurisdiction over this crime only after 30 States Parties have ratified the amendments and the Assembly of States Parties has taken a one-time activation decision, no earlier than 2017.¹

II. Discussions

The strategic discussion on the Kampala Amendments began with a keynote speech by former Nuremberg Prosecutor **Benjamin Ferencz**. He issued a strong call on States Parties to ratify the Amendments and to activate them. Recalling the commitment made by States Parties to do so at Kampala, he noted that it would be inconsistent for States not to ratify and activate the Amendments

¹ For more information see the website of the Global Campaign for the Ratification and Implementation of the Kampala Amendments of the Crime of Aggression (www.crimeofaggression.info) including especially the Handbook on Ratification and Implementation (<http://crimeofaggression.info/documents/1/handbook.pdf>), which is also available on the website in French and Spanish.

now. He encouraged supplementing support for the Amendments with a broader approach that would include the use of universal jurisdiction and educating youth to end the glorification of war-making, in line with his personal motto “law, not war”.

The first session addressed the **experiences and lessons learnt from ratifiers, and the ratification campaign from now until 2017**. Ms. Barbara Kremzar, Legal Adviser of the Permanent Mission of Slovenia to the UN, shared the positive experience of her country, which was the first State to both ratify and implement the Amendments. Dr. David Donat Cattin, Secretary-General of Parliamentarians for Global Action, spoke about his organization’s work in promoting and facilitating ratifications of the Kampala Amendments, including through a network of dedicated Parliamentarians around the globe.

In the discussion, it was noted that States Parties had taken different approaches to the implementation of the Kampala Amendments. Most importantly, the Amendments themselves entail no obligation to incorporate the crime of aggression into domestic criminal codes, since they deal exclusively with the ICC’s jurisdiction over this crime. The utility of having a political champion of the Amendments within Government or Parliament was also noted. Participants were also of the view that States newly joining the Rome Statute should ratify the amended version of the Rome Statute. Irrespective of the separate decision regarding implementation, participants were of the strong view that States Parties should make every effort to ratify before 2017.

During the second session, participants considered some of the **criticisms of the Kampala Amendments**. Prof. Noah Weisbord of Florida International University and Ms. Jutta F. Bertram-Nothnagel of the Union Internationale des Avocats guided participants in a discussion of such criticisms and potential responses thereto. It was recalled that the Kampala Amendments represented a compromise, and while there might be room for interpretation on some issues, it was important not to lose sight of the big picture. Criticisms considered included that the Amendments could politicize the Court, could hamper peace talks, as well as questions related to humanitarian intervention, amnesties, national implementation and procedural questions regarding jurisdiction. Responses to these criticisms are summarized in a paper being prepared by the Global Campaign for the ratification and implementation of the Kampala Amendments. It was also recalled that most of these criticisms had already been expressed prior to the Kampala Conference and that the relevant points had been addressed in the Kampala Consensus, including in the so-called “Understandings.”

In the final session, Ambassador Christian Wenaweser, Permanent Representative of Liechtenstein to the UN, led a discussion **looking ahead to the activation decision**. Participants discussed the modalities for such a decision in 2017, for which there are several options. At the outset, it would have to be decided whether to take the decision to activate the Court’s jurisdiction at the regularly scheduled session of the Assembly of States Parties, or whether to convene the Assembly for a resumed session earlier in the year. If activation were to be undertaken at a regularly scheduled session of the Assembly, the decision could take place through a stand-alone resolution, which could be very short or more elaborate, or through the inclusion of a paragraph in the omnibus resolution. It was noted that the activation of the amendments was part of the consensual decision adopted at Kampala, which led to the conclusion that activation was merely a procedural step. It was considered desirable to continue a

discussion among supportive States Parties on these and related questions. In order to ensure activation in 2017, it would also be important to increase the awareness of this topic, as well as to promote the understanding of the substance of the Kampala Consensus, among States Parties. Participants also stressed the link between activation and ratification, as an activation decision would become politically easier the more States Parties had ratified the Amendments at that point.

III. Action Points

On the basis of the discussions, the following actions are suggested for States Parties and civil society.

Promoting Ratification of the Amendments

States Parties and civil society are encouraged to:

- Support the Amendments by ratifying them. There is no reason to wait until the activation in 2017 to ratify. Indeed, ratifying soon helps to contribute to a timely activation. Consider receiving technical assistance from the Global Campaign.
- Send information on progress made towards ratification and implementation to the Global Campaign for inclusion in its Status Report.²
- Promote ratification of the Kampala Amendments both among ICC States Parties and among States that are currently working on ratifying the Rome Statute. To that end, integrate advocacy for the crime of aggression into talking points for bilateral meetings at the ministerial and other levels. Coordinate outreach efforts at occasions such as the General Debate of the UN General Assembly.
- Discuss the ratification and implementation of the Kampala Amendments in meetings of regional organizations. Support the elaboration of clear and positive positions on the Amendments by such regional organizations.
- Continue to explain the content of the Amendments and the accompanying documents, including especially the Understandings. Counter common misconceptions such as the notion that there will be a Review Conference in 2017 (no such Conference is foreseen), that the Kampala Amendments are to be reviewed in 2017 (a review is foreseen seven years after their activation in 2017), or that it is only possible to ratify the Amendments after 2017 (there is no reason to wait for activation in order to ratify).

² For the current status of ratification and implementation of the Amendments, see the “Status Report”:
<http://crimeofaggression.info/the-role-of-states/status-of-ratification-and-implementation/>.

Responding to negative messaging

States Parties and civil society are encouraged to:

- Be prepared to respond to criticisms by drawing on available materials produced by the Global Campaign and coordinating with like-minded States Parties, civil society and academic experts. While engaging with critics on substantive questions, it is important to emphasize that the Amendments are not open for renegotiation.
- Recall that many of the criticisms were raised at or before the Kampala Review Conference, and were taken into account during negotiations, resulting in products such as the Understandings.
- While engaging in advocacy, recall the progress in international law reflected in the Kampala Amendments: they are designed to implement one of the key provisions of the post-World War II international order as enshrined in the UN Charter: the prohibition of the illegal use of force, and thereby to contribute to world peace. The Amendments follow logically from the Nuremberg and Tokyo tribunals via the consensus definition of the aggression adopted by the UN General Assembly in 1974.
- Complement governmental engagement with public advocacy for the Kampala Amendments, working together with civil society and media to emphasize the contribution these Amendments will make to world peace and a just international order.

Ensuring the timely Activation of the Court's jurisdiction

States Parties and civil society are encouraged to:

- Recall the commitment contained in Resolution ICC-ASP/RC/Res.6 of the Kampala Review Conference to activate the Court's jurisdiction over the crime of aggression in 2017. Engage in political-level advocacy to ensure timely activation.
- Restate the expectation that the Court's jurisdiction be activated in 2017 in statements at the Assembly of States Parties, the annual General Assembly debate on the International Criminal Court and other appropriate occasions.
- Continue coordinating in preparation for activation in 2017, including through consultations among supportive States Parties to find an agreement on the most desirable modalities for the activation decision. Reach out to other States Parties to raise awareness of the decision to be taken in 2017 and to seek their views on the subject.