

## The Crime of Aggression and the ICC

The International Criminal Court (ICC) can try criminals that commit genocide, war crimes, and crimes against humanity. However, in an exciting new development, the ICC may soon be able to try individuals who have committed the crime of aggression - the act of one state waging illegal war against another. This came from a recent history-making decision on prosecuting leaders who wage illegal wars.

### Why is Aggression Important Now?

When a state uses force against another state outside of the authorization of the United Nations Security Council, it is an act of aggression. The crime of aggression has been included in the guidelines that govern the ICC since 1998. Despite the crime appearing in the statute of the ICC, the Court hasn't been able to try leaders who wage an aggressive war because countries that belong to the Court first must agree to a definition of the crime and lay out exactly how it would work. Unfortunately they were not able to come to an agreement in Rome in 1998, when the statute was drafted.

### What about the United States?

Historically the U.S. has been a global leader on the crime of aggression. The U.S. helped to establish the Nuremberg Tribunal after World War II, which brought Nazis to justice for their decision to engage in an illegal war and the terrible crimes committed in the Holocaust. In 1974 the U.S. took the decision, as part of the United Nations, to ban the planning or execution of an unlawful war.

Last month States, members of the ICC, and non-members like the U.S. joined together in Kampala, Uganda to look at the way the Court has been operating and to make changes to the ICC statute. At this meeting the U.S. continued its global leadership on this issue by providing a positive influence at the Review Conference. Through U.S. involvement, states were able to understand better and come to a common agreement on the definition of the crime of aggression and how it could be prosecuted. The Obama Administration's decision to attend and participate constructively proves that engagement with the global community works. This was a reversal of the policy of hostility by the Bush Administration, which ignored the Court during eight critical years of decision-making.

### Let's Talk About Kampala

**Defining the Crime of Aggression:** the planning, preparation and implementation of an act of aggression, by the head of state or military, which clearly violates the UN Charter. The act itself must be very serious, in its character, gravity, and scale, for it to rise to the level of consideration by the ICC. The act must also involve the use of force by one State against the sovereign, territorial, and political independence of another State. And this definition isn't actually "new." Coincidentally, this is the same definition that the U.S. and the UN agreed to back in 1974!

In practice, an investigation could be started by the UN Security Council (which the U.S. is a part of), the ICC Prosecutor, or a country that is a part of the ICC. This part isn't new either – it's the same way that a case on genocide, crimes against humanity or war crimes is started.

Here is what is new in the process:

1. The ICC Prosecutor must wait 6 months before s/he can act on an alleged act of aggression in order to give the UN Security Council time to assess whether or not it wants to look at the situation and take action.
2. If the UN Security Council doesn't act within the 6 months time period, the ICC Prosecutor may go ahead with the case. However, once the Prosecutor acts, if the UN Security Council has any additional concerns, it can delay the case from moving forward for one year. The hold can be renewed annually.

Citizens for Global Solutions was represented in Kampala, and with the support of our members, was able to influence the positive outcome of the conference. As an organization, we strongly believe in the importance of the prosecution of aggression, and we are long-time supporters of the ICC and its future success. We are pleased to see our hard work result in a decision that respects the wishes of both State Parties and victims of war, through allowing both the UN Security Council and the International Criminal Court to be involved in stopping acts of illegal aggression once and for all.

### Will this affect me as an American?

The crime of aggression will not apply to non-state parties like the U.S. Even in the case where a citizen of a non-state party wages aggression on the territory of a state party, the ICC will not be able to step in. That means that the ability for the U.S. to engage in coalition forces, humanitarian intervention, and deploy U.S. military personnel will not be curbed in any way. The only way the ICC would step into this situation is under the direction of the UN Security Council, where the U.S. has veto authority. While Citizens for Global Solutions hopes that one day the crime of aggression will apply to all nations, currently if States that have ratified the ICC Statute are unhappy with the provisions regarding aggression, they can easily “opt-out” of it without withdrawing from the court. Similarly, if and when the U.S. joins the court, it can decide to opt out of the crime of aggression.

### So What Happens Now?

When it came to the timing of when the ICC could start prosecuting the crime of aggression, the U.S. and other permanent members of the U.N. Security Council [United Kingdom, France, China and Russia], worked very hard in Kampala to postpone the decision. In no less than 7 years the States will meet together to discuss the act of aggression again and have, in essence, a Kampala II. Only if a positive decision is made at the next Conference would the International Criminal Court be allowed to prosecute and convict heads of state who commit acts of aggression. As a result, the ICC will not be able to investigate the illegal act of aggression for at least seven more years. Seven plus years is a long time, too long, to wait for justice for the victims of a war of aggression, and puts humanity further away from the goal of achieving peace.