



## Policy Regarding the Crime of Aggression

**Citizens for Global Solutions** (CGS) is a membership-based organization that envisions a future in which nations work together to abolish war, protect our rights and freedoms, and solve the problems facing humanity that no nation can solve alone.

CGS believes that an important step toward preventing war is to end impunity for the world's most egregious crimes. Since the mid 1980s, CGS has supported the creation of the International Criminal Court, a court of last resort for prosecuting individuals accused of committing crimes of genocide, crimes against humanity and war crimes.

The "**crime of aggression**" was included in the Rome Statute of the ICC. However, the Court cannot prosecute aggression until the ICC's governing body, the Assembly of States Parties (ASP), amends the Statute to define the crime and to set out the conditions for the Court's exercise of jurisdiction. Without such an amendment the world will remain without a permanent international court for holding individuals accountable for aggression.

CGS believes that ultimately the Rome Statute should be amended to allow for the effective prosecution of the crime of aggression. This would be a critical step in the promotion of peace through the rule of law. Extending the ICC's reach to include the crime of aggression will deter States from waging unlawful war and will bring to justice those high level officials who lead such conduct.

CGS supports State Parties amending the Rome Statute to reflect the *definition of the crime* proposed by the Special Working Group of the Crime of Aggression (SWGCA), as it is a statement of customary international law.<sup>1</sup>

We believe that this definition will:

- Limit ICC prosecutions to only the most senior level-officials, those who mastermind, plan, or organize the crime, such as individuals in senior military or state leadership positions and not low-level perpetrators.
- Require that the accused have culpability in that the accused must have been aware that he or she was in a position effectively to exercise control over or to direct the political or military action of the State that committed the act of aggression.
- Guide the Court to consideration of only the most serious and clear-cut cases of abuses.
- Not serve to prohibit humanitarian intervention or State responsibility to protect civilians [Genuine humanitarian intervention would not violate the territorial integrity or political

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<sup>1</sup> The SWGCA definition, developed by states parties and observer states over many years, is that the "crime of aggression" means "[T]he planning, preparation, initiation or execution, by a person in a position effectively to exercise control over or to direct the political or military action of a State, of an act of aggression which, by its character, gravity and scale, constitutes a manifest violation of the Charter of the United Nations."

independence of a state, and the requisite special intent of the crime of aggression would not be present].

Regarding the **jurisdiction** of the ICC, CGS believes that the Rome Statute should ultimately reflect the natural division between the political determination of an ***act of aggression*** committed by a state against another state, and the judicial determination of the ***crime of aggression*** committed by an individual or limited group of individuals.<sup>2</sup>

CGS recognizes that the UN Security Council has an important role in determining whether acts of aggression have occurred between states, based on the specific responsibilities entrusted to it by the UN Charter, Resolution 3314 of the UN General Assembly and recently as reflected in the SWGCA draft definition of the crime of aggression.

The appropriate body to determine individual criminal responsibility for the crime of aggression is the ICC. For such a determination, the Court is well-placed to look at the most serious and apparent or “manifest” cases of violations and determine whether the requisite subjective and objective elements of the crime have been met.

While the UN Charter grants the Security Council the ‘primary’ authority over determination of acts of aggression, it does not assert an ‘exclusive’ authority over aggression. Therefore, CGS does not support a proposal where the Prosecutor can *only* proceed with the investigation of the *crime of aggression* when there has been a pre-determination of an *act of aggression* by the UN Security Council. Such a measure would seriously undermine the independence of the Court.

CGS also believes in upholding the independence of the office of the Prosecutor. Therefore, we support applying the current *proprio motu* mechanism to investigate the crime of aggression, whereby the Prosecutor can conclude “by his or her own volition” that there is a reasonable basis to proceed with an investigation. As with the other crimes in the Rome Statute, this investigation should be subject to authorization by the Pre-Trial Chamber of the ICC.

In conclusion, although the United States is not a party to the Rome Statute, CGS is pleased that the U.S. has overcome its initial reluctance and is increasingly cooperative with the Court. We believe that the next critical step is for the U.S. to reinstate its signature of the Rome Statute, which would demonstrate to States Parties its commitment to the ICC and mark the start of a new U.S. relationship with the Court.

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<sup>2</sup> According to the Special Working Group on the Crime of Aggression an “act of aggression” is defined as “[T]he use of armed force by a State against the sovereignty, territorial integrity or political independence of another State, or in any manner inconsistent with the Charter of the United Nations.”