



REGISTRAR
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DECLARATION OF NON ACCEPTANCE OF JURISDICTION OF THE INTERNATIONAL CRIMINAL COURT PERTAINING TO THE CRIME OF AGGRESSION PURSUANT TO PARAGRAPH 4 OF ARTICLE 15 *bis* OF THE ROME STATUTE

The Republic of Kenya has examined the amendments to the Rome Statute in relation to the Crime of Aggression adopted by the Assembly of State Parties during the Kampala Review Conference on 31st May to 11th June 2010.

The Republic of Kenya points out that the definition and context of the crime of Aggression and consent thereof is ambiguous and hence poses a huge risk of misuse by Parties. In particular, the Republic of Kenya strongly demurs the provisions of paragraph 2(f) of article 8 *bis* whose effect will constrain states' right to request intervention of neighboring states in order to restore peace and security within its territory.

The Republic of Kenya constitutes, in fact, a Declaration of Non Acceptance of exercise of jurisdiction by International Criminal Court over the Crime of Aggression pursuant to paragraph 4 of Article 15 *bis* of the Rome Statute, since it does not consider itself bound by any provisions of Article 8 *bis* of the Rome Statute which is incompatible with the Constitution of the Republic of Kenya.

The Republic of Kenya defers to the definition of aggression in the *United Nation General Assembly Resolution 3314 (XXIX) of 14th December, 1974* which makes a distinction between "aggression" and "war of aggression" which is "a crime against international peace". In accordance with the provisions of Paragraph 3 of Resolution 3314, acts such as armed invasions or attacks, bombardments, blockades, armed violations of territory, permitting other states to use one's own territory to perpetrate acts of aggression and the employment of armed irregulars or mercenaries to carry out acts of aggression constitute aggression. Furthermore, Article 2 states that the first use of force in contravention of the UN Charter will be prima facie evidence of aggression, but the Security Council has the authority to determine that given the circumstances aggression has not taken place. The



definition's distinction between an act of aggression and a war of aggression make it clear that not every act of aggression would constitute a crime against peace; only war of aggression does. States would nonetheless be held responsible for acts of aggression.

The Republic of Kenya, therefore conveys its Declaration of Non Acceptance of the exercise of the jurisdiction by the International Criminal Court in relation to the Crime of Aggression, as defined in Article 8*bis* of the Rome Statute, and pursuant to Article 15*bis*, read together with Article 12 of the Rome Statute, since such matters are squarely within the ambit of the United Nations' Security Council.

A handwritten signature in black ink, appearing to read 'Amina C. Mohamed', written over a horizontal dotted line.

AMB. (DR.) AMINA C. MOHAMED, CBS, CAV

CABINET SECRETARY FOR FOREIGN AFFAIRS AND INTERNATIONAL TRADE

THE REGISTRAR
INTERNATIONAL CRIMINAL COURT
THE HAGUE, THE NETHERLANDS