STATEMENT

BY

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ON BEHALF OF THE
AFRICAN STATES PARTIES TO THE INTERNATIONAL CRIMINAL COURT (ICC)

AT THE REVIEW CONFERENCE OF THE ROME STATUTE OF THE ICC

KAMPALA, UGANDA
31ST MAY – 14TH JUNE 2010

Mr. President,

I have the honour to speak on behalf the African States Parties to the Rome Statute and I thank you for giving us the opportunity to address this assembly.

It is, indeed, appropriate that the first Review Conference is held here in Uganda on African soil. As you know African states account for 33 of the 111 States Parties to the Rome Statute. Moreover, African situations account for all the cases before the Court. It is our hope therefore, that African aspirations for a stronger ICC at this Review Conference will be realised.

The adoption of the Rome Statute in 1998 marked a key moment in history, when the world declared intolerance to international crimes and the intention to combat impunity for such crimes. While Rome was a key step in the development of an international system to combat impunity, it was only that: a moment. The Rome Statute itself foresees the further development, the idea that Rome was not the end, and this foresight is reflected in the call for a Review Conference to consider, amongst other things, possible amendments to the Rome Statute and the fulfillment of the promise made in Article 5(2) for the operationalisation of the crime of aggression. Thus, Kampala should be seen as a continuation of the legacy of Rome as we, continue to strive for a more humane world in which we do not commit heinous crimes against one another and which imposes severe sentences for those who do breach the minimum standards of treatment that we have set for ourselves.

Mr. President,

On the agenda for the Review Conference are a number of important items, including Stocktaking, Article 124 (the transitional provision), the proposed Article 8 amendment as well as the proposal on prison facilities. Important as all these agenda items are, there is no question that the operationalisation of the crime of aggression is of utmost importance.

In 1998, when the Rome Statute was adopted, the International Criminal Court was granted jurisdiction over three crimes: war crimes, crimes against humanity, genocide and the crime of aggression. As is now well know, under Article 5(2) while the Court has jurisdiction, it may not exercise such jurisdiction until such a time as a definition for the crime of aggression as well as the conditions for the exercise of such jurisdiction have been adopted. Accordingly, Article 5(2) is a promise to the international community that the ICC would, in the future, be able to exercise jurisdiction over the crime of aggression. We believe that the time is opportune for the ICC to assume its mandate over this issue as well.

Mr. President,

The Assembly of States Parties, and particularly the Special Working Group on the Crime of Aggression, worked diligently trying to fulfill the promise in Article 5(2). After many rounds of negotiations, States Parties have reached consensus on the substantive definition of aggression as contained in Article 8*bis*. Nonetheless, there are two outstanding issues, namely the question of filter mechanism(s) and the question of the consent of the aggressor. While these two questions are yet to be resolved, we are of the firm belief that the differences between the delegations are not insurmountable and that there is sufficient will at this Review Conference to overcome them. We are of the firm view that during this Review Conference, our efforts should be aimed at bridging the differences of views between States Parties on the outstanding issues and not to revisit issues on which there is already consensus. We should put our time and

resources to gainful use by avoiding any discussion about whether the time is ripe for the adoption of the crime of aggression by this Review Conference. Our discussions in the Special Working Group as well as the level of consensus on the definition of the crime of aggression and the near consensus among the States Parties on the conditions necessary for the exercise of jurisdiction convince us that time is indeed ripe for the adoption of the crime of aggression.

The position of the African States Parties on the two outstanding issues is well known and is based on well established principles. The first principle, applicable particularly to the question of filters, is the importance of the principle of the independence of the judiciary and that the International Criminal Court should not be subject to political considerations. The second, and this applies in particular to whether the aggressor state should have consented to the Court's exercise of jurisdiction over the crime of aggression. We believe that the crime of aggression ought to be treated in the same way as all the other crimes. It was for this reason that during the roll call at the resumed session in March, African States individually expressed the support for combination four in the chairman's illustrative chart.

On the question of filters, the position of African States is that there should be no external filter. We are particularly not convinced that the Court's jurisdiction over the crime of aggression should be subject to the Security Council's approval. Some have suggested the Council's prior approval for the exercise of jurisdiction is a necessary consequence of the provisions of the Charter – some going so far as to argue that the Council has "exclusive responsibility" of determining the existence of the crime of aggression. This, Mr. President, is consistent neither with a literal or purposive interpretation of the Charter which, while granting the Council the "primary responsibility", does not exclude the role of other organs of the UN or the ICC from making determinations on the crime of aggression. It is appropriate at this stage to also emphasize that the Statute already contains a filter mechanism in the form of the Pre-Trial Chamber.

We have also been told that to avoid political prosecutions, it is important that the alleged aggressor state should have consented to the Court's exercise of jurisdiction over the crime of aggression. The truth is that all the crimes in the Statute are capable of being politicized. It is for this reason that the Statute has put in place internal mechanisms, including the Pre-Trial Chamber, to ensure that the judicial appropriateness of any investigation.

It has also been said that we should not proceed to adopt the definition because of a lack of consensus. Yet it is clear that the overwhelming majority of states are ready to adopt a definition. During the Resumed 8th Session of the ASP the overwhelming majority of states parties expressed their support for combinations three and four. We are convinced that the adherents of these two combinations can work towards a consensus position.

Mr President,

We are also confident that our deliberations on the four stocktaking topics, cooperation, victims, complementarity and peace and justice will be positive and constructive.

I thank you.