



# KENNEDY GRAHAM MP



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**The Norwegian Nobel Committee**  
**Henrik Ibsens gate 51**  
**0255 Oslo, Norway**  
Via: [postmaster@nobel.no](mailto:postmaster@nobel.no)

Your Excellencies,

Through this letter I submit, for the consideration of the Norwegian Nobel Committee, the nomination for the Nobel Peace Prize (2013) of *Mr Benjamin Ferencz* and of the *Review Conference of the Rome Statute of the International Criminal Court, held in Kampala, Uganda on May-June 2010* for their contribution to peace in the world. Their specific contribution concerns the adoption of the Amendments to the Rome Statute which will allow the prosecution of the crime of aggression at the International Criminal Court.

As you may know, on 17 July 1998, the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court met in Rome to adopt the Statute, which upon its entry into force on 1 July 2002, established the first permanent and independent International Criminal Court (ICC). The establishment of the ICC has been described by former UN Secretary General Kofi Annan as "a gift of hope to future generations and a giant step forward in the march towards universal human rights and the rule of law"

For almost 200 years, leaders and concerned citizens have relentlessly advocated for a judicial and independent mechanism that could, through its repressive powers, prevent heinous behaviour of individuals affecting the consciousness of humanity.

- In 1818, at the Peace Congress of Aix-la-Chapelle, the Russian Government proposed the creation of a permanent organ with criminal and civil jurisdiction over persons engaged in the slave-trade.
- In 1872, Gustave Moynier, then president of the International Committee for the Red Cross, realised that the prosecution of individuals for ordering breaches of the 1864 *Geneva Convention* would ensure the effectiveness of this Convention and safeguard the conduct of armed conflict, therefore promoted a permanent jurisdictional mechanism for such a purpose.
- In 1919, the Paris Peace Conference, setting the peace terms for the defeated Central Powers, recommended the creation of a high tribunal to prosecute the supreme offence against international morality and the sanctity of treaties that brought about the horrific First World War.
- Following this trend to monitor the observance of peace, numerous organisations between 1920 and 1928 highlighted the need for the League of Nations to establish an organ with individual jurisdiction over individuals for offences against the universal law of nations. In particular, in 1925, the Inter-Parliamentary Union was concerned with deterring orders that threatened or used force against nations.

None of these efforts, however, bore fruit. The international polity of those times proved unwilling to renounce entirely the use of force, leaving citizens around the world to wonder how many lives might have been saved if these initiatives had succeeded?

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A further horrific episode of war was required before the international community would articulate, through the International Military Tribunals in Nuremberg and Tokyo, the concerns of the proposals of more than a century. This realisation is crystallised in the principle of individual responsibility at the international level for the most serious crimes, whose rationale is explained in the words of the Nuremberg Prosecutor, Justice Jackson:

*"Crimes against international law are committed by men, not by abstract entities, and only by punishing individuals who commit such crimes can the provisions of international law be enforced."*

Despite the forceful affirmation of this principle and of the contribution that the IMTs and the domestic trials for atrocities brought to avoid the condemnation of entire nations, the world failed again. The United Nations had been established without recourse to individual criminal accountability, despite the earlier proposals.

Yet efforts towards an effective deterrent instrument did not cease. The indignation generated by the human-created tragedies in the former Yugoslavia and in Rwanda, which led to the establishment of ad hoc tribunals, created a momentum that was seized by a like-minded group of states and individuals to consolidate finally the establishment of the first permanent international court.

This establishment is in itself a landmark in the history of humanity, and the contributions that the ICC is starting to make to uphold the rights of millions of victims of the most serious crimes, and to prevent the commissions of these atrocities is not insignificant. But as solid as the legal framework of the ICC is, its jurisdiction was left incomplete when the Statute was adopted in 1998. The Diplomatic Conference agreed that the ICC would have jurisdiction over only the most serious international crimes, and Article 5 reflects such decision referring to genocide, crimes against humanity, war crimes and the crime of aggression. But the negotiators could not overcome the profound political obstacles to make operative (through an agreed legal definition and procedure) the Statute's jurisdiction over the crime of aggression.

It has been indeed a paradox that, while the international consensus to punish 'the supreme offence' drove the efforts to create an ICC, the Court upon establishment was left incapable of assuming its supreme responsibility.

Since 2002, specific nations and individuals have continued the call to complete the unfinished task of Rome. In particular, Mr Benjamin Ferencz (born 11 March 1920; former Chief Prosecutor of the *Einsatzgruppen* Case, Nuremberg Military Tribunal) has worked tirelessly and effectively with state officials and civil society for completion of the task.

His efforts finally bore fruit when for the 1<sup>st</sup> Review of the Rome Statute, on 11 June 2010, the States Parties to the Rome Statute meeting in Kampala, Uganda, adopted by consensus Resolution 6, thereby including a definition of the crime of aggression and determining the provisions on the conditions for the exercise of jurisdiction over this crime.

The work and vision of Benjamin Ferencz, and the decision of the Kampala Review Conference merits, in our view, your Excellencies, the recognition of a Nobel for Peace.

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Contrary to the anti-impunity environment prevailing at the time of the adoption of the Rome Statute, the negotiations that led to the outcome in Kampala did not benefit from an easy political climate. Yet Mr Ferencz's active participation in these negotiations, as contemporary witness of the atrocities committed during WWII at the Kampala Review Conference, helped to keep the spirit up of those committed to end the use of force against nations. He has spoken and written against the glorification of war to leaders of governments worldwide, and ensured that the voices of those soldiers and civilians who suffer from political decisions to engage in war were heard. As a participant at the Kampala Conference, I can attest that his gracious, humorous and unassuming yet forceful message was an inspiration to all present.

The ICC will not have jurisdiction over this crime until 30 ratifications to the amendment are achieved, and the Assembly of States Parties of the ICC votes for the activation. The calendar is set for this decision to take place in 2017. To date, 4 states, all small nations from all over the world that shield themselves in the rule of law, have ratified the amendment on the crime of aggression. Those states are Liechtenstein, Samoa, Trinidad and Tobago and Luxembourg.

The outcome of the Kampala Review Conference is of great symbolic, political and practical significance. It enshrines the call of humanity to reaffirm the fundamental tenet of the UN Charter: the unauthorised use of force in international relations is illegal, and individuals who drive their nations into war will be punished.

The Kampala decision appeals not only to historic justice of the circumstances and decisions that led Europe into World War II. It also speaks to the atrocities being suffered today, before our eyes, due to on-going inter-state conflict, such as that between Rwanda and the DRC, Liberia and Sierra Leone and Côte d'Ivoire, which has brought misery and affected the lives and development of vulnerable populations.

At the same time this consensus overcame a fundamental deadlock in international relations, namely the role of the Security Council in the regulation of the use of force. The Kampala Amendment on the Crime of Aggression affirms the centrality of the decisions of the Council to determine the legality of the use of force, but it does not allow the Council to infringe upon the judicial independence of the ICC and thus of the right to fair trial for individuals who may find themselves brought before the Court.

Finally, with the activation of the Kampala Amendment, in practical and concrete terms, the world will have its very first operative tool to avoid international confrontation, and hopefully save lives.

In December, a group of 300 members of parliament from more than 130 nations, meeting in the Italian Chamber of Deputies in celebration of the 10<sup>th</sup> Anniversary of the ICC in its birth city, Rome, adopted the Plan of Action to guide our work over the next years. This Plan of Action ([http://www.pgaction.org/pdf/activity/Rome\\_Plan\\_of\\_Action\\_ENG\\_Final.pdf](http://www.pgaction.org/pdf/activity/Rome_Plan_of_Action_ENG_Final.pdf)) includes the recognition of the merit of the Kampala decision to receive the Nobel Peace Prize.

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This is because we are convinced, your Excellencies, that the breakthrough of the Kampala decision, taken at the Kampala Review Conference, is the most important historic and legal development of our times since the creation of the United Nations.

Awarding the Nobel Prize to Benjamin Ferencz and the 2010 Kampala Review Conference would have a significant impact in supporting the Amendment's entry-into-force. It would also reward the efforts of individuals and states to uphold the prohibition of unauthorised use of armed force. Most importantly, the awarding of the Nobel Peace Prize to Mr Ferencz and to the Conference would raise awareness among states and inform them of the importance of ratification of the Amendment and the need to ensure effective mechanisms to prevent the crime of aggression.

The Kampala decision, the efforts that brought it about, and its legacy are the ultimate expression of Alfred Nobel's wish to foster "*fraternity between nations, for the abolition or reduction of standing armies and for the holding and promotion of peace congresses*". I attach three scholarly articles on the subject of the Kampala decision. To quote Prof Claus Kress, a leading authority on the subject: "*The word 'historic' suffers from exaggerated use, but the adoption of the package proposal on the crime of aggression by the First Review Conference on the Rome Statute, on 11 June 2010 in Kampala, deserves that label*".

We hope, your Excellencies, that you will consider recognising the victims of the failed past efforts of humanity with this Prize, signalling the hope that this diplomatic decision carries for the future.

Yours sincerely,

Dr Kennedy Graham, MP  
New Zealand

**Postscript:**

The following other NZ citizens who are eligible to nominate, and who support this nomination are:

Rt. Hon. James Bolger, Rector, University of Waikato (former Prime Minister of New Zealand)

Rt. Hon. Sir Geoffrey Palmer, Distinguished Fellow, School of Law, Victoria University (former Prime Minister of New Zealand)

Prof Roger Clark, Rutgers Law School, Camden, New Jersey, USA

Prof Neil Boister, Faculty of Law, University of Waikato

Prof Kevin Clements, Director, NZ Centre for Peace & Conflict Studies, University of Otago

Assoc. Prof Chris Gallavin, Dean of Law School, Canterbury University

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Each of the above is sending a similar letter on their own letterheads. Sir Geoffrey will send his letter within a few days, but has authorised me to include his name in this letter.

cc. Rt. Hon. James Bolger  
Rt. Hon. Sir Geoffrey Palmer  
Prof Roger Clark  
Prof Neil Boister  
Prof Kevin Clements  
Assoc. Prof Chris Gallavin

**Supporting Articles:**

*A Historic Breakthrough on the Crime of Aggression*, Stefan Barriga & Leena Grover, American Journal of International Law, July 2011, 517-33.

*Amendments to the Rome Statute of the ICC Considered at the first Review Conference on the Court, Kampala, 31 May-11 June 2010*, Roger Clark, Goettingen Journal of International Law (2010) 2, 689-711.

*The Kampala Compromise on the Crime of Aggression*, Claus Kress & Leonie von Holtendorff, Journal of International Criminal Justice 8 (2010), 1179-1217.

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