

ONE STEP FORWARD, TWO STEPS BACK: HARMONIZING THE ICC'S JURISDICTION OVER THE CRIME OF AGGRESSION

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Abstract

The Israeli-Palestinian conflict, Russia's invasion of Ukraine, and ongoing military conflicts worldwide have become major concerns in today's international affairs. These events underscore the pressing need for robust global mechanisms to hold those responsible for acts of aggression accountable. Currently, the International Criminal Court (ICC) faces significant hurdles in prosecuting the crime of aggression. Unless the matter is referred by the UN Security Council—a rarely used and highly politicized process—the Court has no jurisdiction over cases involving non-States Parties, whether they are aggressors or victims. States Parties may also choose not to grant the Court jurisdiction over the crime of aggression (CoA). Compared to the ICC's jurisdiction over the other three core crimes, which are not limited by the same legal constraints, this situation is quite different. From July 7 to July 9, 2025, the Assembly of States Parties (ASP) held a special meeting at the UN in New York to address this urgent issue. The goal of this meeting was to align the ICC's jurisdiction over the CoA with its authority over the other three core crimes. This paper examines the outcomes of this significant meeting and its potential impact on the future of the ICC.

Keywords:

International Criminal Court, Core Crimes, Crime of Aggression, Jurisdiction, Rome Statute, All State Parties.

Introduction

Before the Kampala Conference, the Rome Statute, adopted on July 17, 1998, did not provide a specific definition for the Crime of Aggression (CoA), restricting the International Criminal Court's (ICC) jurisdiction concerning this Crime.¹ Because, at the Diplomatic Conference, all State Parties (ASP) could not agree on a definition for the Crime of aggression, resulting in its deferral until later.² The ASP at the Review Conference of the Rome Statute achieved a consensus regarding the meaning of aggression and the conditions necessary for the Court to have jurisdiction over the Crime during the meeting held in Kampala, Uganda, from May 31 to June 11, 2010.³ Once the threshold of 30 ratifications for the Kampala amendments was reached, as stipulated by the Assembly of States Parties on December 14, 2017, the jurisdiction of the Court over aggression was activated, effective July 17, 2018.⁴

The global community faces significant challenges in addressing and prosecuting acts of aggression in modern conflicts. Recent events, including the Gaza conflict and Russia's invasion of Ukraine, have revealed the limitations of current systems in holding perpetrators accountable. The ICC was created to handle serious international crimes, but it has notable restrictions when dealing with cases related to the crime of aggression. These restrictions include limited

¹ Sean D. Murphy, "The Crime of Aggression at the ICC", *Oxford Handbook on the Use of Force*, (Oxford: Oxford University Press, 2013), 1-46, available at, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2083091, February 8, 2020).

² See ICC Assembly of States Parties (ASP), Resolution RC/Res.6: The Crime of Aggression (2010), Annex I.

³ Murphy, "The Crime of Aggression at the ICC", 1-46.

⁴ ASP, Resolution ICC-ASP/16/Res.5: Activation of the Jurisdiction of the Court over the Crime of Aggression (2017), para.1.

jurisdiction, particularly regarding non-States Parties, and the option for States Parties to opt out of the Court's jurisdiction over this specific crime, which complicates efforts. The ICC has broader authority over offenses like genocide, crimes against humanity, and war crimes, which differ from its jurisdiction over the crime of aggression. Recognizing the urgent need to fill this jurisdictional gap, a special session of ASP was convened in 2025 to explore ways to align the ICC's authority over aggression with its existing powers. This session represented a significant advancement in international criminal law, focusing on bridging the gap between the ICC's jurisdiction over aggression and other crimes. It brought together States Parties to seek innovative legal and diplomatic solutions to overcome jurisdictional barriers that limit the Court's ability to prosecute acts of aggression effectively. The outcomes of this meeting could have lasting effects on international criminal justice and may reshape the global legal landscape concerning state-sponsored acts of aggression.

This paper examines the impact of a crucial meeting on international criminal justice. Analyzing the session's deliberations, choices, and compromises sheds light on the ICC's efforts to prevent and prosecute serious crimes under international law.

History of the Crime of Aggression

Aggression is defined as “the 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.”⁵ Aggression is a concept that has been present in international Law for a long time.⁶ Aggression is when a state launches a war or creates a condition that may lead the victim state to commence war.⁷ After World War II, hostility was first recognised as an international crime in 1945.⁸ The aftermath of World War I influenced international and national legal systems to criminalise aggression.⁹

Before the early 20th century, states might have used war as a political instrument under International Law.¹⁰ The League of Nations Covenant, established in 1919, marked a significant change. League member states defended the territorial integrity and political independence of all League members from external invasion.¹¹ In 1928, the Kellogg-Briand Pact largely abandoned war as a national policy tool.¹² The following significant events after 1945 can be linked to the crime of aggression: Following World War II, violations of a country's political independence or territorial integrity are prohibited by Article 2(4) of the UN Charter.¹³ These restrictions solely

⁵ Rome Statute of the International Criminal Court (July 17, 1998). *United Nations Treaty Collection*, https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-10&chapter=18&lang=en.

⁶ Matthew Gillett, “the Anatomy of an International Crime: Aggression at the International Criminal Court”, available at, <http://dx.doi.org/10.2139/ssrn.2209687> ((February 27, 2020) 1-30.

⁷ *ibid*

⁸ Florian Jeßberger, “The Modern Doctrinal Debate on the Crime of Aggression,” Chapter. In *The Crime of Aggression: A Commentary*, edited by Claus Kreß and Stefan Barriga (Cambridge University Press, 2016), 287-306.

⁹ *Ibid*.

¹⁰ Sergey Sayapin, *the Crime of Aggression in International Criminal Law: Historical Development, Comparative Analysis and Present State* (Hague: T.M.C. Asser Press, 2014), 28.

¹¹ See generally Article 10 of the Covenant of the League of Nations of 1919.

¹² Matthew Gillett, “the Anatomy of an International Crime: Aggression at the International Criminal Court”, 1-30.

¹³ However, article 51 of the Charter authorises states to use force in self-defense, and article 42 allows the UN Security Council to authorise such action. Mary Ellen O’Connell & Mirakmal Niyazmatov, “What Is Aggression? Comparing the Jus Ad Bellum and the ICC Statute”, *Journal of International Criminal Justice*, Vol. 10 (2012): 192-207.

apply to states, holding them accountable for infractions. To strengthen this, the Nuremberg Charter also made aggression a crime under international law.¹⁴ The tribunal had authority over crimes against peace, as outlined in Article 6(a), which included the "planning, preparation, initiation, or execution of aggressive war" or any actions that breached international treaties. Article 5(a) of the Tokyo Charter states the same.¹⁵

After World War II, the U.N. General Assembly mostly agreed with Article 6 (a) of the IMT's definition of aggression.¹⁶ Following the agreement, the U.N. War Commission disagreed on whether international law regarded aggression as a crime.¹⁷ The United Nations General Assembly defined aggression in 1974 in Resolution 3314 (XXIX).¹⁸

The Rome Statute of the ICC, adopted in July 1998, was a significant step toward defining the crime.¹⁹ At the Rome Statute Review Conference in Kampala, Uganda, from May 31 to June 11, 2010, representatives agreed on the concept of aggression and the grounds for the Court to have jurisdiction over it.²⁰ Consequently, Articles 8 bis,²¹ 15 bis, and 15 ter²² were added to the Rome Statute in 1998. The ICC can prosecute violence, the fourth Rome Statute offence. However, the Court could only use this jurisdiction starting July 17, 2018.²³

Definition and Jurisdictional Framework of the Crime of Aggression in the Rome Statute, 1998.

Article 8bis Para 1 of the Rome Statute defines aggression as

"the 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

¹⁴ Ibid.

¹⁵ Article 5(a) of the Tokyo Charter defines crimes against peace as the planning, preparation, initiation, or waging of a declared or undeclared war of aggression, or a war in violation of international law, treaties, agreements, or assurances, or involvement in a common plot or conspiracy to do so. <https://www.jus.uio.no/english/services/lib/treaties/04/4-06/military-tribunal-far-east.xml>, (last accessed: August 05, 2025).

¹⁶ The UN General Assembly confirmed the "principles of international law recognised by the Charter of the Nuremberg Tribunal and the decision of the Tribunal" in resolution 95 (I) in 1946. ". See, Antonio Cassese, *International Criminal Law* (Oxford: Oxford University Press, 2003) 111.

¹⁷ Mary O'Connell & Mirakmal Niyazmatov, "What Is Aggression? Comparing the Jus Ad Bellum and the ICC Statute", *Journal of International Criminal Justice* 10, (2012):192-207.

¹⁸ In Article 2(4) of the Charter, aggression is defined as the illegal use of force and includes specific acts of aggression, such as the invasion or attack by a State's armed forces on another State's territory (including related military occupation), bombardment, etc. . For details see, Sean D. Murphy, "The Crime of Aggression at the ICC", *George Washington University - Law School Law*, no. 50 (2012):1-46.

¹⁹ Delegates could not agree on a definition of the crime of aggression, as some wanted only «wars of aggression» to be covered, whereas others wanted to use what is arguably the broader notion of «acts of aggression» contained in the 1974 GA definition. ¹⁹ See ICC Assembly of States Parties (ASP), Resolution RC/Res.6: The Crime of Aggression (2010), Annex I.

²⁰ Murphy, "The Crime of Aggression at the ICC", 1-46.

²¹ Article 8bis of Rome Statute of the International Criminal Court (Rome Statute) 1998, 2187 UNTS 90.

²² Ibid., art. 15 ter.

²³ After 30 ratifications of the Kampala amendments, as required by Article 15 bis and 15 ter, the Assembly of States Parties voted on 14 December 2017 to activate the Court's jurisdiction over aggression on 17 July 2018. See generally, Murphy, "The Crime of Aggression at the ICC", 1-46. See also, ASP, Resolution ICC-ASP/16/Res.5: Activation of the Jurisdiction of the Court over the Crime of Aggression (2017), para.

State, of an act of aggression which, by its character, gravity and scale, constitutes a manifest violation of the Charter of the United Nations.”²⁴

Aggression targets senior political and military figures, unlike the other major international crimes under the ICC's jurisdiction.²⁵ The Crime of Aggression has a distinct jurisdictional framework that operates differently from other offenses in the Rome Statute, like genocide, crimes against humanity, and war crimes. in Articles 15bis²⁶ and 15ter of the Rome Statute, 1998.²⁷ Article 15bis of the Rome Statute allows State parties to refer cases or the Prosecutor to investigate. Art. 15bis (6)-(9) authorises UNSC or Court Pre-trial Division COA investigations. These paragraphs acknowledge the importance of the UNSC to world security.²⁸ However, Article 15 ter of the 1998 Rome Statute covers UNSC referrals in five paragraphs. The Court's authority to hear cases involving aggression is confirmed under Article 13, paragraph 1. The Security Council acts under Chapter VII of the UN Charter. Article 15 ter's second and third paragraphs match Article 15 bis (2) and (3). In comparison, Article 15 ter's final two paragraphs reiterate the statements in Article 15 bis (9) and (10) about the Court's independence and the inviolability of other crimes.²⁹

Thus, the Court can establish jurisdiction over this crime through:³⁰

- An ICC member state officially referring a case.
- Prosecutor is investigating independently.
- The UNSC referred cases.

Deficiencies in the Definition of the Crime of Aggression

Since the Court's jurisdiction and aggression are narrowly defined, prosecutions are improbable. Leadership crimes target high-ranking individuals who oversee a state's political or military actions and include major violations of the U.N. Charter.³¹ Prosecutions are unlikely because aggression

²⁴ "The 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 constitutes a manifest violation of the Charter of the United Nations" is defined as a crime of aggression under Article 8bis of the Rome Statute, 1998. According to paragraph 1, a "act of aggression" is when a state uses armed force against another state's sovereignty, territorial integrity, or political independence, or in any other way that is against the UN Charter. According to United Nations General Assembly resolution 3314 (XXIX) of December 14, 1974, any of the following actions, even if they do not constitute a declaration of war, shall be considered anFor details see, Article 8bis of Rome Statute of the International Criminal Court (Rome Statute) 1998, 2187 UNTS 90.

²⁵ Leila Nadya Sadat, "The Conferred Jurisdiction of the International Criminal Court," *Notre Dame Law Review* 19, no.549 (2023):551-650.

²⁶ Article 15 bis of the Rome Statute lays forth ten paragraphs of procedural guidelines for initiating an individual prosecution on charges under Article 8 bis of the Statute through a State. Article 15 bis states that "1. The Court may exercise jurisdiction over the offence of aggression under Article 13, paragraphs (a) and (c), subject to the rules of this article." 2. The Court may only hear cases involving crimes of aggression that occurred within a year after thirty States Parties approving or ratifying the amendments. 3. If the same majority of States Parties as required to accept a Statute amendment choose to do so after January, the Court will have jurisdiction over the crime of aggression under this article. For details see, Sergey Sayapin, *the Crime of Aggression in International Criminal Law: Historical Development, Comparative Analysis and Present State*, 298-312.

²⁷ Ibid.

²⁸ Astrid Reisinger Coracini, "Is Amending the Rome Statute the Panacea Against Perceived Selectivity and Impunity for COA Committed Against Ukraine?" *Just Security*, March 21, 2023.

²⁹ Sergey Sayapin, *the Crime of Aggression in International Criminal Law: Historical Development, Comparative Analysis and Present State*, 300.

³⁰ Jeremy Sarkin & Juliana Almeida, "Understanding the Activation of the Crime Of Aggression At The International Criminal Court: Progress And Pitfalls", *Wisconsin International Law Journal* 36, no. 3(2018)519-550.

³¹ A restrictive, state-centric strategy for carrying out violent crimes. A person can only be charged with the crime of aggression under the current version of Article 8 bis if it is proven that a nation-state carried out the act. For

is defined narrowly, and the Court has jurisdiction. Leadership crimes, which include serious violations of the U.N. Charter, target senior officials who supervise a state's military or political activities.³² Due to the ICC's limited authority and the definition of crimes, the ruling may be most significant for its symbolic and declaratory repercussions. According to Article 8bis, the term “act of aggression” is defined in a limited manner.³³ The UN Charter's stance on war and peace, along with the vague notions of the legality of aggressive warfare from the Nuremberg legacy, falls short in addressing the advancements in 21st-century warfare. This includes challenges to global peace and security, such as cyber warfare, asymmetric conflicts, terrorism, organized crime, and piracy.³⁴

Article 8 bis, which requires a state to employ military force against another's sovereignty or independence for criminal liability, depends heavily on the international dimension of aggression under present law. Since non-state actors frequently use internal disputes to exert control over regions, excluding internal aggression could affect the efficacy of the ICC.³⁵

Issues Regarding the CoA's Jurisdictional Reach

CoA's limited jurisdiction is its primary issue. The Kampala revisions made the CoA binding only with the assent of individual states, a stance backed by Western nations, despite attempts by African and Caribbean delegations to broaden its applicability globally.³⁶ Furthermore, it only applies to State Parties that adopt the Kampala modifications without opting out, as stated in Article 15 bis of the Rome Statute. Ratifying parties may opt out of the CoA's jurisdiction by withdrawing their consent.³⁷

However, Article 15ter might present an alternative. It grants the UNSC the authority to refer a State to the ICC for CoA, which may include non-ratifying States within the ICC's jurisdiction.³⁸ It's uncertain if the UNSC is prepared to make such referrals. As previous resolutions have shown, the Permanent Five members' capacity to abuse their veto power remains a serious concern. Considering that dealing with instances of aggression is a matter of political sensitivity, there is little reason to believe that the misuse of vetoes would happen less often under Article 15ter. States that do not ratify are therefore unlikely to be subject to the CoA.³⁹

The proposed modifications heavily emphasize the repeal of Article 15bis (4) and (5), which limit the ICC's authority over the COA. According to article 15 bis (4) of the Rome Statute,

details see, David Scheffer, “The Missing Pieces in Article 8 bis (Aggression) of the Rome Statute”, *Harvard International Law Journal-Online Journal* 58, (2017):1-4.

³² Murphy, “The Crime of Aggression at the ICC”, 1-46.

³³ The necessity of this restriction was hotly debated, but in the end, most participants agreed to accept it in exchange for either eliminating the requirement for a “war of aggression” or limiting the number of actions that qualify as “acts of aggression” in comparison to those specified in General Assembly Resolution 3314. Further examination of this threshold will be discussed in the subsequent section on Elements. For details see, Roger S. Clark, Negotiating Provisions Defining the Crime of Aggression, its Elements and the Conditions for ICC Exercise of Jurisdiction Over It, *European Journal of International Law*, Volume 20, Issue 4, November 2009, Pages 1103–1115, <https://doi.org/10.1093/ejil/chp075>.

³⁴ Sascha-Dominik Bachmann and Gerhard Kemp, “Aggression as ‘Organized Hypocrisy?’ - How the War on Terrorism and Hybrid Threats Challenge the Nuremberg Legacy.” *The Windsor Yearbook of Access to Justice* 30, no. 1 (2011).

³⁵ David Scheffer, “The Missing Pieces in Article 8 bis (Aggression) of the Rome Statute”, 1-4.

³⁶ Noah Weisbord, “Diplomatic Practices: Activating the Crime of Aggression”, *American University International Law Review* 40, no.2 (2025):489-532.

³⁷ Carrie McDougall, Expanding the ICC’s Jurisdiction ver the Crime of Aggression, *Journal of International Criminal Justice* 22, no.3-4(2024):543–564, <https://doi.org/10.1093/jicj/mqae042>.

³⁸ Ibid.

³⁹ Jeremy Sarkin & Juliana Almeida, “Understanding The Activation Of The Crime Of Aggression At The International Criminal Court: Progress And Pitfalls”, *Wisconsin International Law Journal* 36, no.3(2017):519-550.

the Court may have jurisdiction over an act of violence that results in a crime of aggression, “unless that State Party has previously declared that it does not accept such jurisdiction by registering a declaration with the Registrar of the Court.”⁴⁰ This provision gives State Parties the ability to disassociate themselves from the CoA jurisdiction. There are essential ramifications when exercising the right to opt out.⁴¹ For a State that is not a party to this Statute, however, “the Court shall not exercise its jurisdiction over the crime of aggression when committed by that State's people or on its territory,” according to Article 15 bis (5).⁴²

Review of Amendments to the COA during a Special Session of the ASP

From July 7 to July 9, 2025, the ASP to the ICC's Rome Statute convened in New York to discuss amendments to the crime of aggression. Following a 2010 agreement at the Kampala Review Conference to review the ICC's regulations, which were initially scheduled to take effect in July 2018, this Special Session aimed to enhance accountability for aggression.⁴³ Particularly in view of Russia's invasion of Ukraine, the substantial limitations on the ICC's jurisdiction over the crime of aggression are widely known and have been emphasised.⁴⁴

To harmonize the Court's jurisdiction over the CoA with its power over other core crimes, concerned governments have proposed amendments to Article 15bis. Costa Rica, Germany, Sierra Leone, Slovenia, and Vanuatu are the five ICC States Parties that have formally submitted a proposed modification to the UN Secretary-General.⁴⁵

The purpose of this amendment is to bring the ICC's jurisdiction over war crimes, crimes against humanity, and genocide into line with its authority over aggression. Because they establish a double standard and damage the ICC's reputation, it urges the elimination of exclusions in Article 15bis (4) and (5) that impede prosecutions from State party referrals or proprio motu investigations.⁴⁶ The proposed amendments replace the current jurisdictional regimes in Article 15bis (4) and (5) with provisions mirroring Article 12(2)⁴⁷ and (3).⁴⁸

The suggested modifications were presented in line with Article 121 (1), which “allows any State Party to suggest amendments to the ICC Statute following seven years from its adoption.”⁴⁹ Furthermore, it was proposed that the amendments related to aggression be reviewed mandatorily seven years after the Court starts exercising its jurisdiction.⁵⁰ Although a “review”

⁴⁰ Carrie Macdougall, *the Crime of Aggression under the Rome Statute of the International Criminal Court* (Cambridge University Press, 2021), 5.

⁴¹ Ibid.

⁴² See, Article 15bis Rome Statute, 1998, at n. 28.

⁴³ See, Resolution RC/Res.6, Crime of Aggression, <https://asp.icc-cpi.int/sites/asp/files/asp/Resolutions/RC-Res.6-ENG.pdf>. See also, ICC-ASP/16/Res.5 Activation of the jurisdiction of the Court over the crime of aggression. https://asp.icc-cpi.int/sites/asp/files/asp_docs/Resolutions/ASP16/ICC-ASP-16-Res5-ENG.pdf. For details,

⁴⁴ Isabelle Hassfurth, “Accountability for the Crime of Aggression against Ukraine an Immediate Call to Reform the ICC’s Jurisdiction”, *Versufungsblog*, 24 February 2024, <https://verfassungsblog.de/aggression-ukraine/>.

⁴⁵ Costa Rica, Germany, Sierra Leone, Slovenia, and Vanuatu made a proposal to amend the Rome Statute of the International Criminal Court. For details see, <https://treaties.un.org/doc/Publication/CN/2025/CN.162.20-Eng.pdf>.

⁴⁶ Claus Kress, On the New Momentum Regarding the Prosecution of the Crime of Aggression, Conference on Amendments: Towards one Comprehensive Jurisdictional Regime for all Crimes Within the Jurisdiction of the International Criminal Court, 6 Oct. 2023, <https://www.youtube.com/watch?v=nHSgzXE9TsU>.

⁴⁷ According to Article 12(2), the state where the crime was committed or the nationality of the alleged offender may invoke the ICC's jurisdiction.

⁴⁸ Article 12(3): Enables ad hoc acceptance of jurisdiction by states through declarations.

⁴⁹ Carrie McDougall, “Expanding the ICC’s Jurisdiction Over the Crime of Aggression,” 543–564,

⁵⁰ Agreed by the States Parties in Kampala under RC/Res.6, para. 4. Astrid Reisinger Coracini and Claus Kreß, “For an Effective and Legitimate Jurisdictional Regime on the Crime of Aggression at Last: States Parties to

does not require approval of harmonization amendments, these fall within the Assembly's authority. In accordance with Article 121(2) of the ICC Statute, which permits States Parties to propose amendments during the Special Session, the proposed amendments were distributed three months before the Kampala amendments being reviewed at the ASP Special Session, which took place in New York from July 7 to 9, 2025.⁵¹

The proposed modifications centre on the fundamental components of harmonising the Court's jurisdictional powers. They don't talk about the method for implementing the Kampala modifications or how the harmonisation amendments relate to them.⁵² The concerns are addressed in a 'Draft Resolution on the CoA, Article 15bis Rome Statute', which was presented by a coalition of countries on June 5, 2025.⁵³ One year after depositing their instruments of ratification, either by agreement or a two-thirds majority, the changes will take effect for States Parties that accept or ratify them (Article 121(3) of the ICC Statute). This is in line with the implementation procedure outlined in Article 121 (5).⁵⁴

The ASP agreed to approve resolution ICC-ASP/S-1/Res.1 on July 9, 2025, following discussions among delegates over the ratification, application, and use of the proposed amendments.⁵⁵ The ASP's commitment to extending the Court's jurisdiction over the crime of aggression was reaffirmed in this resolution. In addition to an intersessional meeting in 2027 to assess progress, the ASP intends to convene a special session in 2029 to examine a proposed modification backed by a specific subgroup.⁵⁶

Implications of the proposed amendments on the Crime of Aggression

Proposed amendments to Article 15bis would do away with the non-States Parties' exclusion from the Court's jurisdiction to oversee the CoA, which is a restriction specific to this particular offence.⁵⁷ Additionally, by choosing not to ratify the amendments about aggression, States Parties can avoid punishment for aggression. The amendment would address this loophole.⁵⁸ It is reasonable to be concerned about the ICC's jurisdiction being expanded, but the Court won't be

the Statute of the International Court to Convene on Monday for a Special Session in New York", July 4, 2025, <https://www.ejiltalk.org/for-an-effective-and-legitimate-jurisdictional-regime-on-the-crime-of-aggression-at-last-states-parties-to-the-statute-of-the-international-court-to-convene-on-monday-for-a-special-session-in-new-yor/>.

⁵¹ Ibid.

⁵² Astrid Reisinger Coracini and Claus Kreß, "For an Effective and Legitimate Jurisdictional Regime on the Crime of Aggression at Last: States Parties to the Statute of the International Court to Convene on Monday for a Special Session in New York", July 4, 2025, <https://www.ejiltalk.org/for-an-effective-and-legitimate-jurisdictional-regime-on-the-crime-of-aggression-at-last-states-parties-to-the-statute-of-the-international-court-to-convene-on-monday-for-a-special-session-in-new-yor/>.

⁵³ Terje Einarsen, "ICC's Jurisdiction over the Crime of Aggression: Amending Article 5 Instead of Article 15bis (Part I)", *OpinioJuris*, April 18, 2025, <https://opiniojuris.org/2025/04/18/iccs-jurisdiction-over-the-crime-of-aggression-amending-article-5-instead-of-article-15bis-part-i/>.

⁵⁴ Ibid.

⁵⁵ See, Resolution ICC-ASP/1/Res.1, Adopted at the 3rd plenary meeting, on 9 September 2002, https://asp.icc-cpi.int/sites/asp/files/asp_docs/Resolutions/ICC-ASP-ASP1-Res-01-ENG.pdf.

⁵⁶ Damilola Banjo, "ICC Members Tell Victims of the Crime of Aggression to Wait", July 10, 2025, <https://passblue.com/2025/07/10/icc-members-tell-victims-of-the-crime-of-aggression-to-wait/>.

⁵⁷ "The need to strengthen the International Criminal Court's jurisdiction over the crime of aggression", Global Institute for prevention of Aggression, 25 September, 2023, https://crimeofaggression.info/wp-content/uploads/GIPA-Proposal-Short_25-September-2023.pdf.

⁵⁸ "States Parties Should Strengthen the ICC's Ability to Prosecute Aggression", Berlin, Florence, Oslo and Wellington, 27 April 2023, <https://cijc.eu/statement-3/>.

overburdened if the CoA is aligned with other crimes. Its authority is kept precisely defined and constrained by Articles 8bis, 15bis, and 15ter. The goal of the amendment is to bridge this gap.⁵⁹

At the request of the United States, Article 15bis (5) was added to the Rome Statute during the Kampala Review Conference.⁶⁰ It gives the Court the authority to charge non-State Parties with crimes against humanity, war crimes, and genocide that had taken place on a State Party's territory. However, those who commit acts of aggression on the territory of a State Party are not prosecuted because such activities directly endanger the international order.⁶¹ Aggression was recognised by the Nuremberg Tribunal as the “supreme international criminal”, setting it apart from other war crimes. The darkest sides of humanity are revealed by war, which results in crimes against humanity, war crimes, and genocide. Atrocities in Rwanda, the former Yugoslavia, and more recently, Gaza, Israel, Lebanon, and Ukraine have been caused by this environment.⁶² Furthermore, as the Nuremberg Tribunal did, some scholars argue against ranking international crimes, contending that all crimes falling under the ICC's jurisdiction are equally heinous and should be treated as such. According to this perspective, the idea of equality before the law is compromised when aggressiveness is treated differently from other offences, and it may even provide offenders with impunity.⁶³

Furthermore, when aggression is committed by a non-state party or on its territory, it is excluded from the Court's jurisdiction, thereby depriving the victim State Party and its residents of the legal safeguards to which they are entitled.⁶⁴ Similar to domestic criminal law, international criminal law serves as a strong defense against criminal acts, especially when it is applied universally to all accused individuals. An aggressive war breaches a customary international law rule with *jus cogens* status and creates *erga omnes*⁶⁵ obligations for the offending state.⁶⁶ International criminal law focuses on those who manage or guide a state's actions in preparing or executing acts of aggression rather than directly prosecuting aggressors. According to the statement, “International law can only be implemented by punishing individuals; crimes against it are committed by men, not by abstract institutions.”⁶⁷

⁵⁹ Patrycja Grzebyk, “Myths around the review process of the Kampala amendments on the crime of aggression”, *Blog of the European Journal of International Law*, June 6, 2025, <https://www.ejiltalk.org/myths-around-the-review-process-of-the-kampala-amendments-on-the-crime-of-aggression/>.

⁶⁰ Stefan Barriga, and Niels Blokker. “Entry into Force and Conditions for the Exercise of Jurisdiction: Cross-Cutting Issues,” Chapter in *The Crime of Aggression: A Commentary*, edited by Claus Kreß and Stefan Barriga, (Cambridge University Press, 2016), 621-645.

⁶¹ Carrie McDougall, Expanding the ICC's Jurisdiction over the Crime of Aggression, *Journal of International Criminal Justice* 22, no.3-4(2024):543–564.

⁶³ Jocelyn Getgen Kestenbaum, “Closing Impunity Gaps for the Crime of Aggression”, *Chicago Journal of International Law* 17, no.1 (2016): 51-79.

⁶⁴ Claus Kreß, and Stefan Barriga, eds. “Crime of Aggression and the Future World Order,” Part. In *The Crime of Aggression: A Commentary* (Cambridge University Press, 2016), 1115-1500.

⁶⁵ The Latin term “*Erga omnes*” translates to “towards all” or “towards everyone.” In the realm of international law, it signifies the obligations a state holds towards the global community as a whole, rather than obligations limited to particular states. These responsibilities are considered so crucial that every nation has a vested legal interest in their observance. Eugenio Carli, “Obligations *Erga Omnes*, Norms of *Jus Cogens* and Legal Consequences for “Other States” in the ICJ Palestine Advisory Opinion”, *Blog of European Journal of International Law*, August 26, 2024, <https://www.ejiltalk.org/obligations-erga-omnes-norms-of-jus-cogens-and-legal-consequences-for-other-states-in-the-icj-palestine-advisory-opinion>.

⁶⁶ Ibid.

⁶⁷ See Benjamin B. Ferencz, “Can Aggression be Deterred by Law?” *Pace International Law Review* 11, (1999):341-360. Also see, “The Crime of Aggression” in Gabrielle Kirk McDonald and Olivia Swaak-Goldman (eds.),

When influential figures and officials contemplate acts of aggression, the fear of trial and punishment—akin to the repercussions faced by Nazi war criminals after World War II—serves as a deterrent.⁶⁸ This consciousness also underscores the idea of the “rule of law.”⁶⁹ Ultimately, this understanding supports the primary goal of international criminal law, which is to safeguard the global community from war and its atrocities and to prevent threats to peace.⁷⁰

The key question in any proposal to amend the Court's selective jurisdiction over aggression. Whether Article 15bis (5) and perhaps Article 15bis (4) of the ICC Statute should be amended to remove the non-State party exception or not. Additionally, whether the non-State party exception, such as jurisdiction under Article 12(2) and the opt-out in Article 15bis (4), is consistent with State parties rejecting the aggression amendments or not. For instance, take the Proposal to Amend Article 15bis of the Rome Statute.⁷¹ This could rekindle debates about whether Article 12(3) and Article 15bis cover aggression (4) or not. Suppose the amendment eliminates all jurisdictional exceptions for opt-out State parties and non-State parties.⁷² Then, the Court would have the same jurisdiction over other core crimes as it does over the crime of aggression or not. Last but not least, an amendment should also address the ICC Statute's Article 121(5)'s selective jurisdiction regarding “amended most severe crimes” or not.⁷³

Careful thought must be given to the discussion surrounding the ICC Statute amendment. A crucial question is whether a straightforward change is sufficient, particularly in light of the Court's authority over aggression, which may necessitate steps under Article 121(4) or 121. (5). It should also consider whether changing an amendment may result in an undefined “inter se regime.”⁷⁴

Harmonization faces uncertainty as major Western powers raise concerns about technical and geopolitical risks. Opinions vary even among supporters. The group opted to enhance the court's jurisdiction over aggression, planning meetings for 2027 and 2029. While experts view dialogue positively, progress on harmonization remains slow. Thus, one step forward, two steps backward.

Conclusion and Recommendations

Navigating intricate legal issues and political considerations is necessary to update the ICC's jurisdiction over CoA. Achieving consensus among all parties to the States is essential, but it is also important to recognize that this process will require significant time and effort. It is unrealistic to expect these negotiations to be finalized within just a few months or during a single Assembly of States Parties session.

Substantive and Procedural Aspects of International Criminal Law (Kluwer Law International, The Hague, 2000), 35.

⁶⁸ Tonya J. Boiler, “the International Criminal Court: Better Than Nuremberg”, *International and Comparative law Review* 14, no.1(2001): 280-314.

⁶⁹ Benjamin B. Ferencz, “A Nuremberg Legacy: The Crime of Aggression”, *Washington University Global Studies Law Review* 15, no.4(2016): 555-558.

⁷⁰ Ibid.

⁷¹ Ibid.

⁷² Ibid.

⁷³ Ibid.

⁷⁴ Fiona Abken & Paulina Rob, “Amending the Amendment: In Search of an Adequate Procedure for a Revision of the Jurisdictional Regime for the Crime of Aggression in the Rome Statute”, *European Journal of International Law Blog*, January 13, 2023, <https://www.ejiltalk.org/amending-the-amendment-in-search-of-an-adequate-procedure-for-a-revision-of-the-jurisdictional-regime-for-the-crime-of-aggression-in-the-rome-statute/>.

Given this complexity, it is recommended to take a phased approach to addressing jurisdictional issues, starting with the most urgent matters that require immediate action. This strategy will enhance the ICC's operational effectiveness. Meanwhile, as long-term solutions are carefully developed, it is crucial to consider interim measures. These would prevent delays in justice amid continuing discussions by bolstering the ICC's ability to handle crimes of aggression in the meantime. Additionally, the effectiveness of these amendments will largely depend on the degree of support and collaboration from member states and the broader international community. Achieving consensus on such significant changes to the ICC's jurisdiction may necessitate extensive diplomatic discussions. In addition, enforcing the broadened jurisdiction concerning crimes of aggression will involve establishing new investigative methods and legal frameworks to ensure just and efficient prosecutions.

Let's recognize the significance of the Special Session of the Assembly of States Parties in strengthening the Rome system by removing Article 15 bis, paragraphs (4) and (5), from the Statute. This change will align the Court's jurisdiction over the CoA with other crimes under the Rome Statute, which was adopted on July 17, 1998. As a result, all states, especially those at risk of intimidation or attack from stronger neighbours, should ratify the Kampala agreements and support the proposed amendments. These actions will demonstrate their commitment to a fair international legal system and promote peaceful coexistence.