




 THE UNIVERSITY OF
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The Crime of Aggression

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 INTERNATIONAL AND
 COMPARATIVE LAW
 The Crime of Aggression
 under the Rome Statute
 of the International
 Criminal Court
 SECOND EDITION
 CAMBRIDGE

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Prohibition of the threat or use of force

Article 2(4) UN Charter: 'All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or of any other manner inconsistent with the Purposes of the United Nations.'

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Agreed exceptions to the prohibition

- **Consent**
- **Self-defence**
 - Article 51 UN Charter: ‘Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security’;
 - Customary international law;
- **Authorisation of UNSC under Chapter VII**
 - Article 42 UN Charter: ‘Should the Security Council consider that measures provided for in Article 41 would be inadequate or have proved to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security...’

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Contested exceptions to the prohibition

- Self-defence against a non-State armed actor on the territory of a foreign State;
- Self-defence in response to an accumulation of events;
- Rescue of nationals;
- Intervention in a war of national liberation on request;
- Humanitarian intervention.

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Crimes Against Peace

- IMT described crimes against peace as ‘the supreme international crime differing only from other war crimes in that it contains within itself the accumulated evil of the whole.’
- IMT Charter Art 6(a): ‘planning, preparation, initiation or waging of a war of aggression, or a war in violation of international treaties, agreements or assurances, or participation in a common plan or conspiracy for the accomplishment of any of the foregoing.’

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Transformation from crimes against peace to the crime of aggression

- UN Charter employed a new lexicon to describe inter-State armed violence: ‘threat of force’, ‘use of force’, ‘threat to the peace’, ‘breach of the peace’, ‘act of aggression’, ‘armed attack’.
- 1950 Soviet Union proposal to define ‘act of aggression’.
 - Held up negotiations on the establishment of a permanent international criminal court.
- Took States until 1974 to agree on a definition: annexed to UNGA Resolution 3314 (XXIX)
 - A face-saving political compromise that barely describes, let alone defines, an act of aggression.

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1998 Version of the Rome Statute

- Article 5(1)(d) lists the crime of aggression as a crime within the jurisdiction of the Court.
- Article 5(2): ‘The Court shall exercise jurisdiction over the crime of aggression once a provision is adopted in accordance with Articles 121 and 123 defining the crime and setting out the conditions under which the Court shall exercise jurisdiction with respect to this crime. Such a provision shall be consistent with the relevant provisions of the Charter of the United Nations.’

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Act of Aggression

Article 8*bis* (2): For the purpose of paragraph 1, “act of aggression” means the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State, or in any other manner inconsistent with the Charter of the United Nations. Any of the following acts, regardless of a declaration of war, shall, in accordance with United Nations General Assembly resolution 3314 (XXIX) of 14 December 1974, qualify as an act of aggression...

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Article 8bis (2)

- (a) The invasion or attack by the armed forces of a State of the territory of another State, or any military occupation, however temporary, resulting from such invasion or attack, or any annexation by the use of force of the territory of another State or part thereof;
- (b) Bombardment by the armed forces of a State against the territory of another State or the use of any weapons by a State against the territory of another State;
- (c) The blockade of the ports or coasts of a State by the armed forces of another State;
- (d) An attack by the armed forces of a State on the land, sea or air forces, or marine and air fleets of another State;

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Article 8bis (2)

- (e) The use of armed forces of one State which are within the territory of another State with the agreement of the receiving State, in contravention of the conditions provided for in the agreement or any extension of their presence in such territory beyond the termination of the agreement;
- (f) The action of a State in allowing its territory, which it has placed at the disposal of another State, to be used by that other State for perpetrating an act of aggression against a third State;
- (g) The sending by or on behalf of a State of armed bands, groups, irregulars or mercenaries, which carry out acts of armed force against another State of such gravity as to amount to the acts listed above, or its substantial involvement therein.

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Understanding 6

It is understood that aggression is the most serious and dangerous form of the illegal use of force; and that a determination whether an act of aggression has been committed requires consideration of all the circumstances of each particular case, including the gravity of the acts concerned and their consequences, in accordance with the Charter of the United Nations.

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The Crime of Aggression

Article 8*bis* (1): For the purpose of this Statute, “crime of aggression” means 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.

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Understanding 7

It is understood that in establishing whether an act of aggression constitutes a manifest violation of the Charter of the United Nations, the three components of character, gravity and scale must be sufficient to justify a “manifest” determination. No one component can be significant enough to satisfy the manifest standard by itself.

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Article 25 (3bis)

In respect of the crime of aggression, the provisions of this article shall apply only to persons in a position effectively to exercise control over or to direct the political or military action of a State.

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Elements of the crime of aggression

1. The perpetrator planned, prepared, initiated or executed an act of aggression.
2. The perpetrator was a person in a position effectively to exercise control over or to direct the political or military action of the State which committed the act of aggression.
3. The act of aggression – the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State, or in any other manner inconsistent with the Charter of the United Nations – was committed.
4. The perpetrator was aware of the factual circumstances that established that such a use of armed force was inconsistent with the Charter of the United Nations.
5. The act of aggression, by its character, gravity and scale, constituted a manifest violation of the Charter of the United Nations.
6. The perpetrator was aware of the factual circumstances that established such a manifest violation of the Charter of the United Nations.

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Jurisdiction: UNSC referral

Article 15^{ter} (1): The Court may exercise jurisdiction over the crime of aggression in accordance with article 13, paragraph (b), subject to the provisions of this article.

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Jurisdiction: State referrals and proprio motu

Article 15bis:

- (1) 'The Court may exercise jurisdiction over the crime of aggression in accordance with article 13, paragraphs (a) and (c), subject to the provisions of this article.'
- (6) + (7): P can proceed with investigation where UNSC has made a determination of an act of aggression.
- (8): If UNSC fails to make a determination within six months of UNSG notification, P may proceed, provided Pre-Trial Division has authorised investigation and UNSC has not made use of Article 16.
- (5): Acts of aggression of Non-States Parties (aggressor or victim) excluded.
- (4): 'The Court may, in accordance with article 12, exercise jurisdiction over a crime of aggression, arising from an act of aggression committed by a State Party, unless that State Party has previously declared that it does not accept such jurisdiction by lodging a declaration with the Registrar. The withdrawal of such a declaration may be effected at any time and shall be considered by the State Party within three years.'

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The Special International Tribunal for Crimes of Aggression Committed Against Ukraine

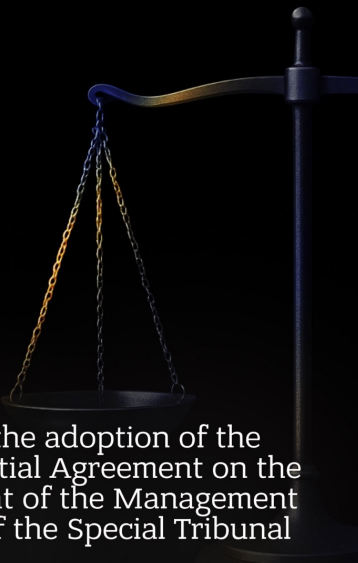



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The Special
International Tribunal
for Crimes of
Aggression
Committed Against
Ukraine




 Ministry of
Foreign Affairs
of Ukraine

Decision on the adoption of the
 Enlarged Partial Agreement on the
 establishment of the Management
 Committee of the Special Tribunal

37 notifications of intent to join the EPA.
 Thank you to our partners for their support!



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The Special International Tribunal for Crimes of Aggression Committed Against Ukraine

- Tribunal's jurisdiction limited to crimes of aggression committed against Ukraine.
- Provisions on cooperation with the ICC.
- Tribunal will have the ability to conduct trials in absentia.
- Tribunal will not be able to confirm an indictment against a person who enjoys personal immunity (i.e. Head of State, Head of Government, Foreign Minister) until that person leaves office.

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The Special International Tribunal for Crimes of Aggression Committed Against Ukraine

- Art 2(1) of the Tribunal's Statute replicates Article 8bis(1) of the Rome Statute.
- Art 2(2) mirrors the chapeau of Article 8bis(2)'s definition of an act of aggression – but the list of illustrative acts is omitted.
- Art 2(3) lists UNGA resolutions (including Res 3314) that the Tribunal shall take into account in determining whether the manifest violation threshold has been met.
- Art 2(4) specifies that an act of aggression that meets the manifest violation threshold is deemed to be a war of aggression.

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Global Institute for the Prevention of Aggression

<https://crimeofaggression.info/gipa-proposal-to-amend-art-15bis/>



THE GLOBAL CAMPAIGN FOR RATIFICATION AND IMPLEMENTATION
OF THE KAMPALA AMENDMENTS ON THE CRIME OF AGGRESSION



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GIPA Proposal to Amend Art. 15bis

The Global Institute for the Prevention of Aggression (GIPA) believes it is critical to strengthen the ICC's jurisdiction over the crime of aggression. This is why the GIPA has published a [proposal](#) for the amendment of the conditions under which the ICC can exercise jurisdiction over the crime of aggression. The proposal has been thoroughly discussed among experts on the crime of aggression and has the objective of bringing the ICC's jurisdiction over the crime of aggression into line with the Court's jurisdiction over genocide, crimes against humanity and war crimes.

The proposal contains **model amendments**, as well as a **resolution** ready to be adopted by the Assembly of States Parties, and an **explanation** of the proposed amendments.

Reasons for the Proposed Amendment

At the Rome Conference in 1998, the crime of aggression was included in the Rome Statute of the International Criminal Court as one of the four core crimes, but its definition and the conditions under which the ICC could exercise jurisdiction over the crime were left for later negotiation.

At the Kampala Review Conference in 2010, States Parties adopted amendments defining the crime of aggression (Article 8bis) and setting out the conditions for the ICC's exercise of jurisdiction

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Proposed amendment of Article 15bis(4) and (5)

Amendments to article 15 *bis* of the Rome Statute

Article 15bis (4) and (5) are replaced by the following text inserted after article 15bis (3):

4. The Court may, in accordance with article 12, exercise jurisdiction over a crime of aggression if one or more of the following States have ratified or accepted the aggression amendments, or have accepted the exercise of the jurisdiction of the Court over the crime of aggression in accordance with paragraph 5:
- (a) The State on the territory of which the conduct in question occurred or, if the crime was committed on board a vessel or aircraft, the State of registration of that vessel or aircraft;
 - (b) The State of which the person accused of the crime is a national.
5. If the acceptance of a State that has not ratified or accepted the aggression amendments, or that is not a Party to this Statute, is required under paragraph 4, that State may, by declaration lodged with the Registrar, accept the exercise of jurisdiction by the Court over the crime of aggression in accordance with article 12, paragraph 3.

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