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International Bar Association International Criminal Court and International Criminal Law (ICC & ICL) Programme

Position Paper

Special Assembly of States Parties Session on the Review of the Amendments on the Crime of Aggression

July 2025

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Introduction

This paper sets out the position of the International Bar Association (IBA) International Criminal Court and International Criminal Law (ICC & ICL) Programme in relation to the review of the amendments on the crime of aggression adopted during the [2010 Kampala Review Conference](#).

The ICC's Assembly of States Parties will meet in a Special Session on 7-9 July 2025 in New York to review the jurisdiction of the International Criminal Court (ICC) over the crime of aggression. The ASP Special Session will provide a unique opportunity to harmonise the Court's jurisdiction over all core crimes in the Rome Statute.

The conditions for the exercise of the ICC's jurisdiction over the crime of aggression determined by the Kampala Review Conference are based on a regime that differs from the other Rome Statute core crimes. In fact, except for situations referred by the UN Security Council, the Court is barred from investigating and prosecuting alleged acts of aggression committed by nationals of Non-State Parties and nationals of States Parties that have lodged a declaration rejecting the ICC jurisdiction, even if they took place on the territory of a State Party.

The different jurisdictional regime established for the crime of aggression limits the ICC jurisdiction compared to other crimes and has resulted in the inability for the Court to investigate and prosecute acts of aggression in some situations where they may have allegedly occurred. Moreover, the prosecution of the crime of aggression, as a leadership crime, is limited in national jurisdictions due to the application of personal immunities for sitting heads of states and governments, and ministers of foreign affairs, before national courts. While a number of states have included the crime of aggression in their domestic criminal codes implementing the Rome Statute, pending any [legal developments](#) such cases would be barred by these personal immunities for sitting heads of states and governments, ministers of foreign affairs, and potentially other senior government officials. Those most responsible for the crime of aggression cannot currently be tried in domestic courts as long as they remain in power.

The accountability gap in relation to the crime of aggression has become particularly evident after Russia's full-scale invasion of Ukraine in February 2022. The lack of an existing international mechanism that can try Russia's top political and military leadership for the crime of aggression against Ukraine, has necessitated discussions about an *ad hoc* mechanism, eventually resulting in the establishment of the Special Tribunal for the Crime of Aggression against Ukraine in the framework of the Council of Europe (CoE), through an [agreement](#) between Ukraine and the CoE. The IBA has strongly [supported](#) the creation of this Special Tribunal, in line with its position that the crime of aggression, as a core international crime, must not go unaddressed, and therefore there must be a legal mechanism to address Russia's aggression against Ukraine.

While the creation of the Special Tribunal is essential in order to close the accountability gap, it is also essential to harmonise the ICC's jurisdiction over the crime of aggression with other core crimes in order to avoid impunity in future situations and strengthen the Rome Statute system.

The importance of reviewing the ICC's jurisdiction in order to prosecute evolving international crimes, and of reviewing the legislative functions of the ASP, were considered by the IBA ICC & ICL Programme in the context of its 2024 [Guide for States Parties](#), setting out detailed recommendations to enhance the critical role that States Parties must play, individually and collectively, in strengthening the ICC and the

Rome Statute system. This includes, specifically, amending the Rome Statute to [harmonise jurisdiction among all core crimes, including the crime of aggression in domestic legislation](#), and that [States Parties should ratify all amendments to the Rome Statute](#) that have been adopted so far.

Recommendations

1. States Parties should amend the Rome Statute to ensure that the ICC is able to exercise jurisdiction over the crime of aggression effectively and in line with other core crimes

To ensure that the ICC is able to prosecute evolving international crimes, the Assembly of States Parties should support amendment processes that seek to close gaps in the definitions of current core crimes in the Rome Statute and of the exercise of the Court's jurisdiction over them.

At the upcoming ASP Special Session, **States Parties should amend the conditions under which the ICC can exercise jurisdiction over the crime of aggression, with the aim of ensuring that the Court can investigate and prosecute acts of aggression effectively and in line with the Court's jurisdiction over other Rome Statute core crimes.**

A group of ICC States Parties, the 'Group of Friends on the Review of the Kampala Amendments', [proposed](#) an amendment of Article 15 *bis* of the Rome Statute with a view to allow the ICC to investigate and prosecute alleged acts of aggression if they occurred on the territory of a State Party that ratified the amendment and if committed by a national of a State Party that ratified the amendment. The proposal is reflected in a draft resolution submitted for consideration to the ASP Working Group on Amendments.

Civil society organisations have also strongly advocated for the harmonisation of the Court's jurisdiction over the crime of aggression. Over 85 organisations [signed](#) a statement supporting the reform process and calling States Parties to review the Court's jurisdiction over the crime of aggression.

The IBA ICC & ICL Programme commends the leadership of States Parties in the Group of Friends and welcomes amendment proposals aimed at closing the accountability gap in relation to the investigation and prosecution of alleged acts of aggression.

The IBA ICC & ICL Programme calls on **ICC States Parties amend Article 15 *bis* of the Rome Statute in order to allow the Court to exercise jurisdiction for alleged acts of aggression committed on the territory of States Parties and by nationals of States Parties that ratified the amendment, thus closing the accountability gap.**

Amendments to the Rome Statute shall be adopted by consensus or, in the absence of consensus, they are adopted with a two-thirds majority of States Parties.

In adopting the amendments necessary to harmonise the ICC's jurisdiction over all core crimes, States Parties should strive for consensus. At a critical time for the ICC and the Rome Statute system, States Parties' unity would represent a concrete and strong expression of support for the Court and a powerful statement against impunity for the gravest crimes. If it is not possible to achieve consensus, the amendment on the crime of aggression should be adopted with a strong majority.

2. States Parties should ratify amendments to the Rome Statute adopted by the Assembly without delay

The IBA ICC & ICL Programme calls on all States Parties to ratify the amendments on the crime of aggression adopted by the ASP Special Session and to consider ratifying all Rome Statute amendments adopted so far without delay.

Amendments to Rome Statute core crimes enter into force for each State Party that has ratified them one year after the ratification, according to Article 121(5) of the Statute. As a consequence, the ICC can only exercise jurisdiction over crimes introduced with amendments to the Statute if the State Party has ratified such amendments. Amendments to other provisions of the Rome Statute enter into force for all States Parties one year after seven-eighths of States Parties have ratified them, according to Article 121(4) of the Statute.

While the two regimes have different thresholds for the entry into force of amendments, the rapid ratification of the amendment of the crime of aggression by all or almost all States Parties would ensure that the Court can exercise jurisdiction over alleged crimes of aggression consistently and effectively.

The IBA ICC & ICL Programme further calls all on States Parties to ratify all Rome Statute amendments adopted so far by the Assembly without delay. The lack of ratifications of Rome Statute amendments severely restricts the Court's ability to prosecute these crimes.

Since the Review Conference of the Rome Statute in 2010, amendments have been adopted expanding the crimes covered by the Rome Statute. However, only a small number of States Parties have ratified them, and the process of individual ratifications has proceeded slowly.

In addition to amending the crime of aggression, the 2010 Review Conference adopted an amendment to Article 8 of the Statute introducing the war crime in non-international armed conflict of employing poison or poisoned weapons; asphyxiating, poisonous or other gases and all analogous liquids, materials or devices; and bullets which expand or flatten easily in the human body. This amendment has currently been ratified by [48 states](#).

More recently, in 2018, Switzerland proposed an amendment to include starvation as a war crime in non-international armed conflicts, to harmonise with the court's existing jurisdiction over starvation in international armed conflicts. The ASP adopted the amendment in 2019. Currently, only [20 states](#) have ratified the amendment.

Review of the ICC's jurisdiction over aggression: background

The crime of aggression establishes individual criminal responsibility for the planning, preparation, initiation or execution of a manifest act of aggression.

The crime of aggression was prosecuted for the first time by the International [Military Tribunal \(IMT\) at Nuremberg](#) and the International Military Tribunal for the Far East established in the aftermath of World War II as a 'crime against peace'. Together with other key principles of international criminal law, the criminalisation of aggressive warfare was solidified in the 1950 [Nuremberg Principles](#) of international law, influencing the statutes and jurisprudence of the *ad hoc* criminal tribunals, hybrid courts and the International Criminal Court.

In 1998, the crime of aggression was included in the [Rome Statute of the ICC](#) as one of the core crimes within the jurisdiction of the Court. Unlike the other core crimes of genocide, war crimes, and crimes against humanity, the crime of aggression was not defined in the Rome Statute due to the lack of agreement among negotiating states. The ICC's founding treaty established instead that the Court would be able to exercise jurisdiction over the crime of aggression after the adoption of a definition and the determination of the conditions to exercise jurisdiction over it.

During a [Review Conference](#) held in Kampala in 2010 in accordance with Art. 123 of the Rome Statute, ICC States Parties adopted the definition of the crime of aggression and determined the conditions for the exercise of the Court's jurisdiction over the crime. Notably, the Review Conference created a separate regime for the exercise of the ICC's jurisdiction over the crime of aggression, differing from the conditions established for the other core crimes. The Review Conference further established a threshold of ratifications to be reached before the jurisdiction could have been activated by the ASP. Finally, the Review Conference established that the amendments on the crime of aggression should be reviewed seven years after the beginning of the exercise of the Court's jurisdiction.

The threshold of thirty ratifications necessary for the activation of the ICC's jurisdiction over the crime of aggression was reached in June 2016 with the ratification of the amendment by the State of Palestine. The [decision](#) to activate the Court's jurisdiction over aggression was taken during the 16th session of the ASP in December 2017, which became effective on 17 July 2018.

Based on the provisions of the Kampala Review Conference, the Assembly of States Parties [decided](#) to convene a Special Session to review the amendments on the crime of aggression during its 23rd regular session in 2024. The ASP will convene the Special Session from 7 to 9 July 2025 in New York.

In 2025, discussions were held in the context of the ASP Working Group on Amendments to lay the ground for the review of the aggression amendments. A [proposal](#) to amend the conditions for the exercise of the Court's jurisdiction over the crime of aggression under Art 15 *bis* of the Statute was submitted on 4 April 2025 by Costa Rica, Germany, Sierra Leone, Slovenia and Vanuatu. On 5 June 2025, Liechtenstein submitted a draft resolution reflecting the proposed amendment. On 27 June, an alternative draft resolution was put forward by Canada, France, Japan, New Zealand and the United Kingdom, which declines to amend the Rome Statute at the special session, and proposes to reconvene the discussions at a later date yet to be determined.

Currently, 48 out of the 125 States Parties have [ratified](#) the Kampala amendments on the crime of aggression, making the amendments on the crime of aggression the most widely ratified Rome Statute amendment adopted so far. The most recent ratifications came from Denmark and Timor-Leste in 2025.