

# International Criminal Justice

## The Crime of Aggression

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# The Crime of Aggression (I)

- Aggression is widely regarded as a crime under customary international law
- International crime involving the planning, initiation, or execution of an act of armed force by a state leader that violates the UN Charter.
- Defined in Article 8 bis of the Rome Statute
- It constitutes a “manifest” violation due to its character, gravity, and scale.
- A “leadership crime” targeting individuals in control of state policy.
- The “supreme international crime” as it contains the accumulated evil of other international crimes (genocide, war crimes).

# The Crime of Aggression (II)

- The crime focuses on holding top-level political or military leaders accountable for initiating illegal wars, distinguishing it from war crimes which can be committed by individuals at any level.
- Acts of Aggression: examples include invasion, military occupation, bombardment, or blockade of ports by the armed forces of a state.
- The International Criminal Court (ICC) activated its jurisdiction over the crime of aggression on July 17, 2018, following the 2010 Kampala Review Conference.
- It requires a "manifest" violation of the UN Charter, meaning the violation must be objectively clear.

# The Crime of Aggression (III)

- In essence, the crime of aggression is when one country uses armed force against another country without legal justification.
- While the crime of aggression was one of the four crimes listed in the Rome Statute when the treaty was adopted in 1998, the completion of the definition and provisions of jurisdiction were postponed for further negotiation.
- It focuses on leaders – applies to individuals
- The fourth core crime of the ICC Statute

# The Crime of Aggression (IV)

- In 2010, the first Review Conference of the Rome Statute took place in Kampala, Uganda.
- ICC member states and non-member states alike gathered to review the implementation and impact of the Rome Statute since its entry into force in July 2002.
- Several amendments to the Rome Statute were proposed at the conference, including a proposed definition for the crime of aggression.
- States agreed how and in what instances the ICC can begin exercising jurisdiction over the crime of aggression.
- Both ICC member states and non-ICC member states agreed to adopt, by consensus, the Kampala Amendments, which included the crime of aggression amendments.

# The Crime of Aggression (V)

- The ICC Assembly of States Parties convened a Special Session from 7 - 9 July 2025, in order to review the Kampala Amendments on the crime of aggression.
- The amendments on the crime of aggression enter into force for a state one year after its ratification or acceptance by that state.
- Even if ICC member states activate ICC jurisdiction over the crime of aggression, the option to “opt-out” of the Court’s exercise of that jurisdiction in non-UN Security Council referral situations does exist.
- The view held by the plurality of ICC member states is that once the two conditions (ratification by at least 30 ICC member states and the decision by the ASP) are met, the Court’s exercise of the jurisdiction over the crime of aggression applies to all ICC member states (unless an opt out declaration has been submitted), regardless of individual ratification status of the amendments.

# The Crime of Aggression (VI)

- Three ways the ICC can currently exercise jurisdiction
- The Crime of Aggression has a unique jurisdictional regime, which cannot be triggered in the same manner as with other crimes of the Rome Statute (genocide, crimes against humanity and war crimes). The Court may exercise jurisdiction over the crime either by:
  - An ICC member state referring a situation to the Court.
  - The prosecutor initiating an investigation *proprio motu*.
  - UN Security Council referring the situation to the Court.
- Except in the case of UN Security Council referrals, non-ICC member states are excluded from the Court's jurisdiction over the crime of aggression, regardless of victim or aggressor status.

# The Crime of Aggression (VII)

- First possibility
- In the case of a state referral (Article 15 *bis*), the Court will only be allowed to exercise jurisdiction if the amendments have entered into force for at least one of the ICC member states, victim or aggressor, involved. The Prosecutor must then determine there to be a reasonable basis to proceed with an investigation. If this occurs, the Prosecutor must notify the UN Secretary-General of the situation. The Security Council itself has the authority to determine, whether an *act of aggression* has been committed. The Prosecutor must allow the Security Council six months to make a determination. If no such determination is made, the Prosecutor may still proceed with investigation only with authorization of the Pre-Trial Division judges.

# The Crime of Aggression (VIII)

- Second possibility
- In the case of the prosecutor initiating an investigation (Article 15 *bis*), referred to as *proprio motu*, the same conditions apply as in the case of Article 15 *bis* state referrals.
- Third possibility
- In the case of a UN Security Council referral (Article 15 *ter*), if the UN Security Council refers a situation, the Prosecutor has the authority to investigate any of the four core crimes, including the crime of aggression, committed in any territory by any state's national. In this situation, the Court is able to exercise jurisdiction over crimes of aggression involving ICC member states, regardless of their individual ratification status or "opt-out" status, and non-ICC member states alike.

# Special Tribunal for the Crime of Aggression against Ukraine

- A special tribunal is being established to prosecute Russia's senior political and military leadership for the "crime of aggression" against Ukraine, defined as the planning or initiation of the 2022 invasion. Supported by the EU and Council of Europe, this initiative fills a gap in the International Criminal Court's inability to prosecute this specific crime. The tribunal focuses on the core leadership responsible for the illegal war.
- A bilateral agreement was signed between the Council of Europe and Ukraine on June 25, 2025, to establish the tribunal. An advance team (STAT) with €10 million in EU funding is currently setting up the operational, logistical, and legal foundation.

# Special Tribunal for the Crime of Aggression against Ukraine (II)

- The tribunal will target individuals in positions of power who prepared, initiated, or executed the invasion.
- The ICC currently lacks jurisdiction over the crime of aggression in this context, making a special tribunal necessary.
- The International Centre for the Prosecution of the Crime of Aggression (ICPA) already exists at Eurojust to secure evidence.
- The Register of Damage for Ukraine has been operational since 2024 to document damages

# ICC in the case of Ukraine

- Following referrals from 39 of its States Parties, the ICC Prosecutor moved quickly to open investigations into alleged war crimes and crimes against humanity flowing from the Russian aggression.
- Although Ukraine had accepted the ICC's jurisdiction on an ad hoc basis as early as 2014 and subsequently ratified both the Rome Statute and its Kampala Amendments in June 2024, these steps could not confer jurisdiction over crimes of aggression committed by nationals of non-State Parties—such as the Russian Federation.
- This limitation reflects the political compromise underlying the Kampala Amendments and explains why the Court was able to issue arrest warrants for Russian officials, including President Putin, for other crimes within its jurisdiction.

# ICC in the case of Ukraine (II)

- **Active Investigation:** The ICC Prosecutor opened an investigation on March 2, 2022, following referrals from 39 state parties and accepting Ukraine's declarations.
- **Temporal Scope:** Coverage starts from November 21, 2013, onwards, including the 2014 annexation of Crimea and the full-scale 2022 invasion.
- The Court has jurisdiction over crimes committed within the territory of Ukraine, regardless of the nationality of the perpetrators.
- The ICC cannot currently prosecute the "crime of aggression" in this context, as neither Russia nor Ukraine are parties to the Kampala Amendments.
- The ICC has issued warrants for high-level officials, including Vladimir Putin, regarding alleged war crimes.