



The need to strengthen the International Criminal Court's jurisdiction over the crime of aggression

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1. 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.
2. At the Kampala Review Conference in 2010, States Parties adopted amendments defining the crime of aggression (Article 8*bis*) and setting out the conditions for the ICC's exercise of jurisdiction over the crime (Articles 15*bis* and 15*ter*). In 2017, States Parties activated the ICC's jurisdiction over the crime of aggression as of 17 July 2018.
3. This historic agreement meant that the crime of aggression, the modern incarnation of crimes against peace (the centrepiece of the Nuremberg and Tokyo trials), was finally able to occupy its proper place under the Rome Statute. However, the conditions for the ICC's exercise of jurisdiction over the crime of aggression are far more stringent than those that apply to genocide, crimes against humanity and war crimes.
4. There was no legal requirement for such distinct treatment of the crime of aggression. Nor do principles of justice support it. To the contrary, the distinct treatment of the crime of aggression leads to selectivity and constitutes a double-standard in international criminal justice.
5. The restrictions also mean that States that are willing to accept the ICC's jurisdiction over the crime of aggression do not currently receive the same degree of protection against the crime of aggression compared to other core crimes.
6. The practical consequences of the restrictions on the ICC's jurisdiction over the crime of aggression have become starkly visible in relation to the situation in Ukraine. Here, the ICC can exercise jurisdiction over any war crimes, crimes against humanity or genocide committed on Ukraine's territory, but, despite it being the origin of all other international crimes committed in Ukraine, the Court lacks the same power with respect to the crime of aggression. Due to the de facto unavailability of a Security Council referral, the ICC is unable to ensure comprehensive accountability in relation to the situation in Ukraine.
7. To ensure that the ICC does not face similar jurisdictional gaps in the future, the Global Institute for the Prevention of Aggression has prepared recommended amendments, along with a proposed resolution and an accompanying explanation for the consideration of States Parties. These documents cover a range of technical issues that will need to be addressed. See <https://crimeofaggression.info/wp-content/uploads/GIPA-model-amendment-proposal.pdf>.
8. In order to protect the UN Charter's prohibition of the illegal use of force, the keystone of the international legal order, from erosion, it is more important now than ever to take steps to deter the crime of aggression, and to be able to prosecute the crime should deterrence fail. At this historic juncture, it is therefore critical that States remove the restrictions on the ICC's jurisdiction over the crime of aggression, thereby harmonizing the ICC's jurisdiction over all four of its core crimes, reducing selectivity, and overcoming a significant double-standard in the international legal architecture.