EUROPEAN CENTER FOR CONSTITUTIONAL AND HUMAN RIGHTS

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Information brief

Reform of the ICC's jurisdiction over the crime of aggression: A long overdue endeavor

From 7 to 9 July 2025, States parties to the Rome Statute will be called upon to review the International Criminal Court's [ICC] jurisdictional regime on the crime of aggression – a step which is crucial to increase states' protection from aggressive war, to re-emphasize the importance of the prohibition of the use of force, and to counter double standards in the application of international criminal law.

The crime of aggression was recognised to hold military and political leaders accountable for the most serious forms of the unlawful use of force. Following intense negotiations, the Kampala amendments to the Rome Statute were adopted in 2010, introducing both a definition of the crime and an agreement on the ICC's jurisdiction over it. However, the compromise reached deviates significantly from the standard jurisdiction for the other three core crimes – genocide, crimes against humanity, and war crimes – in cases of state referrals and *proprio motu* investigations, as codified in Article 12 of the Rome Statute. Most notably, according to Art. 15*bis*, the ICC is prevented from exercising jurisdiction over crimes of aggression involving a non-state party, independently of whether the aggression is directed against the territory of a state party. Moreover, it is possible for states parties to opt out of the jurisdiction.

These restrictions create serious accountability gaps. Although the prohibition of the use of force is a cornerstone of the international legal order and the crime of aggression has long been recognized as customary international law, the current framework fails to effectively deter military and political leaders from waging aggressive war. Moreover, the crime of aggression not only violates the prohibition of the use of force – and thus state sovereignty – but leads to grave violations of the human rights of civilians and combatants alike, which charges of war crimes and crimes against humanity can only partially cover. It is thus crucial to align the jurisdiction of the ICC over all core crimes to enable it to fulfill its mandate of ending impunity for "the most serious crimes of concern to the international community as a whole".

A unique opportunity for such a reform is approaching: A review of the jurisdictional regime is mandated to take place seven years after its activation and hence in July 2025. States parties have agreed to hold this Special Session from 7 to 9 July 2025 in New York. The Working Group on Amendments has begun deliberations on the amendment process and a cross-regional group of states parties submitted an amendment proposal in April 2025 and developed a draft resolution to accompany the amendment aimed at harmonizing the Court's legal framework. Civil society likewise strongly calls for the necessary reform.

Against this background, the following information brief examines the amendment proposal and addresses some frequently asked questions on the amendment process raised by states parties and other stakeholders.[1]

[1] This briefing note builds on the earlier work by others and provides an update in the light of the submitted amendment proposal. A very instructive overview was published by the Global Institute for the Prevention of Aggression in September 2023. It includes a model amendment proposal similar to the one introduced by a group of states parties. For details see Global Institute for the Prevention of Aggression, *Model Amendment Proposal*, 9 September 2023, available at: https://crimeofaggression.info/wp-content/uploads/GIPA-model-amendment-proposal_9-September-2023.pdf (last accessed 19 June 2025).

Frequently asked questions

In what way is the ICC's jurisdiction over the crime of aggression more limited than its jurisdiction over the other three core crimes?

The ICC's jurisdiction over the crime of aggression is considerably more limited than its jurisdiction over the other three core crimes. This limitation applies to both cases of state referrals and investigations conducted by the Prosecutor on their own initiative (*proprio motu* investigations). Under the standard jurisdictional regime of Article 12 of the Rome Statute, which applies to genocide, crimes against humanity, and war crimes, the ICC may prosecute any such crimes committed on the territory or by a national of a state party. This jurisdiction extends to crimes committed by nationals of non-states parties when committed on the territory of a state party. A state that is not a party to the Rome Statute may accept the Court's jurisdiction through an ad hoc declaration. Within the scope of that declaration, the Court may then exercise its jurisdiction under the same conditions as outlined above for states parties.

For the crime of aggression, however, Article 15*bis* of the Rome Statute establishes a jurisdictional regime that is restricted in two respects. First, the Court is barred from prosecuting acts of aggression committed on the territory or by nationals of non-states parties, even if they are committed against the territory of a state party or a state that has accepted the jurisdiction of the Court through an ad hoc declaration. Second, Article 15*bis*(4) provides for an opt-out clause for states parties, allowing them to exclude the Court's jurisdiction over that crime by lodging a declaration with the Registrar. In both cases, a referral by the UN Security Council remains the only way to establish jurisdiction in accordance with Article 15*ter* – an approach that is often ineffective due to political deadlock and a lack of political will.

Why is reform necessary?

Open and blatant defiance of the international legal order – particularly the prohibition on the use of force – is on the rise. The use of aggression and threats thereof are clearly enjoying a dangerous renaissance. Despite these threats, the ICC's current jurisdictional framework leaves glaring gaps in accountability for aggressors who are nationals of non-states parties or of states parties that have opted out of the Court's jurisdiction (see previous question). Although the ICC has broader jurisdiction over genocide, war crimes, and crimes against humanity, these charges do not criminalize the act of waging aggressive war itself.[2] As a result, several dire consequences of an aggressive war or other acts of aggression that are not adequately covered under these charges – such as the killing of combatants during hostilities or of civilians in so-called 'proportionate attacks' – will often fall outside the scope of international criminal accountability.

Domestic courts cannot effectively substitute for international criminal prosecution because of the personal immunity that heads of state, heads of government and foreign ministers enjoy in foreign domestic proceedings while in office. As a result, those in leadership positions – who are typically responsible for decisions to wage a war of aggression – are effectively shielded from accountability before domestic courts in other states. Special tribunals for the crime of

[2] According to Article 8*bis* of the Rome Statute, the crime of aggression covers only those acts of aggression which, by their character, gravity, and scale, constitute a manifest violation of the Charter of the United Nations.

aggression risk fragmenting the accountability landscape, and their creation will require renewed efforts each time aggression occurs. Given that the legitimacy of international criminal justice rests on the equal application of the law, it is imperative to work towards a jurisdictional framework for the crime of aggression which is as universal as possible and equips the ICC – a court with universal aspirations – to effectively ensure accountability. This will help prevent further fragmentation, double standards and selective justice.

However, enabling the crime of aggression's effective prosecution is not only a matter of criminal accountability, but also essential to safeguard fundamental human rights—particularly the rights to life and to peace of civilians and combatants alike. In this regard, the UN Human Rights Committee reminded all states of their responsibility "as members of the international community to protect lives and to oppose widespread or systematic attacks on the right to life, including acts of aggression". Only an amended Rome Statute can provide a credible deterrent. As former Nuremberg Prosecutor Benjamin Ferencz emphasized, "[a]llowing aggressors to remain immune from prosecution by the ICC surely does not deter illegal war-making, but rather encourages it."

Why is the July 2025 Special Session a key moment for strengthening the ICC's jurisdiction over the crime of aggression?

By resolution adopted in Kampala in 2010 (RC/Res.6(4)), states parties mandated a review of the crime of aggression to take place seven years after the beginning of the ICC's exercise of jurisdiction over the crime. As a result of the decision to activate the Court's jurisdiction as of 17 July 2018, this review became due in 2025. It was agreed upon as part of the carefully crafted compromise amongst states parties on the jurisdictional regime adopted in Kampala, which is significantly more limited than that of the other three core crimes. States parties confirmed their intention to undertake the review by consensus during the plenary meetings of the Assembly of States Parties [ASP] in 2023 and 2024 (ICC-ASP/22/Res.3(157); ICC-ASP/23/Res.1(161)).

The Special Session scheduled for July 2025 presents a timely and long-overdue opportunity to address the shortcomings of the current legal framework. An amendment enabling the ICC to prosecute the crime of aggression under the same conditions as the other three core crimes is necessary. A mere stocktaking exercise would not be sufficient. There are no legally persuasive reasons to justify the current restrictions on the Court's jurisdiction. The decision to create a separate regime for the crime of aggression was a political compromise, resulting from pressure by a small number of states. These limitations have weakened the ICC's ability to deter wars or other acts of aggression and likely discouraged many states from ratifying the Kampala amendments. Harmonizing the Court's jurisdiction would be a critical step toward overcoming this fragmentation and would likely foster greater unity among states parties.

Civil society organizations around the world are therefore calling on states parties to harmonize the ICC's jurisdiction over the crime of aggression during the Special Session. The preamble of the Rome Statute recognizes that "such grave crimes threaten the peace, security and well-being of the world". The ICC's jurisdiction "exists for the benefit of the international community as a whole" and "to contribute to the prevention of such crimes". The Court should be empowered to fulfill this mandate as effectively and independently as possible. The amendment proposal submitted by a cross-regional group of states parties (Costa Rica,

Germany, Slovenia, Sierra Leone and Vanuatu) already sets out the necessary changes – what is needed now is for states to unite behind the shared goal of defending international peace and adopt them.

Which provisions must be amended to achieve harmonization?

The problematic restrictions on the Court's jurisdiction over the crime of aggression are found in Article 15*bis*(4) and (5) of the Rome Statute. These provisions allow states parties to opt out of the Court's jurisdiction and prevent the prosecution of acts of aggression committed by nationals of or on the territory of non-states parties – unless the Security Council refers the situation. Both paragraphs should be amended to remove these limitations.

Paragraphs 4 and 5 were introduced as part of the Kampala amendments and are currently binding only on the states parties that have ratified them.[3] While it is theoretically possible to adopt an entirely new jurisdictional regime in an amendment beyond the one agreed upon in Kampala, there are several reasons for improving – rather than replacing – the existing framework. Most importantly, the Kampala amendments not only established specific jurisdictional conditions but also introduced a carefully negotiated definition of the crime. Reopening that debate would risk undermining a hard-won consensus. The same holds true for the role of the UN Security Council in determining acts of aggression, which was also settled through the Kampala compromise.

What does the amendment proposal submitted by a group of states parties entail?

In April 2025, Costa Rica, Germany, Sierra Leone, Slovenia, and Vanuatu submitted a proposal to harmonize the ICC's jurisdiction over the crime of aggression. The proposal seeks to remove the two problematic jurisdictional limitations found in Article 15*bis*(4) and (5) of the Rome Statute, which were introduced by the Kampala amendments (see previous question). Rather than simply deleting both paragraphs, the proposal suggests replacing them with language that largely mirrors Article 12(2) and (3), where the preconditions to the exercise of jurisdiction for the other three core crimes are defined.[4] Beyond this, no further changes are proposed, meaning that both the definition of the crime of aggression and the agreed role of the UN Security Council remain untouched.

Upon entry into force, the amendment would align the ICC's jurisdiction over the crime of aggression with that of the other three core crimes. In cases of state referrals or *proprio motu* investigations, the ICC could prosecute crimes of aggression if either the state on whose territory the conduct occurred, or the state of nationality of the accused, has accepted jurisdiction through ratification or ad hoc acceptance of the harmonized aggression amendments. As is already the case for genocide, crimes against humanity, and war crimes, the

[3] For the current status of ratifications (as of 19 June 2025), see the UN Treaty Collection – Amendments on the Crime of Aggression, available at: https://treaties.un.org/pages/viewdetails.aspx?src=treaty&mtdsg_no=xviii-10-b&chapter=18&clang=_en#1(last accessed 19 June 2025). While Ukraine and Denmark have accepted or ratified the Kampala Amendments, the amendments have not yet entered into force for either state.

[4] For a detailed explanation of the benefits of this proposal, see Global Institute for the Prevention of Aggression, *Model Amendment Proposal*, 9 September 2023, available at: https://crimeofaggression.info/wp-content/uploads/GIPA-model-amendment-proposal_9-September-2023.pdf (last accessed 19 June 2025).

amended regime would also cover certain situations involving non-states parties – namely, where a non-state party national commits an act of aggression against the territory of a state party that has ratified or otherwise accepted the harmonized aggression amendments, or where a national of such a state party commits such an act against the territory of a non-state party.

Which states parties are entitled to participate in the amendment process?

All states parties to the Rome Statute are entitled to participate in the amendment process, regardless of whether they have ratified the Kampala Amendments. This follows from Article 121(2) and (3) of the Rome Statute, which provide that the Assembly of States Parties (ASP) as a whole "may deal with a proposal" and that the adoption of an amendment requires a two-thirds majority of "States Parties." The provision does not distinguish between states parties to the original Statute and those that have ratified specific amendments. This interpretation is also consistent with the purpose of the amendment provisions and the general principle of *pacta sunt servanda*: amendments are adopted with the aim that all states parties will eventually join them. It is therefore in every state party's interest to participate in shaping the content of proposed amendments to the original treaty. Hopefully, a significant number of states parties will engage actively in the process in support of harmonization.

What are the steps to bring the amendment into force?

The current proposal seeks to amend provisions originally introduced by the Kampala amendments. Since the Rome Statute does not explicitly regulate the procedure for amending an amendment, several procedural options can be considered. However, regardless of these technical complexities, the Statute provides all necessary legal tools to achieve the urgently needed reform.

The **first required step** is the adoption of the new amendment, as provided in Article 121(3) of the Rome Statute. This requires a two-thirds majority of states parties – currently amounting to 83 out of 125 parties, or could be accomplished by consensus. The **second step** concerns the amendment's entry into force, with the most widely discussed procedural routes being those set out in **Article 121(4)** and **Article 121(5) Sentence 1.**

Article 121(4) governs the entry into force of all non-institutional[5] amendments unless they fall within the scope of **Article 121(5)**. **Article 121(5),** in turn, applies to amendments to the crimes under the jurisdiction of the court as defined in Articles 5-8. Neither provision explicitly addresses the situation of amending a previous amendment, and, as the negotiation history on the crime of aggression illustrates, neither neatly accommodates the crime's unique status.[6]

[5] Amendments to provisions of an institutional nature are governed by Article 122 of the Rome Statute.

[6] Although included within the Court's jurisdiction from the outset under Article 5(1)(d), the crime of aggression was initially left undefined and inoperative. As a remedy, Article 5(2) mandated states parties to define the crime and determine the conditions under which the Court could exercise jurisdiction over it. However, the procedural mechanisms in the Statute were not specifically tailored to this unique situation—a dormant crime within the Court's jurisdiction, lacking a definition. More specifically, Article 5(2) broadly referred to Articles 121 and 123 for the adoption procedure, without addressing the need for an entry into force mechanism. Aside from this omission, applying Article 121(4) to the crime of aggression – as one possible mechanism – would have imposed a higher threshold for entry into force than the one foreseen for entirely new crimes under Article 121(5). This would have been difficult to justify, given that the crime of aggression, unlike any new crimes added to Articles 5–8, had already been included in the Statute. For this reason, states parties, after careful deliberation, chose to apply Article 121(5) sentence 1 as the most appropriate mechanism. See next footnote for further detail.

Nonetheless, both could reasonably apply to the proposed new amendment. A combination of legal and contextual factors must therefore be considered in determining which mechanism offers the most appropriate path for entry into force.

Option 1: Article 121(5) Sentence 1 – Individual entry into force for ratifying states

Article 121(5) Sentence 1 provides: *"Any amendment to articles 5, 6, 7 and 8 of this Statute shall enter into force for those States Parties which have accepted the amendment one year after the deposit of their instruments of ratification or acceptance."*

This option mirrors the procedure used for the original Kampala amendments. Under this procedure, the amendment would enter into force **one year after ratification** for **each individual state party** that accepts it. No specific majority is required.

- Allows for **fast implementation** by states willing to move ahead.
- Aligns with the **precedent and negotiating history** of the Kampala process, during which states agreed to apply Article 121(5) Sentence 1 to the entire legislative package, including jurisdictional provisions.[7]
- Reinforces **continuity** with the Kampala amendments. Although the current reform proposal does not directly amend Articles 5–8, it builds on the Kampala amendments, and together they form a **coherent legal package**. This supports the use of the same entry into force mechanism again.

Option 2: Article 121(4) – Entry into force for all states parties upon ratification by seven-eighths

Article 121(4) provides: *"Except as provided in paragraph 5, an amendment shall enter into force for all States Parties one year after instruments of ratification or acceptance have been deposited with the Secretary-General of the United Nations by seven-eighths of them."*

This procedure requires ratification by **seven-eighths of all states parties** (currently 109), after which the amendment would enter into force **for all states parties** one year later.

- Would establish a **binding jurisdictional regime** for all states parties if the required majority is achieved. However, this would apply only to the amended provisions in Article 15*bis*(4) and (5); all other provisions, including the definition of the crime of aggression, would still need to be ratified individually to become binding.
- Carries the risk of **significant delay** unless overwhelming support is present from the outset.

[7] With regard to the Kampala amendments, states parties decided by consensus that Article 121(5) Sentence 1 applied to them in their entirety (RC/Res.6). This decision was based on the interplay between Article 5(2) and Article 121, as well as a teleological interpretation of Article 121(4) and (5): Article 5(2) provided that states parties could adopt a provision 'in accordance with Articles 121 and 123 […] setting out the conditions under which the Court shall exercise jurisdiction' over the crime of aggression, thus granting them discretion regarding the applicable amendment procedure. Relying on this mandate, states parties adopted a contextual and teleological interpretation according to which all substantive amendments relating to subject-matter jurisdiction were adopted as a single, coherent package under Art. 121(5) Sentence 1.

- Draws support from the **text of Articles 121(4) and (5)**, as the proposed amendment concerns Article 15*bis* rather than Articles 5–8. However, since the proposal builds on and modifies the Kampala amendments, applying this mechanism instead of the previously used Article 121(5) Sentence 1 would constitute a break from procedural continuity (see above).

In summary, Option 1 offers significant advantages due to its consistency with past practice and its potential to strengthen protection against aggression without delay. Option 2 remains available but entails significantly higher procedural hurdles that would impede harmonization.

If states parties opt for Option 1 as recommended, it would be helpful to include a clarification in the activating resolution stating that the jurisdictional restriction contained in the second sentence of Article 121(5)[8] does not apply. Such a clarification would reaffirm the consensus reached in Kampala that all states ratifying the amendment are protected from potential acts of aggression committed by nationals of states parties that have not accepted the amendment.[9]

What will the relationship be between the new harmonization amendment and the Kampala amendments?

The draft resolution submitted by Liechtenstein and supported by a cross-regional group of states parties clarifies the relationship between the proposed harmonization amendment and the Kampala amendments.

In accordance with the Vienna Convention on the Law of Treaties, states parties already bound by the Kampala amendments will remain bound by the original version of Article 15*bis*(4) and (5) until the harmonization amendment enters into force for them. This means that there will be a transitional period during which states parties that have already ratified the Kampala amendments will need to ratify the harmonization amendment to reach the harmonization goal. For states parties that have not ratified the Kampala amendments, the draft resolution suggests

[8] Article 121(5) Sentence 2 of the Rome Statute provides: "In respect of a State Party which has not accepted the amendment, the Court shall not exercise its jurisdiction regarding a crime covered by the amendment when committed by that State Party's nationals or on its territory."

[9] According to the prevailing view, states parties agreed at Kampala to apply Article 121(5) Sentence 1 of the Rome Statute to the entire package of amendments, without invoking sentence 2. For a detailed explanation, see Carrie McDougall, *Expanding the ICC's Jurisdiction Over the Crime of Aggression*, *Journal of International Criminal Justice*, Vol. 22, Issues 3–4 (July–September 2024), pp. 543–564, https://doi.org/10.1093/jicj/mqae042. This interpretation is supported by the negotiating history. During the discussions on the jurisdictional regime, most states parties favored a model in which it is sufficient for either the victim state or the aggressor state to accept the Court's jurisdiction. The compromise adopted – Article 15*bis*(4) and (5) – established a special regime overriding Article 121(5) Sentence 2, with the opt-out clause in Article 15*bis*(4) serving as a concession to states that had insisted on mutual consent. This reading is reinforced by the reference in Article 15*bis*(4) to Article 12 of the Statute and by the activation resolution, which provides that "any State Party may lodge [an opt-out] declaration […] prior to ratification or acceptance", thereby implying that jurisdiction may be exercised based on the acceptance of other states. Only later did some states begin to argue for the applicability of Article 121(5) Sentence 2 – an interpretation that conflicts with the agreed-upon regime and in any event does not alter the original legal assessment. Therefore, if states parties decide to apply the same procedure to the proposed amendment, Article 121(5) Sentence 1 would again govern entry into force, with Sentence 2 having no bearing. This approach would also align with the jurisdictional framework under Article 12 for the other core crimes, which does not require the consent of both the territorial state and the state of nationality to trigger jurisdiction. To avoid ambiguity, the activating resolution should explicitly affirm that only Article 121(5) Sentence 1 applies.

that they will ratify the harmonization amendment as a whole, including the Kampala amendments. New states parties joining the Rome Statute will remain free to accede to either the original Statute or to the Statute incorporating the aggression amendments.

To send a strong signal against impunity for the crime of aggression, the draft resolution encourages all states parties – current and future – to ratify the aggression amendments. There is a strong incentive for states parties to do so, as ratification will afford them legal protection against aggression. With sufficient political will, the long-overdue harmonization of the Court's jurisdictional framework can be swiftly achieved.

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For questions or comments, please contact us at coa-reform@ecchr.eu.

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ANNEX – Harmonizing the ICC's Jurisdiction over Aggression: Proposed Changes to Article 15*bis*

The following table presents the current wording of Article 15*bis*(4) and (5) of the Rome Statute alongside the proposed amendments to these provisions, submitted by Costa Rica, Germany, Sierra Leone, Slovenia, and Vanuatu in April 2025. The proposal, circulated by the Secretary-General of the United Nations on 7 April 2025, is intended for consideration at the Special Session scheduled for July 2025.

Current wording of Art. 15*bis*(4), (5)	**Amended wording of Art. 15*bis*(4), (5)**
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.*	*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. In respect of a ***State that is not a party*** *to this Statute, the* ***Court shall not exercise its jurisdiction*** *over the crime of aggression when committed by that State's nationals or on its territory.*	*5. If the acceptance of a State that has not ratified or accepted the aggression amendments, or which 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.*