

Joint Civil Society Statement

Harmonization of the ICC's Jurisdiction over the Crime of Aggression: A Call to States Parties to Take the Opportunity for Reform

We respectfully call on all states parties to take the steps required to amend the International Criminal Court's jurisdiction over the crime of aggression. What the international community needs is a legal framework that can end impunity and effectively deter state leaderships from waging aggressive wars and other acts of aggression. To work towards these goals, the ICC must be able to prosecute the crime of aggression under the same conditions that exist for the other three core international crimes. Recourse to aggression in the last years painfully illustrates that this reform is crucial and overdue. States parties must therefore seize the opportunity they will be presented with in 2025 to fill the gaps in the ICC's jurisdiction regarding the crime of aggression.

The current legal framework for the prosecution of the crime of aggression is too limited and leads to glaring accountability gaps. The crime of aggression is a leadership crime, committed by those "*in a position effectively to exercise control over or direct the political or military action of a state*". The ICC, as the international court with universal aspirations and thus particularly suited and legitimized to focus on the highest-ranking perpetrators, should be enabled to effectively end impunity for "*the most serious crimes of concern to the international community as a whole*". However, due to the restrictive jurisdictional regime implemented for the crime of aggression in Art. 15*bis* Rome Statute, the ICC is currently barred from doing so in most instances.

For the other three core crimes, in cases of *proprio motu* investigations or state party referrals, Art. 12 Rome Statute provides for ICC jurisdiction where the crime is committed on the territory, or by a national, of a state party or a state lodging an ad hoc acceptance of jurisdiction. This also covers crimes committed by non-state party nationals if committed on the territory of a state party. By contrast, concerning the crime of aggression, the ICC cannot exercise its jurisdiction in the case of non-state party nationals or crimes committed on the territory of non-states parties (Art. 15*bis* (5)), except if the Security Council refers the situation to the Court (Art. 15*ter*). This holds true independently of whether it is a state party that is being attacked by a non-state party. Moreover, states parties have the option to declare that they do not accept jurisdiction (Art. 15*bis* (4)). While the UN Security Council remains competent to refer cases (Art. 15*ter*), the Russian war of aggression against Ukraine illustrates that there is a high risk of deadlock due to the use of the veto power by its permanent members – both to block referrals pertaining to their own state and referrals related to their allies. The current legal framework hence leaves it up to the most powerful states (under Art. 15*ter*) to decide whether accountability for the crime of aggression by leaders not covered by Art. 15*bis* is possible.

States parties must prioritize remedying this dire situation. This is not only crucial to discourage state leaderships from waging aggressive wars and from other acts of aggression against other states, but also to add another layer of protection for states at risk of being a victim of aggression. Only an amendment of the Rome Statute's jurisdiction over the crime of aggression can help ensure that states parties are better protected from the crime being committed against them, and that the ICC will be in a position to ensure accountability. The amendment is also crucial to be able to hold accountable those who are responsible for causing immense suffering to entire populations – including to soldiers on both sides, as well as civilians subjected to attacks, not all of which can be prosecuted as war crimes, but are part of the aggression itself. Finally, as a matter of consistency and legitimacy of the international justice system, its framework must ensure accountability not only in a few instances, but with the aspiration to uphold the prohibition of the crime of aggression as universally as possible, without selectivity and double-standards.

By resolution adopted in 2010 (RC/Res. 6(4)), states parties mandated a review of the crime of aggression provisions to occur in 2025. An opportunity to close the gaps in the Court's ability to exercise its jurisdiction over this crime is thus right around the corner. We urge states parties to seize it by

harmonizing the conditions for the ICC's exercise of jurisdiction over the crime of aggression with those applicable to its other core crimes. In preparation of the review, we call for a transparent and inclusive process appropriate to the task.

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