

**INTERNATIONAL CRIMES: PAST, PRESENT AND FUTURE PERSPECTIVES**

Panel III: International Crimes: Future Perspectives

**THE FUTURE FOR THE CRIME OF AGGRESSION AT THE INTERNATIONAL CRIMINAL COURT**

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**INTRODUCTION**

**Article 5, Rome Statute of the International Criminal Court  
Crimes within the jurisdiction of the Court**

1. The jurisdiction of the Court shall be limited to the most serious crimes of concern to the international community as a whole. The Court has jurisdiction in accordance with this Statute with respect to the following crimes:

- (a) The crime of genocide;
- (b) Crimes against humanity;
- (c) War crimes;
- (d) The crime of aggression.

2. The Court shall exercise jurisdiction over the crime of aggression once a provision is adopted in accordance with articles 121 and 123 defining the crime and setting out the conditions under which the Court shall exercise jurisdiction with respect to this crime. Such a provision shall be consistent with the relevant provisions of the Charter of the United Nations.

**RC/Res.6 (“Kampala Amendments”)**

1. *Decides* to adopt, in accordance with article 5, paragraph 2, of the Rome Statute of the International Criminal Court the amendments to the Statute contained in annex I of the present resolution, which are subject to ratification or acceptance and shall enter into force in accordance with article 121, paragraph 5; and notes that any State Party may lodge a declaration referred to in article 15 *bis* prior to ratification or acceptance.

**Articles 15 *bis* and 15 *ter***

2. The Court may exercise jurisdiction only with respect to crimes of aggression committed one year after the ratification or acceptance of the amendments by thirty States Parties.

3. The Court shall exercise jurisdiction over the crime of aggression in accordance with this article, subject to a decision to be taken after 1 January 2017 by the same majority of States Parties as is required for the adoption of an amendment to the Statute.

## THE JURISDICTIONAL REGIME IN THE KAMPALA AMENDMENTS

### **Article 15 *bis***

Exercise of jurisdiction over the crime of aggression (State referral, *proprio motu*)

1. The Court may exercise jurisdiction over the crime of aggression in accordance with article 13, paragraphs (a) and (c), subject to the provisions of this article

### **Article 15 *ter***

Exercise of jurisdiction over the crime of aggression (Security Council referral)

1. The Court may exercise jurisdiction over the crime of aggression in accordance with article 13, paragraph (b), subject to the provisions of this article.

## SECURITY COUNCIL REFERRALS

### **Article 15 *ter*, Kampala Amendments**

Ibid

### **Article 13, Rome Statute of the International Criminal Court**

The Court may exercise its jurisdiction with respect to a crime referred to in article 5 in accordance with the provisions of this Statute if:

(b) A situation in which one or more of such crimes appears to have been committed is referred to the Prosecutor by the Security Council acting under Chapter VII of the Charter of the United Nations.

## PROPRIO MOTU AND STATE REFERRALS

### **I. NON-STATE PARTIES**

#### **Article 15 *bis*, Kampala Amendments**

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

### **II. PROCEDURAL ASPECTS**

#### **Article 15 *bis*, Kampala Amendments**

6. Where the Prosecutor concludes that there is a reasonable basis to proceed with an investigation in respect of a crime of aggression, he or she shall first ascertain whether the Security Council has made a determination of an act of aggression committed by the State concerned. The Prosecutor shall notify the Secretary-General of the United Nations of the situation before the Court, including any relevant information and documents.

7. Where the Security Council has made such a determination, the Prosecutor may proceed with the investigation in respect of a crime of aggression.

8. Where no such determination is made within six months after the date of notification, the Prosecutor may proceed with the investigation in respect of a crime of aggression, provided that the Pre-Trial Division has authorized the commencement of the investigation in respect of a crime of aggression in accordance with the procedure contained in article 15, and the Security Council has not decided otherwise in accordance with article 16.

Note:

**Article 15 bis, Kampala Amendments**

9. A determination of an act of aggression by an organ outside the Court shall be without prejudice to the Court's own findings under this Statute.

**Article 15 ter, Kampala Amendments**

4. A determination of an act of aggression by an organ outside the Court shall be without prejudice to the Court's own findings under this Statute.

**III. JURISDICTION *RATIONE MATERIAE***

**Article 15 bis, Kampala Amendments**

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.

**Article 12, Rome Statute of the International Criminal Court  
Preconditions to the exercise of jurisdiction**

1. A State which becomes a Party to this Statute thereby accepts the jurisdiction of the Court with respect to the crimes referred to in article 5.

**Article 121, Rome Statute of the International Criminal Court**

5. 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. 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.

*a. Reading whereby second sentence of Article 121(5) Rome Statute of the International Criminal Court is adhered to.*

Position: Consent requires the ratification or acceptance by the State Party concerned of the amendments.

**Article 121(5), Rome Statute of the International Criminal Court**

[Second sentence] 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 amendments when committed by that State Party's nationals or on its territory.

**Article 34, Vienna Convention on the Law of Treaties**

A treaty does not create either obligations or rights for a third State without its consent.

**Article 40(4), Vienna Convention on the Law of Treaties**

The amending treaty does not bind any State already a party to the treaty which does not become a party to the amending agreement.

*b. Reading whereby Article 15 bis(4) prevails*

Position: Consent may result from the absence of a declaration referred to in Article 15 bis(4) of the Kampala Amendments with the effect of “opting-out” of the Court’s jurisdiction.

**Article 121(5), Rome Statute of the International Criminal Court**

First sentence: Any amendments 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.

**Article 12(1), Rome Statute of the International Criminal Court**

A State which becomes a Party to this Statute thereby accepts the jurisdiction of the Court with respect to the crimes referred to in article 5

**Article 5(2), Rome Statute *lex specialis***

The Court shall exercise jurisdiction over the crime of aggression once a provision is adopted in accordance with articles 121 [amendments] and 123 [Review of the Statute] defining the crime and setting out the conditions under which the Court shall exercise jurisdiction with respect to this crime.