



## ***QUESTIONS & ANSWERS ON THE CRIME OF AGGRESSION AMENDMENT ADOPTED AT THE ICC REVIEW CONFERENCE IN KAMPALA, UGANDA***

### ***What happened in Kampala in respect to the crime of aggression?***

In Kampala, the States Parties to the Rome Statute approved a comprehensive package on aggression that included: the definition of the crime which details what a crime of aggression and an act of aggression are; the conditions for the exercise of the ICC's jurisdiction over the crime of aggression that provide when the Court could open an investigation; and new Elements of Crimes and seven understandings, which will help the judges to apply provisions on aggression.

### ***Why did the States Parties want to include the crime of aggression in the Rome Statute?***

In the words of the chief American prosecutor in the Nuremberg trials, Robert H. Jackson, a war of aggression is the "supreme international crime." The Nuremberg Principles defined three categories of crimes, including the crime against peace. This last category was the precedent to the current crime of aggression. Including the crime of aggression in the Rome Statute in 1998 was an effort by the international community to prevent atrocities like the ones committed during the World War II from happening again.

### ***Why were the provisions on aggression approved in Kampala and not originally included in the Statute when it was originally approved in Rome in 1998?***

When countries negotiated and approved the Rome Statute in 1998, there was no consensus on the definition of the crime of aggression and the conditions for the exercise of the ICC's jurisdiction. They realized that the crime of aggression was a very complex issue. They agreed that the crime of aggression must be in the Rome Statute. They decided to include the crime of aggression in the Statute but suspended the Court's jurisdiction over it. They created a Special Working Group which continued working on this issue until 2009. In Kampala, the States Parties finished what they started in Rome by adding several new articles to the Rome Statute.

### ***What is a crime of aggression?***

The amended Rome Statute defines the crime of aggression as the planning, preparation, initiation or execution by a person in a leadership position of an act of aggression. This refers to political or military leaders. Importantly, it contains the threshold requirement that the act of aggression must constitute a manifest violation of the Charter of the United Nations.

### ***What is an act of aggression?***

An act of aggression is defined as the use of armed force by one country against the sovereignty, territorial integrity or political independence of another country, or in any other manner inconsistent with the UN Charter. The definition of the act of aggression is based on the UN General Assembly Resolution 3314 of 1974.

### ***Would any intrusion on the territory of a different state be considered a crime of aggression?***

No. The Rome Statute provides that only the preparation or execution of acts of aggression that manifestly violate the UN Charter could result in crimes that could be prosecuted by the ICC. In addition to that, the Review Conference added some understandings to this definition to help the judges of the ICC to interpret it. These understandings provide that in establishing whether an act of aggression constitutes a manifest violation





of the UN Charter, the three components of character, gravity and scale must be considered and no one of them can be significant enough to satisfy the manifest standard by itself.

### ***Who could be prosecuted for a crime of aggression?***

The provisions on aggression apply to persons in a position effectively to exercise control over or to direct the political or military action of a country who are nationals of a State Party to which the amendment applies.

### ***Who could initiate a crime of aggression investigation?***

According to the amendment adopted in Kampala, the ICC could initiate a crime of aggression investigation in three different ways. The ICC may exercise its jurisdiction over the crime of aggression if the Security Council or a State Party refers a situation, or if the Prosecutor acts with the approval of the Pre-Trial Division.

### ***What happens if the Security Council refers an aggression situation to the ICC?***

The Court's jurisdiction is triggered in the same manner as are the other crimes in the Statute, meaning the Prosecutor could proceed with an investigation into the crime of aggression. The Security Council may refer a situation as a whole which means that it does not need to determine that an act of aggression has occurred. The ICC would decide what crimes have been committed in the situation.

### ***What happens if a State Party refers an aggression situation or the Prosecutor wants to open an investigation?***

In these two scenarios, the Prosecutor needs first to ascertain whether the Security Council has made a determination that an act of aggression occurred. If such a determination has been made, the Prosecutor may proceed with the investigation. If such a determination is not made in a period of six months, the Prosecutor needs an authorization by the Pre-Trial Division of the Court in order to open the investigation.

### ***When could the ICC begin to exercise its jurisdiction over the crime of aggression?***

In Kampala, the States Parties adopted provisions regarding the definition of the crime of aggression and the conditions for the exercise of the jurisdiction. However, the exercise of the jurisdiction will not happen until two conditions are satisfied. First, at least 30 countries need to ratify the amendment. Second, the States Parties need to activate the jurisdiction after January 1, 2017 by consensus action or a two-thirds vote.

### ***Are all States Parties subject to the provisions on aggression?***

If the Security Council refers the situation to the ICC, citizens of any State Party could be prosecuted by the Court. If the situation arrives to the ICC by a State Party referral or by the Prosecutor acting on his or her own initiative, only the nationals of States Parties to which the amendment applies could be prosecuted by the Court. The amendment prevents the Court from exercising jurisdiction over a State Party that has opted out of the aggression regime.

### ***Are non-States Parties subject to the provisions on aggression?***

If the situation is referred to the ICC by the Security Council, any person, no matter his or her nationality, could be prosecuted by the Court. If the situation arrives to the ICC by a State Party referral or by the Prosecutor acting on his or her own initiative, nationals of non-States Parties could not be prosecuted by the Court.





***Could US nationals be prosecuted by the ICC, whether the US joins the ICC or not?***

It is highly improbable that any US national could be prosecuted for a crime of aggression. Since the US is non-State Party, the ICC could not exercise jurisdiction over a crime of aggression committed by a US national, either if a State Party refers the situation to the Court or if the Prosecutor wants to open an investigation on his or her own initiative. Only if the Security Council refers the situation to the ICC could the Court exercise its jurisdiction over American citizens. However, it is very unlikely that such a referral would occur since the US could always use its veto right as a permanent member of the Security Council to block the referral. If the US eventually joins the ICC, it could always lodge a declaration opting out of the crime of aggression regime.

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