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### TRAINING MANUEL ON HUMAN RIGHTS AND HUMAN RIGHTS PROTECTION FOR LAWYERS

#### FILE N° 17: THE CRIME OF AGGRESSION

Since the creation of the United Nations, aggression towards a State by another State has always been considered as a crime against peace.

The competent body for establishing this type of threat to peace and for taking adequate measures was, by virtue of article 39 of the United Nations Charter, the UN Security Council.

With the creation of the International Criminal Court, the act of aggression falls within the scope of international criminal law.

Initially, the Statute provided no definition for this crime, deferring the exercise of this jurisdiction to the adoption of a definition by States Parties. It has been defined since the Review Conference held from 30 May to 11 June 2010.

#### ➤ Identification of the concept of aggression

<b>Legal basis</b>	<i>United Nations Charter :</i> Ch.I (Purposes and Principles of the UN) : -Art. 1§1 : Prevention of threats to peace, suppression of acts of aggression. -Art. 2§4 : Prohibition of the use of force	<i>Statute of Rome :</i> Art. 5 §1 : The jurisdiction of the Court is limited to the most serious crimes of concern to the international community as a whole : d) the crime of aggression.
<b>Definition</b>	<i>Resolution 3314 (XXIX) of the United Nations General Assembly, adopted on 14 December 1974, Article 1 :</i>  <u>Aggression :</u> (regardless of a declaration of war) The use of armed force by a State against the sovereignty, territorial integrity or political independence of	<i>Resolution RC / Res. 6 adopted on 11 June 2010, at the Revision Conference for the Statute of Rome in Kampala, new article 8a of the Statute of Rome</i>  <u>Crime of aggression (article 8 bis§1):</u> The planning, preparation, initiation or execution by a person in a leadership position of an act of aggression. Importantly, it contains the threshold requirement that the act of aggression must



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	another State, or in any other manner inconsistent with the Charter of the United Nations.	constitute a manifest violation of the Charter of the United Nations.  <u>Act of aggression (article 8 bis §2):</u> (with or without a declaration of war) The use of armed force by one State against the sovereignty, territorial integrity or political independence of another State, or in any other manner which is incompatible with the Charter of the United Nations.
<b>List of constitutive acts</b>	<i>Resolution 3314 (XXIX) of the United Nations General Assembly, adopted on 14 December 1974 ; Article 3 :</i>  <u>Non-exhaustive list:</u>  a) The invasion or attack by the armed forces of a State of the territory of another State, or any military occupation, however temporary, resulting from such invasion or attack, or any annexation by the use of force of the territory of another State or part thereof; b) Bombardment by the armed forces of a State against the territory of another State or the use of any weapons by a State against the territory of another State; c) The blockade of the ports or coasts of a State by the armed forces of another State; d) An attack by the armed forces of a State on the land, sea or air forces, or marine and air fleets of another State; e) The use of armed forces of one State which are within the territory of another State with the agreement of the receiving State, in contravention of the conditions provided for in the agreement or any extension of their presence in such territory beyond the termination of the agreement; f) The action of a State in allowing its territory, which it has placed at the disposal of another State, to be used by that other State for perpetrating an act of aggression against a third State; g) The sending by or on behalf of a State of armed bands, groups, irregulars or mercenaries, which carry out acts of armed force against another State of such gravity as to amount to the acts listed above, or its substantial involvement therein.	<i>Resolution RC/Res.6 adopted on 11 June 2010, at the Review Conference of the Statute of Rome in Kampala ; new article 8 bis §2 of the Statute of Rome.</i>  <u>Exhaustive list :</u>  a) The invasion or attack by the armed forces of a State of the territory of another State, or any military occupation, however temporary, resulting from such invasion or attack, or any annexation by the use of force of the territory of another State or part thereof; b) Bombardment by the armed forces of a State against the territory of another State or the use of any weapons by a State against the territory of another State; c) The blockade of the ports or coasts of a State by the armed forces of another State; d) An attack by the armed forces of a State on the land, sea or air forces, or marine and air fleets of another State; e) The use of armed forces of one State which are within the territory of another State with the agreement of the receiving State, in contravention of the conditions provided for in the agreement or any extension of their presence in such territory beyond the termination of the agreement; f) The action of a State in allowing its territory, which it has placed at the disposal of another State, to be used by that other State for perpetrating an act of aggression against a third State; g) The sending by or on behalf of a State of armed bands, groups, irregulars or mercenaries, which carry out acts of armed force against another State of such gravity as to amount to the acts listed above, or its substantial involvement therein.
<b>Exceptions /excluded acts</b>	<i>United Nations Charter :</i> -Art. 51 : case of legitimate defence, individual or collective ;	

	-Art. 42 : coercive action authorised by the Un Security Council with the purpose of maintaining or restoring peace ; -Art. 53 : coercive action carried out by a regional body and authorised by the UN Security Council.	
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➤ **Regime for the crime of aggression within the framework of the jurisdiction of the International Criminal Court and relationship with the action of the UN Security Council**

*Resolution RC / Res. 6 of 11 June 2010* provides for a specific regime for the crime of aggression in articles 15 *bis* and 15 *ter* of the Statute, which sets out the conditions for exercise of jurisdiction by the Court in relation to this crime.

• **In which circumstances can the Prosecutor open an investigation ?**

The Prosecutor may only open an investigation on a crime of aggression on his own initiative or on the referral by a State in the following conditions :

- ✓ After being assured that the Security Council has established that an act of aggression has been committed by the State in question (in accordance with article 39 of the United Nations Charter) and after having allowed 6 months to pass from the time it is determined by the Security Council ;
- ✓ When the situation concerns an act of aggression committed between States Parties ;
- ✓ On condition that the Pre-trial Division of the Court has authorised the initiation of an investigation ;
- ✓ Insofar as the States concerned have not rejected the jurisdiction of the Court through a declaration of non-acceptance of its jurisdiction.

➤ **At which point does the Court have jurisdiction ?**

The crimes of aggression specified are those committed one year following ratification or acceptance of the amendments to the Statute (introduced by *Resolution RC / Res. 6 of 11 June 2010*).

In all cases, the Court cannot exercise its jurisdiction before a decision has been taken to enable its jurisdiction, by 2/3 of States Parties, from 1<sup>st</sup> January 2017.

*Sources:*

- United Nations Charter : <http://www.un.org/en/documents/charter/>
- Resolution 3314 (XXIX) of the United Nations General Assembly, adopted 14 December 1974 : <http://www.un.org/Depts/dhl/resguide/r29.htm>
- Statute of Rome : <http://www.icc-cpi.int/menus/icc/legal%20texts%20and%20tools/legal%20tools?lan=en-GB>
- *Resolution RC / Res. 6* adopted on 11 June 2010, at the Review Conference of the Statute of Rome in Kampala : <http://www.kampala.icc-cpi.info>
- Web site of the International Criminal Court : <http://www.icc-cpi.int/menus/icc/home?lan=en-GB>
- Web site of the Coalition for the International Criminal Court : <http://www.iccnw.org/?lang=en>
- Web site of Trial Watch : <http://www.trial-ch.org/en/home.html>

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