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Articles 15 *bis* and 15 *ter* describe the conditions under which the ICC is allowed to exercise jurisdiction over the crime of aggression. It is a complex legal regime that was agreed to by ICC States Parties at the 2010 review conference. It provides for a much more limited jurisdiction over the crime of aggression compared to the other three core crimes: genocide, crimes against humanity, and war crimes. The conditions are different for Security Council referrals on the one hand, and *proprio motu* investigations and State Party referrals on the other. But both articles have some elements in common.

- First, both articles require that at least 30 State Parties have ratified the amendment, a condition that is already fulfilled;
- Second, both require that the ICC States Parties take a separate decision to activate the Court's jurisdiction over aggression in general, and this decision is scheduled for December 2017, at the annual meeting of the States Parties; and
- Third, both articles confirm that the Court is not bound by a determination by the Security Council, or by any other organ that aggression may or may not have occurred.

But otherwise, the two articles could not be more different.

So, let's start with the easier one, article 15 *ter*, on Security Council referrals. Once the Court's jurisdiction over the crime of aggression is activated, it will be able to investigate and prosecute crimes of aggression based on Security Council referrals without any further aggression-specific conditions. In other words, whenever the Security Council, at that point, refers the situation to the ICC, the procedural conditions will be the same for genocide, war crimes, crimes against humanity, and crimes of aggression. This means, in particular, that there is no requirement for the involved States to have given their consent to the investigation, given that the Court's powers derive in this case from the Security Council's powers under the UN Charter.

Article 15 *bis*, by contrast, has a much more limited jurisdictional regime. Where the Security Council does not refer the situation, the Court can only proceed on the basis of some degree of consent of the States concerned. This is of course a very serious limitation, but one that was indispensable for the review Conference to have found an agreement on this difficult issue. The limitation has three main elements:

First, there is no jurisdiction regarding the crime of aggression with respect to non-States Parties to the Rome Statute. This is provided in Paragraph (5) of Article 15 *bis*. It does not matter whether such states be the aggressor or the victim of aggression. So, in other words, jurisdiction is limited to the circle of States Parties. But there is a second limitation. According to paragraph (4), States Parties to the Rome Statute have the possibility of opting out of the Court's jurisdiction over the crime of aggression, despite the fact that by ratifying the original Rome Statute, they have already accepted the Court's jurisdiction over aggression, at least in principle, in accordance with article 12(1).

The third limitation stems from the fact that article 15 *bis* was added to the Rome Statute later on as an amendment and therefore for the court to exercise jurisdiction, at least one ICC State Party involved must have ratified the amendment, for the Court to then exercise jurisdiction based on either the principle of territoriality or nationality. I should add, however, that some States and some commentators take the view that, in fact, both States Parties involved must have ratified the amendments on the crime of aggression. However, that's a discussion that goes far beyond this scope of this brief introduction.

These are three elements that limit the scope of jurisdiction. In addition, paragraphs 6, 7 and 8 prescribe a special procedure that reflects the fact that aggression, as the most serious form of the illegal use of force by one State against another, is also an issue dealt with by the Security Council. Therefore, if the situation has not originally come from the Security Council by way of a referral, the Prosecutor has to bring the case to the attention of the Council. Ideally, the Security Council would then within the next six months determine that aggression has taken place, and then the Court investigation can proceed. But if the Council makes no such determination, for example, because Council members cannot agree that aggression has happened or if council members actually agree that no aggression has taken place, the investigation is not over yet. In this case, the Prosecutor can request the Pre-Trial Division to authorize the investigation. This was meant to serve as a reinforced check on the power of the Prosecutor, similar to what article 15 of the Rome Statute already foresees, but with six judges instead of three judges involved in the authorization.

So, to sum up, both articles 15 *bis* and 15 *ter*:

Once activated, the ICC will have jurisdiction over the crime of aggression. In case of Security Council referrals, jurisdiction will be exactly the same as for the other three core crimes. In case of State referrals or *proprio motu* investigations, jurisdiction will be more limited. It will exclude aggression committed by or against non-states Parties and even among ICC States Parties, it will be heavily consent-based. And furthermore, both articles foresee important roles for the Security Council, but they also confirm that the ICC remains fully independent in its judicial assessment of the crime of aggression.