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VIA E-MAIL: otp.informationdesk@icc-cpi.int

Madam Prosecutor,

herewith I would like to inform You in Your capacity of the prosecutor of the International Criminal Court upon the crime of Aggression described below.

Let me first put some words on article 8 *bis* of the Statute¹.

It reads in its first two paragraphs as follows:

1. For the purpose of this Statute, "crime of aggression" means the planning, preparation, initiation or execution, by a person in a position effectively to exercise control over or to direct the political or military action of a State, of an act of aggression which, by its character, gravity and scale, constitutes a manifest violation of the Charter of the United Nations.

2. For the purpose of paragraph 1, "act of aggression" means the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State, or in any other manner inconsistent with the Charter of the United Nations. Any of the following acts, regardless of a declaration of war, shall, in accordance with United Nations General Assembly resolution 3314 (XXIX) of 14 December 1974, qualify as an act of aggression:

[follow *literae a*) until g) describing some examples of acts of aggression].

For quoted para. 2 sets forth, in its second sentence, that the following acts shall, *in accordance with United Nations General Assembly resolution 3314 (XXIX)*², qualify as an act of aggression, also article 4 of the *Definition of Aggression*, annexed to said resolution, applies, *mutatis mutandis*; it reads:

The acts enumerated above are not exhaustive and the Security Council may determine that other acts constitute aggression under the provisions of the Charter.

Nevertheless, it must be clear that the Court, in exercising its jurisdiction, is obliged to abide by the principle of art. 22 of the Statute (*nullum crimen sine lege*). Article 22 of the Statute reads:

1. A person shall not be criminally responsible under this Statute unless the conduct in question constitutes, at the time it takes place, a crime within the jurisdiction of the Court.

2. The definition of a crime shall be strictly construed and shall not be extended by analogy. In case of ambiguity, the definition shall be interpreted in favour of the person being investigated, prosecuted or convicted.

3. This article shall not affect the characterization of any conduct as criminal under international law independently of this Statute.

However, it appears that the first sentence of para. 2 of article 8 *bis* of the Statute, in connection with its para. 1, as cited above, constitutes a sufficiently strict construction of a definition of a crime in the sense of art. 22 para 2 of the Statute; therefore and under the light thrown by cited art. 4 of A/RES/3314(XXIX), annex, it results that the enumeration given in *literae a*) until g) of para 2 of art. 8 *bis* of the Statute only shall render a non-exhausting list of examples helpful for further illustration of the elements of such crime.

Thus, it follows that the Court is competent, without violation of art. 22 of its Statute, to undertake the subsumption of other acts under the crime of aggression, in accordance with art. 8 *bis* para. 2, first sentence of the Statute.

Now, art. 8 *bis* para. 2, first sentence of the Statute speaks, in exact conformity with art. 1 of A/RES/3314(XXIX), annex, of *the use of armed force*. This is not the same as the phrase: *the threat or use of force*, in art. 2 para. 4 UN-Charter, which is set forth without referring to arms. Moreover, the wording: **armed force**, in the former cited passage, instead of *arms' force*, even does not necessarily mean the exercise of force by arms, but only the exercise of a force rendered authoritarian by being staffed with arms. This is due to the fact, that yet the arms' show off can render one's vis-à-vis willingly to abide by orders of the aggressor. Therefore, the above cited term: *the use of armed force*, does neither need to be supplemented by the expressive construction of, nor exclude the inherent meaning of a *threat* of force.

Thus, it is proven that the crime of aggression includes acts of threatening arms' force, because such threatening means the *use of armed force*, too.

¹ <https://www.icc-cpi.int/resource-library/documents/rs-eng.pdf>

² [http://www.undocs.org/A/RES/3314\(XXIX\)](http://www.undocs.org/A/RES/3314(XXIX))

The vis-à-vis, mentioned above, need not be a State, because the wording: *or in any other manner inconsistent*, in art. 8 bis para 2, first sentence of the Statute substitutes the whole passage beginning with the words: *against the sovereignty ...*, and thus opens the definition of the crime to acts aimed at other subjects than states, especially citizens of such a state, if they are concerned by the act in large number. This is due to the fact, that said art. 8 bis para 2, first sentence of the Statute even speaks of *any other manner inconsistent with the Charter of the United Nations*. Being aggressive against many citizens of another state, which besides are entitled to asylum after the Geneva Convention 1951/1967, i. e. against refugees, without any doubt must be regarded as inconsistent with the Charter.

Now, it is getting evident, that the situation having taken place at least in the camp of Moria, Lesbos, Greece, before the big fire and being notorious in its characteristics, constitutes the crime of aggression committed by the responsible members of Greek government, and, my be, too, of other governments of European Union Member States. (Regarding the latter it is to refer to the fact, that a decision after art. 5 para 1 of the EU directive 2001/55/EC³ has not yet been taken although the conditions therefor have been evident for long.)

The mentioned circumstances and characteristics of living conditions in the burnt camp of Moria constitute systematically not only many human rights violations but also their criminally prolonged effectiveness through armed force, i. e. the thread of arms' force in case of, and as an answer to, trying to proceed abroad of the island and to get on the Greek mainland.

So, dear Ms. Bensouda, I am hoping to have brought about the evidence that in Moria, there have been committed crimes of aggression which fall within the jurisdiction of the Court, sufficient to a further investigation by Your Office.

Please, do not hesitate to let me know, if so, that there are still some inconsistencies in my explanations.

Sincerely,

Arthur Lambauer

³ <https://eur-lex.europa.eu/legal-content/DE/TXT/?qid=1600253497174&uri=CELEX:32001L0055>