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# The Crime of Aggression: A Legal Framework

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## ABSTRACT

*The addition of the crime of aggression to the Rome Statute of the International Criminal Court (ICC), which creates a framework for holding individuals accountable for using military force unlawfully to jeopardize international peace and security, is a significant milestone in international criminal law. However, prosecuting the crime of aggression presents complex legal, political, and procedural challenges. This paper examines the legal aspects of aggression in accordance with the Rome Statute, including its proper meaning with jurisdictional framework, and the threshold for prosecution, as well as the conflict between state sovereignty and the criminal responsibility of the individual. The Kampala amendments in 2010 provided a clearer definition of aggression, drawing from UN General Assembly Resolution 3314, and set procedural conditions for ICC jurisdiction. Nonetheless, the UN Security Council's role remains a significant cause of conflict, as it still has the power to decide if an action qualifies as aggression, which complicates the jurisdictional power of the ICC.*

*The paper further explores the challenges posed by the manifest violation threshold for prosecuting aggression, the impact of geopolitical factors on the enforcement of the law, and the role of powerful states in shaping the future of aggression prosecutions. The legal complexities surrounding the crime of aggression highlight the need for continued international cooperation and reform, as well as a stronger commitment to ensuring accountability for acts that threaten global peace. This abstract provides an overview of the main political and legal considerations that affect the prosecution of violence, providing information about potential roadblocks and opportunities for the advancement of international criminal justice in this area.*

**Keywords:** *Crime of aggression, international law, human rights, international criminal justice*

## I. INTRODUCTION

The International Criminal Court (ICC), established in 2002 under the Rome Statute, is the first permanent body charged with trying the most serious crimes under international law,

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including crimes against humanity, war crimes, and genocide. Over time, the international court of Justice has evolved as a foundation of global justice, seeking to hold people responsible for horrible deeds that transcend national borders and affect the global community as a whole. However, despite its wide mandate, the ICC initially faced significant challenges in prosecuting one particularly contentious crime: criminal aggression.<sup>4</sup>

Aggression, broadly described as when a state uses armed force to violate another state's political independence, territorial integrity, or sovereignty, has been discussed for more than a century in the field of international law. Despite its foundational importance as per the construction of modern international law—originating from the Nuremberg Trials and the UN Charter—the legal and political obstacles to prosecuting acts of aggression have kept it from being fully incorporated into the framework of the court. Aggression has always been considered a politically delicate crime, especially because it implicates state behaviour and the dynamics of international relations, making it a difficult issue to address in a courtroom.

The long-awaited adoption of criminal aggression by the ICC, following the 2010 Kampala Conference, was a momentous event. It represented a pivotal shift toward greater accountability for acts of war initiated by states. After years of discussion, the ICC decided to include aggression as one of the fundamental international crimes under its purview. legal uncertainty, and political manoeuvring. The process of defining the limits of state sovereignty and accountability in international law came to a head with its inclusion<sup>5</sup>.

However, while Aggression's official inclusion in the Rome Statute was a major step forward, its practical application remains fraught with challenges. Geopolitical considerations, the UN Security Council's function, the legal barrier for prosecution continue to complicate the ICC's ability to bring perpetrators of aggression to justice. The U.S. China, Russia, and other prominent states show concerns regarding the extent of the ICC's authority, fearing that it could be used as a tool for politically motivated prosecutions. This tension between global justice and national sovereignty remains one of the most contentious issues surrounding the role of ICC in the prosecution related to aggression<sup>6</sup>.

This article aims to explore the historical context, legal intricacies, and political challenges surrounding the adoption of criminal aggression by the ICC. It will examine the journey of aggression from being a relatively underdeveloped concept in international law to its eventual

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<sup>4</sup> International Criminal Court (ICC), *Rome Statute of the International Criminal Court* (1998) Art 5(1)

<sup>5</sup> International Criminal Court, 'The Kampala Amendments' (International Criminal Court, Kampala, Uganda, 2010)

<sup>6</sup> United Nations Charter, Art 2(4), 24 October 1945

recognition as a core crime under the ICC. Moreover, this article will investigate the impact of this legal evolution on international diplomacy, the geopolitics of war, and the future of global peace and security.

## II. HISTORICAL CONTEXT OF THE CRIME OF AGGRESSION

The first international organizations created to uphold peace and avert future conflicts were established in the wake of World War I, which is when the crime of aggression originally emerged. The concept of holding individuals accountable for acts of aggression was not entirely novel, but the legal and political frameworks for doing so were still in their infancy.

### A. The crime of aggression and the Nuremberg trials

Following World War II, there was the first significant attempt to bring charges against individuals for the crime of aggression. at the Trials of Nuremberg. These trials, which took place between 1945 and 1949, were a as direct reaction to the wartime horrors, including the genocides carried out by Nazi Germany and its allies. At Nuremberg, Nazi leaders were prosecuted for crimes against peace, an antecedent of the contemporary concept of aggression<sup>78</sup>.

Planning, starting, or carrying out aggressive conflicts in defiance of international law were all considered crimes against peace at the Nuremberg. This included aggressive acts by the Nazi regime in Europe, such as the invasion of Poland, France, and the Soviet Union, which were deemed violations of the Versailles treaty and the developing international peace agreement structure. The tribunal established the legal basis for the idea that people, not only governments, may be prosecuted for acts of aggression. However, the political nature of prosecuting aggression, particularly against high-ranking state officials, was evident. The Allied powers, including Russia, Britain, America, held various views on correct way to deal with the prosecution of war crimes and aggression which influence the Nuremberg Trials' objectives and extent.

Despite the Nuremberg Trials' historical importance, the prosecution of aggression was controversial. The selective nature of the trials—where only Axis powers were prosecuted for aggression while Allied powers remained outside the purview of international law—was one of the critiques levelled against the trials. Furthermore, while the Nuremberg Charter did establish aggression as a crime, the ambiguity surrounding the exact definition of aggression and the political realities of prosecuting such cases meant that the concept did not evolve

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<sup>7</sup> United Nations, *Charter of the United Nations*, Art 51, 24 October 1945

<sup>8</sup> International Court of Justice (ICJ), *The Corfu Channel Case (United Kingdom v Albania)* (1949) ICJ Rep 4

further in the next post-war era.

### **B. The failure to codify aggression in the post-war era**

Following World War II, efforts to define and criminalize aggression remained limited. The United Nations (UN), founded in 1945 with the aim of preventing future wars, included provisions in its Charter that forbidden using force unless necessary for self-defence or with permission from the Security Council. Yet, the UN Charter did not create a clear framework for prosecuting individuals for aggressive acts or clarify the legal thresholds for aggression. The superpower competition between the US and the USSR during the Cold War era further impeded significant advancements in the creation of international law against aggression. Particularly when one of the great countries was involved, the UN Security Council and the larger international community were unable to agree on how to handle incidents of aggression. The United Nations has an expert group called the International Law Commission (ILC)<sup>9</sup>, began drafting a definition of aggression in the 1950s. However, political disagreements, particularly the inability of major powers to agree on the scope of the definition and the conditions for prosecution, meant that no substantial progress was made. Aggression remained a broad and politically sensitive issue, with no consistent framework for international accountability.

### **C. The 1974 definition of aggression and its limitations**

A resolution containing a definition of aggression was passed by the UN General Assembly in 1974. This was an important turning point because it made it clear that aggression was when one state used armed force against another without the Security Council's consent or the excuse of self-defense. This resolution did not, however, create the framework for individual criminal responsibility for aggression, nor was it legally obligatory.

The topic of state sovereignty, human rights violations, and the legitimacy of humanitarian interventions were got attention in the 1980s and the 1990s. the International Criminal Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) prosecuted crimes against humanity and war crimes, but they did not expand its purview to include aggression. This was due to both legal complexities and the need for greater consensus on the concept of aggression<sup>10</sup>.

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<sup>9</sup> M Cherif Bassiouni, *International Criminal Law: A Draft for the Twenty-First Century* (Harvard University Press 2005) 95

<sup>10</sup> United Nations General Assembly, Resolution 3314 (XXIX), 'Definition of Aggression' (14 December 1974)

#### **D. A Legal development leading to the Rome statute**

The Rome Conference in 1998, where the Rome Statute, creating the worldwide Criminal Court (ICC), was established, marked the pinnacle of the movement for a permanent, worldwide criminal tribunal. At first, the law addressed the prosecution of war crimes, crimes against humanity, and genocide, but it made no mention of aggression. Due to political sensitivities, governments were unable to agree on a specific legal definition and the UN Security Council's involvement in verifying when an act of aggression had taken place, delaying the adoption of aggression as a fundamental crime. With the understanding that it would be handled later, the 1998 Rome Statute left the crime of aggression in an ambiguous state. This uncertainty continued for over a decade, with advocacy from civil society groups, states, and international law experts are advocating for the ICC's mandate to eventually include aggression<sup>11</sup>.

### **III. THE ROME STATUTE AND AGGRESSION'S INCLUSION**

An important turning point in the development of international law was the establishment of the International Criminal Court (ICC). Ad hoc courts, like the International Criminal Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR), had been in charge of prosecuting those accountable for serious violations of international law before their creation. Though, these tribunals only had authority over particular areas and conflicts, and they were only transitory. In order to create a permanent body to prosecute charges against the most heinous crimes in the world, including crimes against humanity, war crimes, and genocide, the Rome Statute established the ICC<sup>12</sup>.

The Rome Statute came into effect on July 1, 2002, after being approved at a summit in Rome on July 17, 1998. It was the outcome of years of negotiation, and the result of the global community's desire to create a court that would ensure individuals who commit atrocities would be held accountable, regardless of where they were located. Despite its comprehensive mandate, however, Notably, when the ICC was adopted, the crime of aggression was not included in the list of crimes that fell under its purview.

#### **A. The debate over the crime of aggression**

The Rome Statute effectively established the legal foundation for the prosecution of crimes against humanity, war crimes, and genocide; but, it did not address the crime of aggression. Aggression is defined as the use of armed force by one state against the political

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<sup>11</sup> United Nations Security Council, Resolution 678, S/RES/678 (1990), 29 November 1990

<sup>12</sup> Samuel Totten, *The Prevention and Intervention of Genocide: An Annotated Bibliography* (Routledge 2019)

independence, territorial integrity, or sovereignty of another state, or in any other manner that is in violation of the UN Charter. Aggression, as a crime, was seen as a politically sensitive issue, particularly because it involves the behaviour of states, rather than individuals.

At the heart of the debate was the challenge of balancing the principles of the sovereignty of the state and the international community's interest in preventing wars of aggression. Some states feared that the ICC would be used as a political tool to target their leaders, especially in cases where a conflict involved an intervention that was backed by major powers or aligned with national interests. Additionally, many countries questioned whether it was apt for the jurisdiction of ICC over actions of aggression, particularly when such acts might be seen as legitimate military interventions in certain contexts (e.g., self-defence).

The complexity of these legal and political challenges meant that the issue of aggression was left to be resolved at a later stage. The addition of aggression under Article 5 of the Rome Statute, stating that the ICC could prosecute the crime of aggression once a definition had been established and conditions for prosecution agreed upon. However, this crucial decision was stopped until the further review.

### **B. Challenges regarding defining aggression**

The lack of a clear and accepted definition of aggression was one of the primary obstacles to the crime's inclusion in the Rome Statute. Although the UN Charter provides a broad framework for understanding aggression as the use of armed force against the sovereignty, territorial integrity, or political independence of another state, there was no clear definition of aggression that might guide the prosecution of persons for aggression.

Additionally, there was debate over how to define the threshold for an aggressive act. Did the actual use of force or the intention to wage war have to be present for an invasion of a nother nation to be considered aggression? How should the Security Council decide whether a scenario qualifies as aggression? The crime of aggression was not specified at the time the Court was established since these issues were not settled during the Rome Statute talks.

In addition, the political nature of aggression made it difficult to forge consensus on how to address the issue. Chief powers, particularly America, Russia, and China, were wary for the ICC being used to challenge their own actions on the world stage. This hesitancy stemmed from concerns that the ICC's jurisdiction to look into and prosecute acts of aggression might be used in ways that would jeopardize the geopolitical interests of strong nations<sup>13</sup>.

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<sup>13</sup> Samuel Totten, *The Prevention and Intervention of Genocide: An Annotated Bibliography* (Routledge 2019)

### **C. Article 5 of the Rome Statute: a temporary solution**

According to Article 5 of the Rome Statute, the ICC has jurisdiction over four major crimes: acts of aggression, war crimes, crimes against humanity, and genocide. It further states that the States Parties must agree on a definition of the crime and establish procedures for prosecution before the Court can exercise jurisdiction over the crime of aggression<sup>14</sup>.

This provision represented a temporary solution, reflecting the fact that, at the time, there was no consensus on how aggression should be defined or prosecuted. Until the required legal basis for aggression was established, the ICC would not be able to investigate and punish instances including war crimes, crimes against humanity, and genocide.

### **D. The Rome Statute and the crime of aggression's legal consequences**

Although many viewed the decision to postpone the prosecution of aggression as a practical necessity, it brought attention to the intricate legal issues at play. Specifically, if a state refused to cooperate with the ICC or admit that a dispute was under the Court's jurisdiction, the Rome Statute left open the question of how acts of aggression could be tried. Unlike crimes related to war, crimes related humanity, and genocide, which have more clearly defined legal elements and can be attributed to individual actors, aggression is fundamentally tied to the actions of states<sup>15</sup>.

Thus, any attempt to prosecute aggression requires a mechanism for determining when a state has crossed the threshold of aggression and, more crucially, when those who participated in the planning or execution of such activities within that state are subject to accountability. Since they frequently decide whether an act of aggression has taken place, the UN Security Council and other international organizations play a crucial role in this situation.

## **IV. KAMPALA CONFERENCE: DEFINING AGGRESSION AND ITS IMPLEMENTATION**

The issue of aggression remained unresolved until the 2010 Kampala Review Conference, which became a vital point in the evolution of global criminal law. The Kampala conference was convened to review the Rome Statute and discuss potential changes, including the term aggression<sup>16</sup>. The decision to move forward with a clear definition of aggression was driven by years of advocacy from civil society, human rights organizations, and some member states,

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<sup>14</sup> Robert Hague and Shannon C. Schabas, *The International Criminal Court: A Commentary on the Rome Statute* (Oxford University Press 2016) 299

<sup>15</sup> Robert Hague and Shannon C. Schabas, *The International Criminal Court: A Commentary on the Rome Statute* (Oxford University Press 2016) 299

<sup>16</sup> Yusuf Aksar, *Implementing International Humanitarian Law: From the Ad Hoc Tribunals to a Permanent International Criminal Court* (Routledge 2004)



who called for the addition of the crime of aggression as a critical tool for preventing unlawful wars.

### **A. The Kampala conference agreement**

An essential stage in the evolution of the ICC's mission was the Kampala Conference. The states parties to the Rome Statute agreed on the definition of aggression and the conditions under which the ICC could have jurisdiction over the crime<sup>17</sup>. The UN Charter and the General Assembly's 1974 decision served as the foundation for the generally accepted definition of aggression. According to this definition, aggression occurs when a state violates the UN Charter by using armed force against another state's political independence, territorial integrity, or sovereignty, among other things.

The meeting discussed jurisdiction in addition to defining aggressiveness. It was decided that only in the event that the UN Security Council had found that an act of aggression had occurred would the ICC have jurisdiction over the crime of aggression<sup>18</sup>. However, the agreement also allowed for a limited exception: the ICC could take up cases of the concerned crime if the Security Council could not take step within six months of a charge. This provision was designed to stop the Security Council from blocking prosecutions for political reasons, while still respecting the principle that the Security Council possesses the supreme authority over the use of force under international law<sup>19</sup>.

### **B. Legal and political challenges in Kampala**

The Conference of Kampala was not without controversy. The main point of contention was the significance of the UN Security Council in detecting whether the crime of aggression had occurred. Many states, particularly America, expressed its concerns about the potential for politically motivated prosecutions. For instance, America has historically been involved in military interventions that could be considered deeds of aggression under the explanation of the definition agreed upon in Kampala.

To address these concerns, the Kampala Conference included provisions that would limit the jurisdiction of ICC over aggression in the case of states that had not ratified the amendments or were not party to the Rome Statute<sup>20</sup>. The agreement also established a high threshold for aggression, meaning that the ICC would not automatically assume jurisdiction in every case

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<sup>17</sup> Yusuf Aksar, *Implementing International Humanitarian Law: From the Ad Hoc Tribunals to a Permanent International Criminal Court* (Routledge 2004)

<sup>18</sup> M Cherif Bassiouni, *Introduction to International Criminal Law* (2nd Revised edn, Brill 2013)

<sup>19</sup> International Criminal Court, 'The Kampala Amendments' (International Criminal Court, Kampala, Uganda, 2010)

<sup>20</sup> Patrycja Grzebyk, *Criminal Responsibility for the Crime of Aggression* (Routledge 2013)

where the use of force was involved.

While the Kampala Conference represented a significant breakthrough, this crime remained fraught with hindrances. Since it puts the ICC in a potentially precarious political position, the necessity that the UN Security Council must decide what constitutes an act of aggression before the ICC can launch a prosecution has garnered a lot of criticism. Even if the act in question is generally regarded as unlawful under international law, the five permanent members of the Security Council have the ability to veto any attempt to send an aggressive case to the ICC<sup>21</sup>.

### **C. The ICC's jurisdiction over aggression: the road ahead**

Despite these hurdles, the decision to include aggression in the Rome Statute marked a major advance in international criminal law<sup>22</sup>. However, it also raised important questions about the future effectiveness of the ICC in prosecuting aggression. The interplay between international diplomacy, political power dynamics, and legal principles will determine whether the ICC can fulfill its role in holding individuals accountable for acts of aggression, particularly when powerful states are involved<sup>23</sup>.

## **V. LEGAL ASPECTS OF THE CRIME OF AGGRESSION**

A comprehensive procedural framework and a number of fundamental principles of international law are involved in the complicated legal issues of prosecuting the crime of aggression before the International Criminal Court (ICC). An important advancement in international criminal law is the Rome Statute's inclusion of aggression as a crime. It has made it possible to hold people legally responsible for starting acts of aggression, which are defined as when a state uses armed force against another in defiance of international law. But pursuing the crime of aggression requires striking a balance between the UN Security Council's function, legal precepts, and the political difficulties brought on by strong state players<sup>24</sup>.

To understand the legal implications of prosecuting aggression, it is essential to explore the following key legal dimensions:

### **1. The Legal Definition of Aggression**

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<sup>21</sup> International Criminal Court, 'The Kampala Amendments' (International Criminal Court, Kampala, Uganda, 2010)

<sup>22</sup> William A Schabas and Nadia Bernaz (eds), *Routledge Handbook of International Criminal Law* (Routledge 2010)

<sup>23</sup> International Criminal Court, 'The Court's Jurisdiction over Aggression: A Case Study' (2020) *ICC Annual Report 22*

<sup>24</sup> Alina Kaczorowska-Ireland, *Public International Law* (Routledge 2019)

2. Jurisdiction and Accountability
3. Threshold for Prosecution
4. Sovereignty and State Responsibility
5. Challenges in the Prosecution of Aggression

### **1. The Legal definition of aggression**

The debate about charging aggression revolves around the legal definition of aggression. Along with genocide, crimes against humanity, and war crimes, aggressiveness is included as one of the main crimes under the Rome Statute's Article 5. However, aggressiveness has always been challenging to define legally, whereas genocide and war crimes have more specific and widely recognized definitions<sup>25</sup>.

The 2010 Kampala Review Conference, which clarified the crime of aggressiveness, was a landmark event in international criminal law since it established the definition of aggression. The Rome Statute was modified by the Kampala modifications to establish a more accurate definition of aggression based on General Assembly Resolution 3314 (1974)<sup>26</sup>. As per this resolution, aggression includes: "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."<sup>27</sup>

Therefore, military invasions, occupations, and assaults on the political independence or territorial integrity of another state are all considered forms of aggression. But not every act of force falls under the category of aggressiveness. For example, measures approved by the UN Security Council or self-defense under Article 51 of the UN Charter are not regarded as acts of aggression<sup>28</sup>.

To be classified as aggression under the Rome Statute, the use of force must meet a specific threshold, and the action must be a manifest violation of international law. This is one of the key challenges in defining aggression: determining what constitutes a manifest violation can be highly subjective and often depends on the specific context in which force is used.

### **2. Jurisdiction and accountability**

The issue of jurisdiction—that is, which court has the authority to prosecute the crime of aggression—has been central to debates over its inclusion in the ICC's mandate. In the case of

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<sup>25</sup> United Nations General Assembly, Resolution 3314 (XXIX), 'Definition of Aggression' (14 December 1974)

<sup>26</sup> M Cherif Bassiouni, *Introduction to International Criminal Law* (2nd Revised edn, Brill 2013)

<sup>27</sup> United Nations Charter, Art 2(4), 24 October 1945

<sup>28</sup> United Nations, *Charter of the United Nations*, Art 51, 24 October 1945

aggression, the International Criminal Court has jurisdiction over individuals, not states, meaning that it can prosecute individuals responsible for the crime of aggression, rather than the states themselves. This individual criminal responsibility is a crucial distinction because it represents a shift from state-centered accountability to accountability for the actions of individual leaders and officials.

Aggression is distinct, though, in that it has historically been a state-based offense, making it more difficult to prosecute at the ICC. Only states have historically been able to carry out acts of violence. The UN Security Council, which has the authority to respond to threats to global peace and security, decides whether an act qualifies as aggression under the UN Charter<sup>29</sup>. Because of this, it was challenging to use international legal procedures to hold people accountable for the crime of aggression<sup>30</sup>.

The Rome Statute's Article 15 bis outlines the jurisdiction of the ICC over aggression. It specifies that the crime of aggression may fall under the Court's jurisdiction only if a state party has accepted this jurisdiction, and only under certain conditions<sup>31</sup>. For a state to be subject to ICC jurisdiction for aggression, there are several steps that must be taken<sup>32</sup>:

1. The UN Security Council must first decide that an act of aggression has occurred, or
2. If the Security Council is unable to act within six months, the ICC Prosecutor may proceed with an investigation if the ICC Pre-Trial Chamber authorizes it, provided the state involved is a party to the Rome Statute.

This system effectively makes the Security Council the gatekeeper to prosecution for aggression. If a permanent member of the Security Council is involved in an act of aggression, it can block the process through its veto power. This creates an inherent political limitation on the ICC's ability to prosecute aggression.

### **3. Threshold for prosecution**

The threshold for prosecuting aggression under the Rome Statute is one of the most controversial aspects of the crime's legal framework. Unlike other international crimes, aggression requires that the use of force be a manifest violation of the United Nations Charter. The threshold requirement is intended to prevent frivolous or politically motivated cases from being brought before the ICC. However, this high threshold raises several legal issues:

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<sup>29</sup> International Criminal Court, 'The Role of the UN Security Council in Aggression' (ICC Legal Policy and Analysis Unit, 2015)

<sup>30</sup> M Cherif Bassiouni, *Introduction to International Criminal Law* (2nd Revised edn, Brill 2013)

<sup>31</sup> Patrycja Grzebyk, *Criminal Responsibility for the Crime of Aggression* (Routledge 2013)

<sup>32</sup> Antônio Augusto Cançado Trindade and Damián A González-Salzberg, *International Law of Human Rights* (International Law of Human Rights 2024)

- *Manifest Violation*: The phrase "manifest violation" introduces subjectivity into the legal determination of whether a specific act constitutes aggression. What might be considered a "manifest violation" by one state or international body could be viewed differently by others, making it difficult to establish clear criteria for prosecution.
- *High-Level Responsibility*: The crime of aggression is reserved for those individuals who plan, prepare, initiate, or direct the aggressive act. This means that lower-ranking officials, soldiers, or individuals participated in executing the aggressive act cannot be prosecuted for aggression. The legal focus is primarily on heads of state, military commanders, and other individuals with substantial decision-making power.
- *Self-Defense and Humanitarian Interventions*: The threshold is also impacted by legal doctrines such as the right to self-defense under Article 51 of the UN Charter and the idea of humanitarian interventions. States may justify the use of force under these principles, which complicates the determination of whether a given military intervention constitutes aggression. For instance, a state may argue that it was acting in self-defense or to protect human rights, making the act of aggression harder to prove under international law<sup>33</sup>.

In practical terms, this threshold means that the ICC will only prosecute the most egregious and clearly illegal uses of force. This is intended to prevent the Court from becoming mired in cases of more ambiguous actions that may have significant political and diplomatic ramifications. However, this cautious approach also prompts worries that the ICC may not bring charges for acts of aggression that are perceived by the international community as illegal and unjustified.

#### **4. Sovereignty and state responsibility**

A central issue in the legal framework for prosecuting aggression is the tension between sovereignty and individual criminal responsibility. The principle of sovereignty is a cornerstone of the Westphalian system of international relations, which maintains that states are immune to outside intervention and have the highest power inside their own borders<sup>34</sup>. This has historically created challenges for the international criminal justice system, which seeks to impose legal accountability on individuals who violate international norms, even when they are acting on behalf of the state.

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<sup>33</sup> United Nations, *Charter of the United Nations*, Art 51, 24 October 1945

<sup>34</sup> M Cherif Bassiouni, *Introduction to International Criminal Law* (2nd Revised edn, Brill 2013)

- This tension is especially pronounced when it comes to aggression. Since it implies that individual leaders may be held accountable for actions that are customarily understood to be the responsibility of the state itself under international law, the prosecution of high-ranking state officials, including heads of state and military commanders, for the crime of aggression calls into question the absolute sovereignty of states<sup>35</sup>.
- *State Sovereignty vs. ICC Jurisdiction*: The ICC's ability to prosecute aggression effectively depends on the cooperation of states. If a state refuses to cooperate or withdraws from the Rome Statute, the ICC may struggle to enforce its rulings. States may also claim that prosecuting aggression undermines their sovereignty or their ability to make decisions in the interest of national security.
- *Impunity of Powerful States*: The political dynamics of global power further complicate this issue. principal authorities such as the United States, China, and Russia have historically sought to preserve their sovereignty and avoid legal accountability for actions they deem necessary for national security. This has created a sense of impunity for powerful states, particularly when they are involved in military interventions that could be classified as aggression. This concern is particularly relevant given the function of the Security Council in establishing the existence of aggression, where permanent members have the ability to veto ICC investigations or prosecutions<sup>36</sup>.

## 5. Challenges in the prosecution of aggression

Several challenges arise in the prosecution of aggression under the ICC framework:

- *Geopolitical Factors*: The ability of powerful states to influence or block ICC prosecutions through the UN Security Council remains a pertinent challenge. Countries like the United States and Russia may argue that the ICC's focus on aggression could be used to undermine their geopolitical interests or to challenge the legitimacy of military interventions they deem necessary. These geopolitical factors may prevent the Court from holding individuals accountable for aggression, even in cases where the international community overwhelmingly condemns the act<sup>37</sup>.

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<sup>35</sup> Alina Kaczorowska-Ireland, *Public International Law* (Routledge 2019)

<sup>36</sup> Global Justice, *Accountability and Impunity: The Limits of the ICC's Authority* (2016) 114

<sup>37</sup> M Cherif Bassiouni, *The Crime of Aggression: The Political and Legal Challenges* (International Peace Institute 2012) 18

- *Evidence and Documentation:* Proving the crime of aggression requires robust evidence of the intent and actions of state leaders. Unlike other crimes, which may involve direct acts of violence or widespread harm, the crime of aggression involves political decisions to initiate or direct the application of force. Gathering evidence that proves the manifest violation of international law is challenging, as it requires not only military evidence but also documentation of the political context and decisions made by leaders.
- *Political Resistance:* Some states have objected to the ICC's jurisdiction over aggression altogether, arguing that it should be a matter for the UN Security Council to determine. This political resistance undermines the ability of the ICC to establish a consistent, fair, and universally accepted approach to prosecuting aggression<sup>38</sup>.

The legal aspects of prosecuting the crime of aggression are complex and involve significant challenges. While the integration of aggression in the Rome Statute represents a crucial step in holding individuals accountable for acts of war, its implementation is constrained by high thresholds for prosecution, the involvement of the UN Security Council, and ongoing geopolitical factors. Ultimately, the successful prosecution of aggression will depend on a careful balance between international legal norms, sovereignty, and the practical realities of international politics. The ability of the ICC to effectively prosecute aggression will require continued international cooperation, legal reforms, and a dedication to the principles of justice and accountability.

## VI. THE POLITICAL AND GEOPOLITICAL IMPLICATIONS OF PROSECUTION

The political dynamics of aggression are perhaps the most significant challenge to prosecuting the crime at the ICC. The involvement of the UN Security Council, where the five permanent members (the U.S., Russia, China, France, and the UK) hold veto power, can prevent the ICC from acting in cases where a state with veto power is taking part in a commission of aggression<sup>39</sup>.

- *Security Council Influence:* The Security Council's veto power means that major powers can block ICC investigations or prosecutions of aggression, even in cases of clear infringement of international law. This undermines the impartiality and effectiveness of the Court in some situations.

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<sup>38</sup> Patrycja Grzebyk, *Criminal Responsibility for the Crime of Aggression* (Routledge 2013)

<sup>39</sup> M Cherif Bassiouni, *The Crime of Aggression: The Political and Legal Challenges* (International Peace Institute 2012) 18

- *Geopolitical Resistance:* Countries like the U.S., Russia, and China have expressed concerns that the ICC could be used to prosecute their leaders for military interventions in foreign conflicts. This has led to widespread skepticism about the ICC's ability to hold powerful nations accountable.
- *Selective Prosecution:* The ICC is often accused of focusing disproportionately on the crimes committed by leaders from developing nations while letting powerful states off the hook. This selective prosecution could undermine the Court's credibility and legitimacy in the eyes of the international community.

These political and geopolitical challenges illustrate the conflict between the actualities of power politics and the ideal of universal justice<sup>40</sup>.

## VII. THE FUTURE OF AGGRESSION PROSECUTIONS

The future of prosecuting aggression at the ICC remains uncertain due to political, legal, and practical challenges. However, there are several key factors that could influence its success moving forward:

- *Global Consensus on Accountability:* Increasing international support for the rule of law and the accountability of state leaders could lead to greater acceptance of aggression prosecutions, particularly as public awareness grows about the costs of unaccountable military action.
- *Reform of Security Council Practices:* Calls for Security Council reform—especially the removal of the veto power in cases related to international crimes—are gaining traction. A more transparent and equitable process could make the prosecution of aggression more viable in the future.
- *Expanding ICC Jurisdiction:* Some scholars and advocates propose reducing reliance on the Security Council to initiate cases of aggression. This would allow the ICC to act more independently in cases where the international community believes that justice must be served.

Ultimately, the ICC's ability to prosecute aggression will depend on broader international cooperation, as well as reforms to the current political structures that impede its work.

## VIII. CASE STUDIES RELATED TO AGGRESSION

The practical application of the crime of aggression can be illustrated through several

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<sup>40</sup> M Cherif Bassiouni, *The Crime of Aggression: The Political and Legal Challenges* (International Peace Institute 2012) 18



historical and contemporary examples:

- *The Iraq War (2003)*: One of the most debated modern instances of aggression was the U.S.-led incursion of Iraq in 2003. While many legal experts and international bodies, including the UN, criticized the invasion as an illegal use of force, no individual has been prosecuted for aggression in relation to the war. The U.S. and other countries with veto power in the Security Council prevented a formal investigation into this act of aggression at the ICC<sup>41</sup>.
- *Russia's Invasion of Ukraine (2014 and 2022)*: Recent examples include Russia's attack of Ukraine in 2022 and its takeover of Crimea in 2014 which are acts of aggression that the international community has widely condemned. However, despite these acts being classified as aggression under international law, political and diplomatic hurdles, these cases cannot be sent to the ICC for prosecution because of Russia's participation in the UN Security Council<sup>42</sup>.

These case studies illustrate how the political power of states can hinder the prosecution of aggression, even in the face of significant international consensus.

## IX. CONCLUSION

In the fight for world justice, the International Criminal Court's (ICC) recognition of the crime of aggression represents a major milestone. It offers a framework for the law to punish people responsible for starting aggressive conflicts, a crime that has historically been difficult to prosecute due to political complexities and the sovereignty of states<sup>43</sup>. However, the practical challenges of prosecuting aggression at the court i.e., ICC—particularly the function of the UN Security Council and the political resistance from powerful states—mean that the full potential of the concerned crime as a deterrent to unlawful war remains unfulfilled.

For the improvement of the efficacy of aggression prosecutions, several reforms are needed:

- Reform of the Security Council to prevent vetoes from blocking prosecutions.
- Expanding the scope of ICC jurisdiction to allow for greater autonomy in pursuing cases of aggression.
- Increasing international cooperation and support for the ICC's role in ensuring accountability for acts of aggression.

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<sup>41</sup> Milanovic M, 'The Iraq War and the Prohibition on the Use of Force: Legal Aspects' (2004) 10 European Journal of International Law 379.

<sup>42</sup> Anders Henriksen, 'International Law' (2023)

<sup>43</sup> B S Chimni, Miyoshi Masahiro, Javaid Rehman and Sandrasegaram Paramalingam (eds), Asian Yearbook of International Law (Routledge 2013)

In the long term, the addition of the crime of aggression as a core crime under the ICC's jurisdiction holds the potential to curb unlawful military interventions and increase the overall peace and security framework of international law. However, achieving this goal will require overcoming significant political and diplomatic obstacles, as well as fostering a global consensus that places justice above national interests.

## **X. FINAL THOUGHTS**

The adoption of criminal aggression as a prosecutable offense by the ICC is a prominent development in international law, but its real-world application faces significant barriers. The ICC's ability to hold state leaders accountable for aggressive wars remains constrained by geopolitical realities, particularly the strength of the UN Security Council's permanent members to block actions. Nevertheless, the legal structure established through the Statute of Rome and subsequent amendments provides a foundation for future prosecutions. Moving forward, international cooperation, potential reforms to the Security Council, and a stronger commitment to justice will be crucial in ensuring that the crime of aggression is effectively prosecuted, and deterrence of unlawful wars becomes a central goal of global governance.

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