

An Analysis of the Ineffectiveness of of the Legal Framework in Addressing the Crime of Aggression: An Exploration of the Evolution of the Concept of Aggression in International Criminal Law (Original Research)

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Extended Abstract

Despite the elevated normative status of the prohibition of the use of force in the international legal order—enshrined most notably in Article 2(4) of the UN Charter—its practical enforcement remains gravely compromised. This discrepancy between norm and implementation has persisted for decades and is shaped by a combination of conceptual ambiguities, structural limitations, and political dynamics that have collectively undermined the universality and impartiality of accountability mechanisms for acts of aggression.

Historically, the criminalization of aggression has suffered from a lack of definitional clarity and institutional coherence. From the early post-World War I period—marked by the Treaty of Versailles—to the establishment of the Nuremberg and Tokyo tribunals, and eventually to the adoption of the Rome Statute and its Kampala Amendments, attempts to codify aggression as a crime under international law have been incomplete, contested, or politically constrained. Although the Nuremberg Charter identified aggression (then framed as “crimes against peace”) as a punishable offense, its jurisprudence relied on a rudimentary and politically constructed definition, without offering a stable legal framework for future application.

The situation did not substantially improve with the creation of the International Criminal Court (ICC). While the Rome Statute ultimately included aggression as one of the core international crimes, its operationalization was

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significantly delayed and diluted. The 2010 Kampala Amendments sought to clarify the definition and jurisdictional conditions for prosecuting the crime of aggression. However, the implementation framework they introduced is marked by serious limitations. One of the most important one among them is the requirement that only acts of aggression committed by high-level state officials qualify for prosecution. Moreover, the amendments allow state parties to opt out of the Court's jurisdiction over aggression, thereby weakening the principle of universality that should underpin international criminal law. These provisions, in effect, shield powerful States and their leaders from meaningful accountability and prosecution.

Another structural impediment lies in the exclusive authority of the UN Security Council to determine the existence of an act of aggression. This mechanism, although aimed at preserving global order, has in practice politicized responses to aggression and rendered them highly selective. The five permanent members of the Security Council, equipped with veto powers, often prioritize strategic interests over legal principles. As a result, acts of aggression committed by or involving major powers frequently escape condemnation or prosecution, deepening perceptions of impunity and inequality in international law enforcement.

This study contends that the current architecture of international criminal law—particularly in relation to aggression—fails to offer an effective or just framework for accountability. The combination of jurisdictional loopholes, definitional ambiguities, and geopolitical asymmetries has produced a system in which the legal prohibition of aggression exists more as a rhetorical ideal than a functional legal constraint.

In response to these gaps, the study proposes a twofold strategy: first, to reconceptualize aggression within the broader framework of crimes against humanity; and second, to incorporate non-judicial mechanisms such as truth commissions as complementary tools for addressing unlawful uses of force. Reframing aggression in this way serves both normative and practical goals. On the normative level, it challenges the artificial separation between different categories of international crimes and highlights the human cost of aggressive wars—particularly their widespread and systematic impact on civilian populations. On a practical level, it bypasses some of the procedural and jurisdictional barriers that have hamstrung formal prosecution efforts, offering alternative pathways for recognition, truth-telling, and even limited forms of accountability.

A central argument advanced in this study is the importance of resisting expansive interpretations of the self-defense exception under Article 51 of the UN Charter. In recent decades, several states have invoked broad, preemptive, or preventive justifications for the use of force, often in contexts where no actual armed attack had occurred. These practices undermine the integrity of the Charter framework and create legal gray zones that may be

exploited to justify aggressive behavior under the guise of defense. A more restrictive reading of Article 51—anchored in textual fidelity, customary law, and judicial precedent—is essential to restore the normative force of the prohibition on the use of force.

The study also examines the potential of truth commissions and other transitional justice mechanisms to address aggression, especially in contexts where judicial remedies are politically or logistically infeasible. Truth commissions, while lacking the coercive power of courts, can play a critical role in documenting violations, recognizing victims, and shaping collective memory. Their application to cases of aggression—particularly where such acts lead to widespread civilian suffering—can help fill the justice gap left by the paralysis of formal institutions.

In sum, the article highlights the persistent deficiencies in the international legal response to aggression, while offering concrete theoretical and institutional alternatives. It argues that the selective enforcement of aggression prohibitions not only erodes legal legitimacy but also poses a serious threat to global peace and human dignity. Without effective deterrents or avenues for accountability, the risk of acts of aggression becoming normalized, thereby destabilizing the very foundations of the international legal order. To counter this trend, the study advocates for a principled realignment of legal doctrine, institutional practice, and political will—grounded in the indivisibility of international crimes and the universal aspiration for justice.

Keywords

Aggression, *Jus ad Bellum*, International Law on the Use of Force, International Criminal Law, International Humanitarian Law, Self-Defense

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