

Thesis

The Crime of Aggression in Contemporary International Law: Implementation and
Challenges

Mariana Aristizábal Blandón

International Business Program
Department of Administration
EAFIT University

Tutor: Andrés Ordoñez Buitrago

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Summary

This thesis examines the crime of aggression in contemporary international law, tracing its historical evolution from the Nuremberg Trials to the adoption of the Kampala Amendments in 2010. The process of implementing these amendments is addressed, highlighting the political obstacles, as well as the resistance of some States to their ratification. Additionally, the current challenges to the effective implementation of the criminalization of the crime of aggression are analyzed, focusing on the role of the United Nations Security Council in triggering the jurisdiction of the International Criminal Court. Finally, recommendations are presented to strengthen the implementation of the criminalization of the crime of aggression, and strategies are suggested to improve the efficiency of international justice in this area.

Resumen

Este trabajo final de grado examina el crimen de agresión en el derecho internacional contemporáneo, transitando su evolución histórica desde los juicios de Núremberg hasta la adopción de las Enmiendas de Kampala en 2010. Se aborda el proceso de implementación de estas enmiendas, resaltando los obstáculos políticos, así como la resistencia de algunos Estados a su ratificación. Además, se analizan los desafíos actuales para la implementación efectiva de la penalización del crimen de agresión, con un enfoque en el papel del Consejo de Seguridad de la Organización de las Naciones Unidas en la activación de la jurisdicción de la Corte Penal Internacional. Finalmente, se presentan recomendaciones para fortalecer la implementación de la penalización del crimen de agresión y se sugieren estrategias para mejorar el rendimiento de la justicia internacional en este ámbito.

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1. Introduction

1.1 Contextualization

The Crime of Aggression is one of the most serious offenses within the scope of international law, as it focuses on prohibiting attacks against the independence and sovereignty of a State and the initiation of armed conflicts unjustifiably and without legal basis. This crime is directly related to the preservation of international peace and security, fundamental principles enshrined in the United Nations Charter (hereinafter, "UN"). The relevance of the crime of aggression lies in that, under the principle of individual criminal responsibility, international law allows for the accountability of political and military leaders who, abusing their power, initiate wars that affect not only the States involved but also the stability of the international community as a whole.

In the current context, the crime of aggression takes on particular relevance due to the numerous ongoing international conflicts, where violations of sovereignty and the illegitimate use of force have generated global concern. In this framework, the UN Security Council is the only body with the authority to determine the existence of an act of aggression between States, a decision that may lead to the judicialization of the crime of aggression by the International Criminal Court. The Council consists of fifteen member States, five of which are permanent (China, France, Russia, United States, and the United Kingdom) and hold veto power. This right allows them to block the adoption of a resolution, even if it has majority support. This means that if any of these five countries votes against a proposal, it cannot be approved regardless of the votes in favor. This mechanism was established to ensure cooperation among the great powers and avoid decisions that could lead to conflicts. However, it has also been criticized for its ability to paralyze Council actions and for the perceived abuse of this right.

The International Criminal Court (hereinafter, "ICC") is responsible for prosecuting and judging individuals responsible for committing the crime of aggression, particularly political or military leaders who make decisions at the state level. Although the ICC often needs the Security Council to confirm the existence of an act of aggression, the 2010 Kampala Amendments introduced a provision that allows the ICC to proceed without a Council determination if the Council fails to

act within six months. This partial independence grants the ICC a crucial role in overcoming political blockages, such as those caused by the veto power of the Council's permanent members, and ensures that those responsible for such crimes are not left unpunished.

In a world where multilateralism faces major challenges, the effective application of the judicialization of the crime of aggression is essential to uphold the rule of law and deter future acts of aggression that threaten peace and cooperation among nations.

1.2 Problem Statement

Since the Nuremberg trials, held after World War II, where the basis for the concept of the crime of aggression was established, up until the adoption of the Kampala Amendments to the ICC Rome Statute in 2010, the development of this offense has faced numerous challenges. The implementation of these Amendments has been an arduous process, marked by the resistance of various States that question its applicability or have simply been unable to ratify them directly, delaying its full effectiveness. This resistance by certain States to ratify both the Rome Statute and the Kampala Amendments perpetuates the impunity of leaders who, abusing their power, have violated international laws without facing legal consequences, thereby weakening the international justice system and undermining efforts to ensure accountability on a global level.

1.3 Research Question

The relevance of this study lies in the need to understand how the crime of aggression can contribute to strengthening the international justice system and promoting lasting peace. However, with the Rome Statute ratified by 63.73% of States and the Kampala Amendments by only 23.31% of UN Member States, and considering the history of the crime of aggression in the UN Security Council (to be analyzed further), the question arises: to what extent does the current structure of the Security Council limit the effective judicialization and application of the crime of aggression? While there are various ways to initiate an investigation into a crime of aggression, this work will primarily assess the role of the Security Council in this process.

1.4 Hypothesis

The complexity of finding an effective solution to the problem of judicializing the crime of aggression is evident, as even jurists with years of experience in international law show skepticism about the possibility of effective implementation. The proposed solutions often seem overly optimistic or difficult to materialize. In this work, the hypothesis posed in response to the question of the extent to which the current structure of the Security Council limits the effective judicialization and application of the crime of aggression (even knowing that the Council is not the only means of investigating a crime of aggression) is that the most viable option lies in restructuring the UN Security Council. Only through a substantial reform of this body, including limiting or eliminating the veto power of its permanent members, will it be possible to overcome the political paralysis that prevents true accountability in the UN in cases of aggression.

1.5 Objective of the Work

The main objective of this work is to answer the research question. Additionally, it has three secondary objectives: the first is to analyze the evolution of the crime of aggression from its conceptualization to its application in current international law, examining both its historical transformations and the obstacles it has faced. The second is to reflect on the obstacles that prevent the proper functioning of the criminalization of the crime of aggression. Lastly, to propose suggestions for improving its application and effectiveness, with the aim of strengthening the international justice system and ensuring greater efficacy in the prevention and punishment of this crime.

2. Methodology

2.1 Methodological Proposal

This project will employ a qualitative method with a legal-judicial approach, as the crime of aggression involves not only legal aspects but also political dimensions. This approach allows for a normative analysis of the crime of aggression, enabling an examination of the crime within broader contexts, considering historical and political factors influencing its definition.

In other words, this work will be approached through the interpretation of legal texts and the analysis of relevant cases, examining the complexities and controversies surrounding the

judicialization of this crime in international law. This method allows not only an understanding of the normative evolution but also consideration of how historical and political factors have influenced its implementation. Thus, it seeks to develop a solid argument about the efficacy and challenges of the crime of aggression in the current global context.

2.2 Results

One of the main findings in the analysis of the crime of aggression is the resistance of various States to ratify the Kampala Amendments. The reasons for this refusal are varied, but two factors stand out: on the one hand, the geopolitical interests of certain powers, which consider that ratification could limit their capacity for military intervention or expose their leaders to international judicial prosecution. On the other hand, some States argue that the ICC could be used for political purposes instead of acting with full impartiality. To address these concerns, it would be useful to consider adopting concepts such as the "Responsibility to Protect" (hereinafter, "R2P") as a way to build consensus on the protection of civilians from heinous crimes like the crime of aggression.

3. Theoretical Framework

3.1 Definition of the Crime of Aggression and Differentiation from (one) the Act of Aggression, and (two) Other Crimes under the Jurisdiction of the International Criminal Court

To ensure a proper interpretative analysis of jurisprudence related to the crime of aggression, the first step is to address the consensus definition of this crime. Despite countless discussions and disagreements surrounding the definition of the crime of aggression, in 2010, through the Kampala Amendments, a clear definition was agreed upon by consensus among the delegates present at the meeting. It states that, as expressed in Article 8 bis of the Rome Statute, "a person commits a 'crime of aggression' when, being in a position to effectively control or direct the political or military action of a State, that person plans, prepares, initiates or executes an act of aggression which, by its character, gravity, and scale, constitutes a manifest violation of the Charter of the United Nations" (Assembly of States Parties to the Rome Statute, 2010, art. 8 bis).

The same article lists the elements that the crime must possess to be determined as a crime of aggression, which are:

1. The perpetrator planned, prepared, initiated, or executed an act of aggression.
2. The perpetrator was a person in a position with effective capacity to control or direct the political or military action of the State that committed the act of aggression.
3. The act of aggression—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—was committed.
4. The perpetrator was aware of the factual circumstances establishing that such use of armed force was inconsistent with the Charter of the United Nations.
5. The act of aggression, by its character, gravity, and scale, constituted a manifest violation of the Charter of the United Nations.
6. The perpetrator was aware of the factual circumstances establishing such a manifest violation of the Charter of the United Nations.

Under Public International Law, the crime of aggression differs from an act of aggression. The former is committed by one or more individuals and leads to their criminal responsibility, which can be pursued through prosecution before the ICC. An act of aggression, however, is committed by a State and incurs the international responsibility of that State. According to the UN Charter, the Security Council has the primary responsibility to determine when an act of aggression has occurred. However, this is not the only way in which such a determination can be made, as will be explained in greater detail in the course of this work.

Furthermore, the ICC has jurisdiction over three other crimes: war crimes, crimes against humanity, and genocide, from which the crime of aggression is distinctly different. War crimes are serious violations of International Humanitarian Law during armed conflicts, including the killing of civilians, torture, and attacks on protected targets. Crimes against humanity are systematic violations against civilians, which can occur in times of peace or war, and include acts

like murder, enslavement, and torture. Genocide, in turn, involves the intent to destroy, in whole or in part, a national, ethnic, racial, or religious group, characterized by acts such as killing members of the group and imposing living conditions intended to bring about its destruction. It is important to clarify that while the aforementioned crimes may occur simultaneously with the crime of aggression, they are beyond the scope and focus of this work.

3.2 Theoretical Approaches: Public and Criminal International Law

In this regard, the analysis of the crime of aggression in this work is grounded in a solid theoretical framework rooted in the principles of International Criminal Law and Public International Law. By adopting this interdisciplinary approach, the goal is to provide a comprehensive and rigorous understanding of the crime of aggression, exploring theories of individual responsibility, objective imputation, and superior responsibility, among others. This theoretical choice enables not only a descriptive account of the phenomenon but also an analysis of its implications for international justice, contributing to the development of conceptual tools that are useful for prosecuting this crime.

Various authors, such as Juan José Quintana in his article “A Note on the Activation of the ICC’s Jurisdiction Over the Crime of Aggression,” agree that defining the crime of aggression not only reinforces the prohibition against the use of force enshrined in the UN Charter but also pursues the international justice for which the UN was created in the first place. In contrast, States like Russia believe that this definition is overly restrictive and fails to consider the geopolitical context in which conflicts occur. This stance was evident in President Putin’s decision in 2016 to withdraw from the Rome Statute, reaffirming Russia’s position against the ICC and its rejection of the court’s jurisdiction over the crime of aggression.

Given that the effectiveness of these regulations largely depends on international cooperation and the willingness of States to submit to the ICC’s jurisdiction, positions like those of the United States and Russia pose significant challenges. The UN Charter laid the foundations for modern international law and, in its Article 2(4), prohibits the use of force among States, except in cases of self-defense or with authorization from the UN Security Council. However, ambiguity around sanctions and the lack of clear mechanisms for prosecuting offenders has historically been a

limitation. In response, the creation of the International Criminal Court in 1998 under the Rome Statute marked a milestone in prosecuting international crimes, including the crime of aggression, though this latter crime was not fully defined until the 2010 Kampala Amendments.

Among the most relevant sources for this study are:

- Rome Statute of the International Criminal Court, 1998: This establishes the legal foundation for the creation and functioning of the ICC, thereby laying the groundwork for the judicialization of the crime of aggression.
- Assembly of States Parties to the ICC, Review Conference Documents, 2010: This conference defined and adopted the Kampala Amendments, providing a specific regulatory framework for the prosecution of this crime.
- "Handbook for Ratification and Implementation of the Kampala Amendments to the Rome Statute of the International Criminal Court," 2012: This handbook offers practical guidelines for States seeking to adhere to these norms, essential for understanding the challenges and possibilities of implementation in today's international context.

4. Historical Evolution

4.1 Evolution of the Crime of Aggression in International Law

With the definition of the crime of aggression addressed, it is essential to explore how it developed over time. The initial mention of the crime of aggression dates back to 1919, within the Treaty of Versailles, though not under the same name or with the same clarity as seen in the Nuremberg Trials. The Treaty of Versailles, following World War I, established the idea that German leaders, including Kaiser Wilhelm II, could (and should) be judged for committing a "supreme offense against international morality and the sanctity of treaties" (Treaty of Versailles, 1919, Article 227) by initiating the war.

Article 227 specifically cited Kaiser Wilhelm II's criminal responsibility, declaring he should be judged by an international tribunal for his actions. Although the term "crime of aggression" was

not used, the concept was implied, as the Kaiser was accused of violating international law by starting a war without justification. However, this trial never took place, as the Netherlands, where the Kaiser sought asylum, refused to extradite him. At that time, no clear international legal framework or concrete definition of the crime of aggression existed. The concept evolved significantly in the following decades, particularly with the Nuremberg Trials in 1945 and the Tokyo Trials in 1946, which formalized the concept of crimes against peace, the direct precursor to the crime of aggression.

In 1945, at the end of World War II and with the adoption and enforcement of the UN Charter, the victorious powers pursued judicial proceedings against those responsible for crimes against peace, war crimes, and crimes against humanity: the Nuremberg (1945-1946) and Tokyo (1946-1948) Trials. The Nuremberg Statute defined crimes against peace as "...planning, preparing, initiating, or waging wars of aggression, or a war in violation of international treaties, agreements, or assurances, or participation in a common plan or conspiracy to accomplish any of the foregoing." This phrase highlights the first issue that this paper seeks to address: the lack of specificity around what constitutes "aggression."

Following these trials, the International Law Commission codified what became known as "The Principles of the Charter and Judgment of the Nuremberg Tribunal," which the UN General Assembly subsequently affirmed in Resolution 95(I).

4.2 Challenges in Definition

Almost thirty years passed after the mention of the crime of aggression in the Nuremberg Trial before meaningful discussions on its definition resumed. In December 1974, the UN General Assembly adopted Resolution 3314 (XXIX), aimed at guiding the Security Council on determining the existence of an act of aggression.

This resolution defined the act of aggression as, roughly, the unlawful use of force under Article 2, Paragraph 4 of the UN Charter, and listed specific examples, such as an invasion or armed attack by one State against the territory of another, including any military occupation resulting

from such an invasion or attack. These provisions would later be incorporated as part of the crime of aggression definition in the 2010 Rome Statute. However, critics argue that this definition could be used against them in international conflicts where a State appears to act in defense of its interests or allies. This concern was notably expressed by former President George W. Bush in his May 6, 2002, speech during an Organization of American States (OAS) meeting in Quito, Ecuador, where he warned that the ICC could use this definition to prosecute U.S. soldiers and officials abroad, posing a threat to U.S. national sovereignty.

Fourteen years later, during the July 1998 Diplomatic Conference that would adopt the ICC's Rome Statute, the inclusion of the crime of aggression under the ICC's jurisdiction was debated. With no consensus on its definition or prosecution, it was decided that the crime should be included in the list of crimes under ICC jurisdiction, but that its definition and conditions for exercising jurisdiction would be revisited during the first Review Conference.

4.3 Consensus on the Definition of the Crime of Aggression

After years of negotiations, States attempted to agree on a definition for the crime of aggression, which was finally achieved through a consensus in the Special Working Group on the Crime of Aggression (SWGCA) between 2003 and 2009. This definition served as the basis for the first Review Conference of the Rome Statute in Kampala.

In 2010, Resolution RC/Res. 6 was adopted, which included Article 8 bis defining the crime of aggression, as well as new Articles 15 bis and 15 ter establishing conditions for jurisdiction over this crime. However, two prerequisites had to be met before the ICC could exercise its jurisdiction: (i) one year had to pass after the 30th ratification of the amendments, and (ii) the ICC could not activate its jurisdiction before 2017.

As shown, almost an entire century passed from the first mention or idea of the crime of aggression until it could be practically applied to prosecute those responsible for committing it. Theoretically, the crime of aggression also reflects the evolving concept of sovereignty in international law. Whereas historically, States and their leaders enjoyed nearly absolute immunity

for their international actions, the development of international criminal law has imposed greater responsibility on leaders for decisions affecting global peace and security.

The establishment of the principle of individual criminal responsibility after the Nuremberg Trials, alongside the recognition of this crime in the 1998 Rome Statute and its subsequent activation in 2017, represents significant progress in the international law doctrine on this matter. However, challenges to its effective application remain substantial.

5. Analysis

5.1 Analysis of State Resistance to Ratify the Amendments

Although only the United States and Russia have been mentioned thus far, a total of 148 UN member states have yet to ratify the Kampala amendments to the Rome Statute regarding the crime of aggression. The reasons are unclear, but for academic purposes, three hypotheses will be presented on why some States have not yet ratified these amendments:

1. Firstly, some states are reluctant to ratify the Kampala Amendments due to the possibility of assuming international legal responsibility for past or future military actions. This is particularly relevant for countries that have been involved in regional or international conflicts where acts of aggression may have been committed. Ratification could open the door for their political and military leaders — precisely those who must decide to ratify and facilitate the process — to be prosecuted by the ICC, which could have political implications both domestically and internationally.
2. Secondly, states with strong military structures and national defense strategies prefer to maintain freedom of action on the global stage without the threat of prosecution. The criminalization of certain military operations under the Kampala Amendments raises concerns for these countries, which view such actions as legitimate for national defense or the protection of national interests. This fear that military operations may be classified as aggression represents a significant obstacle to ratification.

3. Finally, the five permanent members of the Security Council hold considerable influence over the activation of the ICC's jurisdiction in cases of aggression, which has drawn criticism. Some states see this structure as a potential tool for political instrumentalization that could be used selectively, and they believe that ratifying the amendments without a reform in this area could expose them to geopolitical manipulation. The perception that jurisdiction over the crime of aggression could be used for political purposes leads certain countries to avoid assuming this risk — a concern with foundations in today's geopolitical dynamics.

5.2 Analysis of Obstacles to the Effective Application of the Crime of Aggression

Having reviewed the possible reasons why a state may not yet have ratified the Kampala Amendments, it is now appropriate to examine the specific obstacles that hinder the effective application of the crime of aggression. Three specific obstacles have been identified for this analysis:

First, the jurisdictional requirements necessary to prosecute an individual. According to the Rome Statute, the ICC can only exercise jurisdiction over this crime if the aggressor state has ratified the amendments and accepted ICC jurisdiction, with the sole exception that a case is referred to the ICC by the UN Security Council. This creates a legal gap allowing non-party states or those that have not ratified the amendments to evade responsibility. Additionally, under the UN Charter, the Security Council has the authority to determine if an act of aggression has occurred, introducing a political element that significantly limits the ICC's actions.

Secondly, the interests of the permanent members of the Security Council represent a major obstacle. These states, with veto power, have shown objections to allowing the ICC to intervene in situations that might compromise their own or their allies' interests. This has resulted in a lack of consensus within the Council when it comes to declaring the existence of a crime of aggression in conflicts where some of these states are directly or indirectly involved. This

strategic use of the veto undermines the system's credibility and reinforces the perception that international law is selective.

Finally, the current geopolitical context, characterized by the proliferation of asymmetric conflicts and the growing influence of non-state actors, adds a significant level of complexity to the application of the crime of aggression. The definition of this crime focuses primarily on the use of force between states, limiting its applicability in situations of internal conflicts or cases in which aggression is perpetrated by non-state groups, such as guerrillas or terrorist organizations. This restriction creates an accountability gap, as many severe human rights violations and acts of violence occurring in contexts of civil war or insurgencies cannot be addressed under the current framework for the crime of aggression. Moreover, the fact that many contemporary conflicts are multifaceted and non-linear, with the involvement of various actors, complicates the identification and prosecution of specific responsible parties. Thus, the lack of a clear legal framework that considers these contemporary dynamics represents a significant obstacle to the ICC's effectiveness and its ability to address crimes of aggression in a constantly evolving world.

5.3 Analysis of the Role of the UN Security Council in the Activation of ICC Jurisdiction Over the Crime of Aggression and the Influence of Global Geopolitics

As has been repeatedly mentioned, the role of the Security Council in determining whether or not an act of aggression has occurred is a highly complex issue, and it may be a significant reason why many states have yet to ratify the Amendments. This debate has had such an impact that it continues to shape how the ICC's jurisdiction over the crime of aggression is activated today.

From the outset, states took strong stances, forming two clear groups: Group 1 (for practical purposes) consisting of Security Council permanent members and allied states, and Group 2 (again, for practical purposes) comprising Non-Aligned Countries and other states:

As Juan José Quintana explains in his article, *"In Defense of the Charter: Regarding the Review Conference of the Rome Statute and the Conditions for Exercising Jurisdiction Over the Crime of*

Aggression"* (*Revista de Derecho Internacional*, 2010), these groups held the following positions:

Group 1 maintained that only the Security Council could determine the existence of an act of aggression, and that without such a determination, a crime of aggression could not be attributed to an individual in a position of leadership or power within that state.

Group 2 held that even in the absence of such a determination, the ICC should be able to prosecute and try individuals who commit a crime of aggression.

What is the critical factor causing dissatisfaction within Group 2? In its entire history, the Security Council has determined the existence of an act of aggression only once. Every time other cases have been presented that could potentially be acts of aggression, the Security Council has opted to define them as something else, such as a "threat to peace" or a "breach of peace," but never again (up to now) as an act of aggression. Consequently, it is unsurprising that many states presume the Security Council will continue in this manner, and thus the crime of aggression becomes something that exists solely in technical terms and as an ideal for those who seek justice, but never useful or practical in real life.

Kampala offered a definitive solution to this dispute through a formula that contemplates aspects such as the following:

- The ICC can act when a state refers a case in which all the states involved in the conflict are parties to the Rome Statute. However, any state may declare that it does not wish to be under the ICC's jurisdiction by submitting a declaration to the UN Secretary-General. This declaration is known as the "opt-out."
- The ICC may exercise its jurisdiction if the Security Council determines that an act of aggression has occurred. In this case, the ICC can proceed with an investigation, regardless of whether the involved state is a party to the Rome Statute and the Kampala Amendments.

- The ICC Prosecutor can initiate an investigation into a crime of aggression on their own initiative, but again, only if both the aggressor state and the victim state are parties to the Rome Statute and the Kampala Amendments and have not declared that they do not accept the ICC's jurisdiction over this crime.
- Investigations into crimes of aggression can only refer to acts committed after 2017.
- "The Security Council is not required to actively determine the existence of an act of aggression or authorize ICC investigations for the Court to proceed. This solution was possible because Article 15 bis established a consent-based regime, thus reducing the scope of the Court's jurisdiction." (Crime of Aggression, n.d., "The ICC and the UN Security Council")
- "The Security Council can also suspend an investigation into a crime of aggression under Article 16 of the Rome Statute for a period of one year. This provision applies equally to the four core crimes of the Rome Statute." (Crime of Aggression, n.d., "The ICC and the UN Security Council")
- "The determination of an act of aggression by the Security Council, according to Article 39, is not binding on the ICC. This derives from the due process principles of the Rome Statute and was explicitly confirmed in Articles 15 bis and 15 ter. Therefore, the Court maintains its full judicial independence regarding the Security Council, as it must conduct its own assessment of whether an act of aggression has occurred." (Crime of Aggression, n.d., "The ICC and the UN Security Council")

Now, the most important aspect of this: Through paragraphs 6, 7, and 8 of Article 15 bis of the Kampala Amendments to the Rome Statute, it was established how the ICC's jurisdiction over the crime of aggression can be exercised, even in the absence of a response or action from the Security Council:

Paragraph 6 states that if the Prosecutor believes there is a reasonable basis to initiate an investigation into a crime of aggression, they must first verify whether the Security Council has made a determination on the case. Then, they must notify the UN Secretary-General of the facts and provide all documentation before the ICC. Next, paragraph 7 states that if the Security

Council determines that an act of aggression exists, the Prosecutor may then initiate the investigation into the crime of aggression.

Finally, paragraph 8 establishes that if six months pass after the case is presented to the Security Council and it has still made no determination, the Prosecutor may initiate an investigation as soon as they have the authorization of the Pre-Trial Chamber regarding a crime of aggression. This formula grants the ICC independence to act, and this independence can be further detailed in the explanation provided by the ICC's Manual for Ratification and Implementation of the Kampala Amendments to the Rome Statute regarding Articles 15 and 15 bis, which essentially outline how the ICC can exercise its jurisdiction over the crime of aggression.

The formula presented in the Kampala Amendments offers hope to many, as it suggests that it is possible to establish justice mechanisms without relying solely on the UN Security Council. This would allow for a more efficient prosecution of those responsible for crimes of aggression, thereby reinforcing the international criminal justice system. However, for others, this represents a violation of the UN Charter, which assigns a fundamental role to the Council in the protection of peace and security. They argue that the Kampala Amendments undermine the Council's authority by allowing the ICC to assume competencies that should be exclusive to the Council. This conflict highlights the tension between the need for justice and respect for a rule-based international order, where the Council's decisions must be respected to maintain global stability.

6. Recommendations

In light of the current challenges facing the effective judicialization of the crime of aggression, it is imperative to propose measures that will advance towards a more equitable and functional international justice system. Below are a series of recommendations directed at states and international actors who share concerns about the current situation regarding the crime of aggression and seek to strengthen its application within the framework of international law.

First, it is essential to reform the Security Council. Article 108 of Chapter XVIII of the UN Charter, which deals with reforms to the Charter itself, establishes that "the Charter may be

amended by a decision of the General Assembly adopted by a two-thirds majority of the members of the General Assembly and ratified by two-thirds of the Member States, including the permanent members of the Security Council" (United Nations, n.d.). This reform should include expanding the number of permanent members to ensure more equitable representation, as currently, there are no countries from regions such as Africa or Latin America with a permanent seat. Additionally, it is important to consider limiting the right of veto, as it has been used by some Permanent Members to block actions or decisions related to potential acts of aggression. This perpetuates the disproportionate influence of certain powers, which often use their veto to protect their national interests or those of their allies, thus hindering the adoption of effective measures regarding the crime of aggression. Only by limiting this tool of power can the Security Council operate more fairly and equitably, genuinely acting in favor of the international community.

As a second recommendation, it would be very significant to strengthen global campaigns like that of the Coalition for the International Criminal Court, an international network of non-governmental organizations working to promote the ratification and effective application of the crime of aggression. Through these initiatives, pressure can be exerted on states that have yet to ratify the Kampala Amendments, with the goal of achieving at least half of UN member states ratifying them. These campaigns play a crucial role by providing awareness, technical assistance, advocacy with parliamentarians, and fostering international collaboration, thereby helping to overcome the political and legal obstacles that limit the implementation of the Amendments.

As a third and final recommendation, the concept of the Responsibility to Protect (R2P) could be integrated into accountability mechanisms. R2P holds that the international community has the responsibility to intervene when a state fails to protect its population from atrocities and could complement efforts to sanction the illegal use of force. While the crime of aggression focuses on the protection of international peace and security, R2P adds a humanitarian dimension, providing a legitimate basis for the international community to act in cases of inaction by the Security Council. In this way, the integration of both principles could overcome some of the current political obstacles, offering a more consensual and effective way to address illegal aggressions

and protect civilian populations in conflict situations. However, this concept generates resistance in certain regions that argue that while it is a right for all, not everyone has the capacity to exercise it.

7. Conclusion

Although the evolution of international law in this century clearly reflects that people around the world have developed a greater awareness of justice, accountability, peace, and human rights, the challenges in ensuring jurisdiction over this crime and the influence of the UN Security Council have hindered the possibility of real action against perpetrators. The aim of defining the crime of aggression was to create a system through which the illegal use of force would be permanently assessed and punished. Unfortunately, since its conceptualization, its progress has been fraught with obstacles. Geopolitical interests and the resistance of various states have slowed its effective implementation, limiting its scope to theoretical debates rather than practical applications.

Thus, it is essential to recognize that although the formalization of the crime of aggression in international law was a significant advancement, its effective application remains a pending challenge. Obstacles such as those presented in this paper, as well as the limitations imposed by the UN Security Council, have shown that the mere existence of norms is not enough to ensure justice. There is still much work to be done for the crime of aggression to be solidified as an effective mechanism for justice and accountability. It is concluded that not only is a reform of the Security Council crucial, but it is also essential to continue promoting international awareness and strengthening campaigns, like those led by the Coalition for the International Criminal Court, that seek to mobilize states to ratify and support the Kampala Amendments.

Now, the question of whether the UN is the only path to achieving accountability is central to this debate. Although the UN plays a fundamental role in maintaining international peace and security, its structure, particularly the veto power in the Security Council, limits its capacity to act impartially. In this context, other avenues, such as pressure exerted by international organizations, regional alliances, and cooperation among states through mechanisms outside the UN, can complement and strengthen efforts for justice. While the UN remains a key actor, relying solely

on it has not proven sufficient. Only through a collective effort among the international community, states, and civil society can we move towards a more just and effective system that truly punishes acts of aggression and prevents future abuses of power.

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