

# The Crime of Aggression and Humanitarian Intervention in International Law

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## Abstract

*This paper seeks to analyze the problem of interpreting the crime of aggression in international law based on the historical development of the term from its earliest evolution to its contemporary understanding. There is a complex intersection between humanitarian intervention activities and the crime of aggression. Over the years, the definition of the crime of aggression has been confronted with a myriad of challenges and obstacles which affect an unambiguous understanding of the exact definition of the crime of aggression. This paper seeks to resolve the overlap that exists between a bona fide humanitarian intervention and the crime of aggression in international law. The idea is to ensure that those who get involved in any bonafide humanitarian intervention are exempted from prosecution for aggression. In other words, the concept of aggression should be defined and enforced without disproportionately discouraging and hampering any form of humanitarian intervention. This paper submits that any form of disparity that exists can be put right and remedied by granting the International Criminal Court exclusive jurisdiction to investigate and prosecute the crime of aggression. The ultimate purpose is to ensure that state leaders and officials who use armed forces in a foreign country for legitimate humanitarian reasons do not get prosecuted for the crime of aggression.*

Keywords: Aggression, Crime, Humanitarian Law, ICC, International Law, Responsibility.



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## 1.0 Introduction

The concept of the crime of aggression as it is discussed in contemporary times was not criminalized until 1945 when aggression was considered an international crime for the first time as a result of the occurrences in the second World War.<sup>879</sup> This is despite the fact that criminalizing concrete acts, which are enclosed by the label of the crime of aggression was already seen as late as the consequences of World War II.<sup>880</sup> No doubt the Treaty of Versailles 1919, and, the 1933 Soviet Union's Draft Definition of Aggression had a lot of influence on the development and growth of the crime of aggression.<sup>881</sup> These two documents emerged based on the experience that the countries had in WWI. The reasons and consequences of WWI left many questions and attempts to avert similar occurrences in the future. At the end of WWI, a peace treaty between the Allies and Germany was established in which Germany took responsibility for the war and with which specific conditions were established for the lawsuit against the German army because they were said to have violated the provisions of the law of war.<sup>882</sup> It needs to be noted that the Treaty of Versailles, especially the aforementioned Article 227 clearly states the progress from the term 'crime against peace' towards a phraseological transition and estimation of the term crime of aggression.<sup>883</sup> The Treaty of Versailles also created the League of Nations which has a great role in strengthening the tendency of defining the term the crime of aggression. In 1933, the Soviet Union on the General Assembly of the League of Nations for Security Questions proposed a more concrete attempt to set the definition of the crime of aggression.<sup>884</sup>

The conversations centered on how the aggressor in an international conflict shall be considered. The crime of aggression was seen in the following situations: if a country declares war against another country. If the armed forces of a country invade the territory of another

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<sup>879</sup>Richard Griffiths, 'International Law, the Crime of Aggression and the *ius Ad bellum*' *International Criminal Law Review*, (2002)(2)(4)374

<sup>880</sup>*Ibid*, 385

<sup>881</sup> Sergey Sayapin, 'International Law, the use of force and the crime of Aggression: From the charter of the United Nations to the Rome Statute of the International Criminal Court' *Asian Yearbook of International Law* (2009)(15) 42

<sup>882</sup>*Ibid*, 56

<sup>883</sup> Megan Wong, 'The Activation of the International Criminal Court's Jurisdiction Over the Crime of Aggression: International law and dispute settlement perceptions' *International Community Law Review*, (2020)(22)(1)223

<sup>884</sup> *Ibid*, 231

country without declaring war, if a country bombards the territory of another country by its land, naval or air forces or knowingly attacks the naval or air forces of another country, Theaforesaid scenarios capture the very definition of the crime of aggression.<sup>885</sup> No doubt, the main period when the modern definition of the crime of aggression was established is related to WWII, especially the period after the war. From the events that followed not long after the end of the WWII, the Nuremberg processes which followed the German Nazis' trials (primarily through forming and the activities of the International Military Tribunal at Nurnberg) as well as the work of the International Military Tribunal for the Far East within the Tokyo process, stand out as the most important period where the emphasis on the concept of aggression was crystallized.<sup>886</sup>

## **2.0 Difficulty in defining the term 'the crime of aggression'**

This part of the paper considers core reasons due to which certain difficulties in defining the crime of aggression existed and still exist, their significance, and their legal interpretation. While war crimes are regulated by the Geneva Conventions, genocide is regulated by the Convention on the Prevention and Punishment of the Crime of Genocide in 1948, the criminalization of aggression did not continue simultaneously at the beginning of the working of the International Military Tribunal at Nurnberg and the International Tribunal for the Far East.<sup>887</sup> The problem can be deduced historically from various factors as follows:<sup>888</sup>

Firstly, at the end of WWII, attempts were made to punish those responsible for the war, taking into consideration that it was a case of the victors punishing those defeated. There was the need to strictly punish individuals who willingly participated in the war including how it was planned which was the usual procedures that follow after a war. The foregoing clearly shows how the consequences of WWII created appropriate circumstances for punishing those responsible for the crime of aggression as well (in the notion and understanding that it had), suggesting how the definition was adequate in its then-contemporary form. This only goes to show how there was no need for a more concrete definition because the given circumstances

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<sup>885</sup> Michael Scharf, 'Universal Jurisdiction and the Crime of Aggression' *Harvard International Law Journal*, (2012)(52)(1)363

<sup>886</sup> Allegra Carpenter, 'The International Criminal Court and the Crime of Aggression', *Nordic Journal of International*, (1995)(64)(2)226

<sup>887</sup> Judith Lichtenburg, 'The Crime of Aggression and the International Criminal Court', *tilberg Foreign Law Review*, (2007)(13)(1)172

<sup>888</sup> *Ibid*, 183

did not need it. What led to the change of this attitude later through time lies primarily within the desire to avert crimes of aggression such as those seen in WWII.

Secondly, there was also the problem of permitting the use of military force. The UN Charter in 1945 created the future system of allowing and forbidding the usage of military force. Consequently, by the provisions of Article 51 of the UN Charter what was only allowed was the approval of the Security Council or in self-defense. The proscription of military force as such was clear. One problem that arose within the authorization of the use of military force was the issue of self-defense. It became problematic as to how to determine when the use of force would be permitted and under which conditions. This was because the issue of self-defense is very complex. The UN Charter somewhat concretizes the definition of self-defense through Article 51, defining it as an occurrence when an immediate near-threatening danger exists, while on the other hand, the illegal self-defense portrays an attack that is undertaken with the aim of anticipating the potential act of aggression. The issue of self defence is subjected to various interpretations because when self-defense is permitted, the prohibition of military force is not affected. This means that such a state cannot be considered an aggressor. It is this lack of preciseness that leads to the inability of international law to clearly define the crime of aggression. Closely related to the foregoing was the very core issue of the analysis of the crime of aggression which is contained in the Article 2(4) of the UN Charter, which also refers to the problem of permitting the use of force as one of the reasons of inability to clearly define the term of aggression. Article 2(4) of the UN Charter is one of the fundamental principles of the United Nations, unfortunately, it did not offer any qualification of the term of the use of force, but the term is rather indirectly read from the related articles of the Charter (concretely the Articles 41 and 46 that mention the terms 'armed force' and 'armed forces').<sup>889</sup>

### **3.0 Developing International Humanitarian Intervention**

This part of the paper analyzes developing international legal standards for humanitarian intervention.<sup>890</sup> It also analyzes the definitions of the crime of aggression and act of aggression as they have advanced over time and as they currently stand today. It is necessary

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<sup>889</sup>Legesse Mengie, 'The ICC and the Crime of Aggression: Justiceability of an Act of Aggression', *Hiwasssa University of Journal of Law*, (2017)(2)96

<sup>890</sup>Achmad Maskun et al, 'Qualifying Cyber Crime as a Crime of Aggression in international Law, Regional Focus & Controversies: Armed Conflict with Digitized technology' *Journal of East Asia and International Law*, (2020)(13)(1)411

to look at some sources of international law in passing.<sup>891</sup> International law has a variety of sources. Article 38 of the International Court of Justice enumerates three groups of sources, viz: (i) international conventions and treaties, (ii) customary international law, and (iii) the general principles of law accepted by civilized societies.

Generally speaking, treaties and international conventions are written agreements by which states clearly consent and undertake to be bound.<sup>892</sup> They are the major form of international law based on the principles outlined in the Vienna Convention on the Law of Treaties. The U.N. Charter is seen as the fundamental international legal treaty which is superior to any other treaty. The charter created the United Nations and other bodies like the UNSC and the UNGA. Even though the United Nations General Assembly resolutions are recommendations and accordingly not binding on members, but they do contribute to customary international law. Customary international law is one fundamental ingredient of international law.<sup>893</sup> Customary international law refers to international obligations and duties created from international practices in contradistinction from obligations created from formal written conventions and treaties. These practices of nations are done out of a sense of legal obligation.<sup>894</sup>

General principle of law or general legal principle refers to rules and principles that are generally accepted in all legal relations, irrespective of the legal system.<sup>895</sup> It can also be principles that is widely accepted by people whose legal order has attained a certain level of civilization and elegance. International tribunals usually rely on these principles and rules when other sources of international law are not readily available to be cited as authority and guide.<sup>896</sup>

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<sup>891</sup>Netta Oussac, 'Territoriality and the Crime of Aggression', *New Zealand Yearbook of International Law*, (2008)(6)172

<sup>892</sup>Eliav Lieblich, 'The Crime of Aggression, Humanity and the Soldier', *American Journal of International Law*, (2019)(1)(3)667

<sup>893</sup> Beth Van Schaack, 'Negotiating at the Interface of power and law: The Crime of Aggression' *Columbia Journal of Transnational Law*, (2011)(6)577

<sup>894</sup>Andreas Paulus, 'Second Thoughts on the Crime of Aggression', *European Journal of International Law*, (2009)(20)(4)1112

<sup>895</sup> Benjamin Ferencz, 'Ending Impunity for the Crime of Aggression, International Criminal Court and the Crime of Aggression,' *Case Western Journal of Internal Law*, (2009) (41)(3) 284

<sup>896</sup>*Ibid*, 287

#### **4.0 An Act of Aggression and Crime of Aggression under the UN Charter and the Rome Statute**

It is important to note that the concepts of an act of aggression and crime of aggression, as canvassed in the U.N. Charter are separate and distinct.<sup>897</sup> The act is usually the state-performed violation, while the crime is the individual criminal liability that the instigator or planner of an act of aggression may face. Accordingly, it is usually a state that commits an act of aggression, while an individual commits a crime of aggression. Both the crime and act of aggression are codified in the U.N. Charter and the Rome Statute.<sup>898</sup> The United Nations, since after World War II has made the prevention of "acts of aggression" its highest priority as clearly contained in its charter.<sup>899</sup> This is in fulfilment of its primary purpose of maintaining international peace and security which is meant to suppress acts of aggression or other breaches of the peace.<sup>900</sup> This is the reason article 2 of the UN Charter encourages members to refrain from the use of threat or force against any state in their international relations with each other in any way that goes contrary to the general purposes of the United Nations.

The Security Council has power to determine if there is any threat to the peace, breach of the peace, or act of aggression and deal with such threat or situation accordingly in line with Chapter VII of the U.N. Charter, comprising articles 39 to 51. The question is, what exactly is an act of aggression? Unfortunately, The Charter did not specifically state what act of aggression is or means. The charter gives the Security Council to determine what constitutes the act, a threat to peace, and an attack.<sup>901</sup> The SC has carried out this onerous duty in many onerous and bleak circumstances. Another statute to be considered in the definition of the act of aggression and crime of aggression is the Rome Statute that created the International Criminal Court in 2002. The treaty empowered the ICC with jurisdiction over the crime of

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<sup>897</sup> Tal Ziskavich, 'The Crime of Aggression, Should Aggression be prosecuted as a Crime in the ICC', *Military Law Review*, (2016) (2) (2) 412

<sup>898</sup> Vo Ioschu

<sup>899</sup> Nata Lia et al, 'The Jurisdiction of the International Criminal Court for the Crime of Aggression', *Law Review of Kyiv University*, (2020) (1) (5) 375

<sup>900</sup> Gorani Bandov, 'Crime of Aggression in International Law and International Relations' *Journal of Liberty and International Affairs*, (2020) (6) (1) 58

<sup>901</sup> Oksana Voloschuk, 'The Crime of Aggression in International Law: Problems of the Development of a Universal definition' *European Journal of Law and Public Administration*, (5) (2) (2015) 43

aggression. Some countries such as the United States, the United Kingdom, and their Western allies opposed the inclusion of the crime in the court's jurisdiction.<sup>902</sup> 0-p

The inclusion was successful because of the effort of a coalition of many European Union states and approximately thirty members of the Movement of Non-Aligned Countries who gave their support to its inclusion. As a result of the vexed nature of this issue the conference decided to create the Special Working Group on the Crime of Aggression (SWGCA). In 2010 the Kampala conference adopted a definition. One core fall out of the Kampala conference was that individual can be prosecuted for a crime of aggression. Certain conditions were highlighted. The first condition is where such a person is in any position or authority where he or she has control or can exercise control over or to direct the political or military action of a country.<sup>903</sup> The second condition is such a situation where a person has been actively involved in the general designing, composition, initiation or implementation of an act of aggression that shows by its characteristic trait, magnitude and scale, constitutes an obvious violation of the Charter of the United Nations.<sup>904</sup>

The Kampala Amendment also states that an act of aggression is where the use of the armed force of a country is used against the sovereignty, territorial integrity or political independence of another country, or in any other manner manifestly contrary to the Charter of the United Nations in line with article 2(4) of the U.N. Charter. This amendment is also carried in the UNGA Resolution 3314 (XXIX) as acts of aggression.

## **5.0 Act of Aggression and Crime of Aggression under Customary International Law and the UNSC & UNGA**

This part of the paper discusses the definition of the act of aggression and crime of aggression under customary international law. It considers the historical paradigm in line with what happened at the International Military Tribunals at Tokyo and Nuremberg. Moreover, it considers the definition of aggression as contained in the U.N. Security Council and the General Assembly. Finally, it discusses the International Court of Justice's (ICJ) treatment of aggression.

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<sup>902</sup> O. Voloshuk, 'The Crime of Aggression in International Law: Problems of Development and Adoption of Unified Definition, the Legal System of Ukraine and International Law, Comparative Legal Studies', Law Review Kyiv University of Law, (3) (7) (2017) 245

<sup>903</sup> Alexander McCaskey, 'Balancing Aggression and Compassion in International Law, The Crime of Aggression and Humanitarian Intervention' Fordham Law Review, (2) (83) (2019) 998

<sup>904</sup> Erdi Safah, 'Changing Perception of Security in International Law and Cyber attacks regarding crime of Aggression' Selcuk University Law Journal, (4) (23) (2020) 122

It was after World War II that the actual execution of crime of aggression prosecution by international tribunals started. The allied powers created International Military Tribunals at Tokyo and Nuremberg to hold those deemed war criminals account for their crimes against humanity including waging wars of aggression.<sup>905</sup> The Nuremberg Court captured instigating a war of aggression as the fundamental international crime that must be punished. Former government and military officials were indicted by Both the International Military Tribunal at Nuremberg and the International Military Tribunal for the Far East for their involvement in aggressive war. The charges against them criminalized both the coordination, designing and the active involvement in the aggression. Unfortunately, the tribunals repudiated the defense by those charged that they were simply carrying out orders by their superior commanders in line with their official obligations. While these tribunals were the first recognition that aggression was an offense, the allied powers alleged that these crimes and their prosecution were based on international law as it existed in 1939. This contention may have been debatable in the late-1940s, but today, the decisions of these tribunals and other subsequent developments make criminal liability for aggression as an unquestionable part of current customary international law.<sup>906</sup>

## **6.0 Confirmation of Acts of Aggression And Crimes of Aggression By UNSC**

The Security Council is vested with the power to decide if there is any threat to the peace, breach of the peace, or act of aggression.<sup>907</sup> These three separate terms as used by the U.N. Charter are construed to have different meanings.<sup>908</sup> The way and manner these terms are used by the U.N. Charter and General Assembly resolutions further supports such an interpretation. Primordial intention and subsequent use in international law only take actions that qualify as acts of aggression as the most severe actions.<sup>909</sup> That is why the Security Council considers an act of aggression as the most serious breaches of the peace in theory. But in practice, acts of aggression are defined differently by the Security Council. It views aggressive acts like the use of armed force against the territorial integrity of victim's country

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<sup>905</sup> Quincy Wright, 'The Concept of Aggression in international Law' *American Journal of International Law*, (29) (3) (1935) 388

<sup>906</sup> Sabine Swoboda, 'Defining Aggression and the Objectives of a crime of Aggression', *Criminal Law Forum*, (19) (2) (2008) 321

<sup>907</sup> Michael Scharf, 'Universal Jurisdiction and the Crime of Aggression', *Harvard International Law Journal*, (53) (2) (2012) 370

<sup>908</sup> James Potter, 'Threshold in the Proposed Definition of Crime of Aggression', *New Zealand Yearbook of International Law*, (6) (8) (2008) 159

<sup>909</sup> Nette Goussac, 'Territoriality and the Crime of Aggression', *New Zealand Yearbook of International Law*, (6) (9) (2007) 163

as acts of aggression.<sup>910</sup> It is therefore surprising that the Korean War, the Iran-Iraq War, the Falklands War, and several Israeli operations were not seen as acts of aggression by the UNSC and UNGA. The inability to see the foregoing situations as cases of aggression might have been either because the UNSC could not take decisions on them or it did not even consider the situations. One conclusion that can readily be made from the foregoing analysis is that the determination of acts aggression and crime of aggression by the Security Council is seen as more political and oratorical than legal.<sup>911</sup>

## **7.0 Confirmation of Acts of Aggression and Crimes of Aggression by UNGA**

There have been many situations where the UNGA took resolutions that bother on actions it considered as acts aggression and crimes of aggression. These resolutions only serve as empirical evidence of customary international law because they are not binding on states. Resolution 498 (V) found that China's intervention in the Korean War, as well as the actions of those it was supporting, constituted acts of aggression. Resolution 1899 (XVIII) condemned South African incursions into South West Africa saying that any attempt to annex a part or the whole of the Territory of South West Africa constitutes an act of aggression. In Resolution S-9/2 the UNGA denounced South Africa's illegal occupation of Namibia and interference in Angola and Zambia as acts of aggression. The UNGA applied its 1974 definition of aggression to find the following South African acts of aggression against Namibia: illegal and colonial occupation in defiance of past UNGA and UNSC resolutions, military attacks against other African states launched from Namibia, and its partial occupation of Angola. Finally, the General Assembly has branded several Israeli actions as acts of aggression. These include: any military occupation, however temporary, or any forcible annexation of such territory, its June 1982 invasion of Lebanon, and its occupation of the Golan Heights. Finally, in 1992, the General Assembly criticized and denounce the military incursion into Bosnia and Herzegovina by Serbia and Montenegro as aggressive acts.

Again, the foregoing clearly shows a preference towards finding of acts of aggression by the UNGA. For instance, when a country has violated another's territorial sovereignty and, such findings are usually towards countries that have become declared as pariah or politically

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<sup>910</sup> Benjamin Ferencz, 'Ending Impunity for the Crime of Aggression, the International Criminal Court and the Crime of Aggression' *Case Western Reserve Journal of International Law*, (41) (2) (2009) 287

<sup>911</sup> Marthen Napang, 'Law Enforcement of Crime of Aggression in the Angle of Rome Statute: Perspectives and Challenges', *Journal of Law, Policy and Globalization*, (36) (7) (2018) 154

speaking not in the good books of some powerful countries.<sup>912</sup>The UNGA has severally been accused of being selective in its determination of acts of aggression and crimes of aggression.<sup>913</sup> It has been generally seen to be unable to generate an acceptable definition of the crime of aggression that is fair to potential defendants and can serve to guide prosecutions in an even-handed way.

## **8.0 Resolving Issues Between Humanitarian Intervention and Crime of Aggression**

This part of the paper considers how bona fide humanitarian interventions could be allowed while prosecuting the crime of aggression. This involves redefining the prosecutorial process as well as the possible definitions of crime of aggression. The first solution is to rigorously stick to the ICC's Kampala Amendment or the prosecuting vis a vis the definitions in UNGA Resolution 3314. One way to resolve the complex and controversial definition is to give the ICC absolute jurisdiction on how to determine and prosecute crimes of aggression. This involves ensuring that the Security Council no longer interferes in the determination and investigation of acts of aggression. Under its current crimes of aggression definition, the court would follow the guidance of UNGA Resolution 3314 (XXIX) and then, through its own systems, determine which cases were severe enough to meet the necessary manifest threshold and prosecute individuals involved in the planning and execution accordingly. The preference for the ICC is based on the fact that it is capable of providing defendants with fair and equitable investigation, prosecution and indictment.<sup>914</sup> This is in addition to the fact that the ICC is gaining more and more popularity and most countries now have confidence in it as well as accept its jurisdiction.

No doubt, the present definition of the crime of aggression is besieged with a clear-cut deficiency of precision for humanitarian intervention purposes. Under the existing definitions, any bona fide humanitarian intervention would almost certainly qualify as a prima facie act of aggression under Resolution 3314's list. The second solution is a rigorous adherence to Resolution 3314 in the determination of the crime of aggression. This procedure is in line with customary international law. The third solution is to allow a crime of aggression

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<sup>912</sup>Cavers Troy, 'The New Crime of Aggression: A triumph for Powerful States', *Journal of Conflict and Security by Law*, (18) (2) (2013) 512

<sup>913</sup>Getgen Kestenbaum, 'Closing Impunity Gaps for the Crime of Aggression', *Chicago Journal of International Law*, (17) (1) (2016) 76

<sup>914</sup> Francois Bugnion, 'Just Wars, Wars of Aggression and with Humanitarian Law', *International Studies Journal*, (2) (1) (2005) 65

exemption where the intervention has to do with regional multilateral participation. In other words, those who work with regional groups which carry out intra-regional humanitarian intervention should be exempted from prosecution for crimes of aggression. Even though these interventions had no legal basis in the U.N. Charter, the UN, Security Council and the international community widely applauded these interventions. For instance, the effort of ECOWAS was commended by Security Council in all its resolutions and statements regarding the Liberian Civil War. These efforts made the Security Council to exempt ECOWAS forces from its Resolution 788 weapons importation embargo. Similar intervention efforts made by NATO were seen as justified as a matter of international law and policy. The point is that humanitarian intervention usually positively affects neighboring countries due to the mass refugee emigration and peripheral violence likely to spill across borders.<sup>915</sup>

The fourth solution is that there is a need for the ICC to rectify and improve its definition of crime of aggression. The current definition is too vast, hazy, bemused, and slippery to allow bona fide humanitarian interventions free from the taint of criminal liability.<sup>916</sup> The only way to guarantee the independence of the ICC is to ensure that the procedure for any deference to the Security Council's resolution is not too intertwined with any political body. That is why the call to provide humanitarian intervention exemption should be taken seriously to ensure effective remedy. There are three elements which those who intend to use bona fide humanitarian intervention defense would need to prove.<sup>917</sup> First is a humanitarian principle motivation. Second is prior knowledge of gross human rights violations, and third, is a well-founded belief in the Security Council's impotence. Only a brief discussion will now follow.

The first element is the humanitarian principle motivation which requires the person using this principle to prove that his reason for using force was a genuine humanitarian desire to prevent gross human rights violations.<sup>918</sup> Such an accused person may prove such intention by showcasing documents as regards the designing and implementation of the military action, diplomatic ties and specific orders and showing arrangement just to prevent civilian casualties. This is meant to enable the ICC to discern and differentiate bona fide interventions

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<sup>915</sup>Ferencz Benjamin, 'Criminally Disproportionate Warfare: Aggression As A Contextual War Crime', Case Western Reserve of International Law, (48) (2) (2010) 37

<sup>916</sup> Oscar Solera, 'The Definition of the Crime of Aggression: Lessons not Learned', Case Western Reserve Journal of International Law, (42) (3) (2010) 813

<sup>917</sup>Abbasi Salar, 'A Conceptual Incongruence between Internal Laws of Self Defence and the international Core Crime of Aggression' Penn State of Journal of Law and International Affairs, (6) (2) (2018) 186

<sup>918</sup>*Ibid*, 189

from ostentatious invasions or occupations. The second element is that the accused person needs to prove that he knew that severe gross human rights violations were occurring in the target state.<sup>919</sup> The third element is that, the accused person may have to establish that he had reasonable belief of the inability or unwillingness of the Security Council to respond to the crisis on grounds that are not connected to the accused's (or his state's) own passivity and apathy. The Security Council can then approve a military action in line with the preference recognized by the U. N. Charter. There is also a two-tier defense of escaping liability.<sup>920</sup> The first is when the defendant can prove that there was a complication of the state's own national security and self-defense and the second defense is that their actions were narrowly-channeled to deal with those concerns.<sup>921</sup>

## 9.0 Conclusion

This paper has discussed the crime of aggression and various humanitarian interventions based on their earliest evolution and the contemporary state. The paper also proposed both procedural and substantive solutions to critically address the problematic overlap. One key point is that the crime of aggression under international law is still unclear but there has been an evolving definition sufficient to generate indictment drawn from customary international law. It is submitted that the ICC should have overriding and exclusive jurisdiction for defining and prosecuting crimes of aggression. This is because international political bodies like the United Nations General Assembly and Security Council are incapable of providing an equitable trial because of their political biased tendencies. The way out of this legal intricacy is to strive to absolutely relinquish and jettison international criminal liability for the crime of aggression. The point is that taking this kind of step which is the right step to take is to prevent many political and legal battles which will unavoidably arise. Even though it may seem to be unduly unrealistic, individual liability for the crime of aggression is a piece of customary international law worth preserving and advancing. Certainly, in today's world, it may be unquestionable to imagine that such a structure and methodology would work perfectly, but a system where those who plan, design and implement wars of aggression is appropriately and justly made to face the wrath of the law is certainly a welcomed idea and encouraged to guarantee a just and peaceful world. Even though, we are in a technologically

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<sup>919</sup>*Ibid.*

<sup>920</sup> William Schabas, 'Freedom from Fear, Human Rights and the Crime of Aggression', *Studies in Transnational Legal Journal*, (43) (1) (2011) 165

<sup>921</sup> Rosca Valentin, 'The Concept of Aggression in the Doctrine of Contemporary International Law', *Journal of International Criminal Justice*, (19) (4) (2021) 1015

driven world, where the concepts of sovereignty and aggression are increasingly becoming complex and fluid, we must deal with the realities of our present archetypal composition. There is an urgent need to ensure that aggressors are brought to justice as well as ensure that powerful nations use force to defend what is left of humanity. It is certainly vital for international law to pursue the goals that the post-World War II envisioned and prosecute all acts and crime of aggression just as we allow the best uses of force to promote peace and security.