

The Crime of Aggression and Russia's Invasion of Ukraine

Jennifer Trahan

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Foreword

This book tells a narrative, perhaps a dispiriting one, about a vision to create an international criminal tribunal to prosecute the crime of aggression committed against Ukraine. It is a dispiriting tale because the vision that states and individuals had for a tribunal established through the United Nations, which would have created the strongest precedent against high-level leaders who invade another state, was not to be. Other powerful states did not wish to set a strong precedent for prosecuting the crime of aggression or for prosecuting a head of state for the crime of aggression and would only agree to a much weaker tribunal.

At the same time, the invasion has proven a tragedy for the people and country of Ukraine, and the victims deserve justice. The tribunal agreed on, formalized by agreement between Ukraine and the Council of Europe, is not what it should be. Yet it would be far worse for there to be no tribunal, given the existence of a widely accepted definition of the crime of aggression that builds on the legacy of the International Military Tribunal at Nuremberg. As of this writing, it is critically important that states join in endorsing the tribunal—a Special Tribunal for the Crime of Aggression in the Situation of Ukraine—and provide it with sufficient funding and support. We can only hope that the tribunal will provide at least some measure of justice and accountability. The tribunal's existence would simultaneously make the statement that it is profoundly wrong to invade a neighboring state or commit other acts of aggression, in this case, resulting in the death and injury of over 1 million people.

The book also poses the question of when states will be willing to make a broader commitment to the rule of law and prosecuting the crime of aggression, wherever and by whomever committed. This commitment is sorely needed to enforce the provisions against the aggressive use of force contained in the UN Charter, as the crime of aggression does. In a world where states are facing multiple threats and incursions against their territorial integrity, this commitment must be made, so that others do not needlessly suffer the same fate as the people of Ukraine.

Johannesburg, South Africa
October 2025

Richard J. Goldstone

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First, I would never have written on the topic had I not been inspired by former Nuremberg Prosecutor Benjamin B. Ferencz, who toiled for years proclaiming to anyone who would listen the horrors of war and the need for the crime of aggression to be meaningfully prosecuted. Ben, who was a prolific scholar, knew what war meant firsthand, having traveled with the US military in 1945 and helped to liberate concentration camps. It was his dedication to the topic, his son Don Ferencz's passing the baton to me to serve as Convenor of the Global Institute for the Prevention of Aggression, as well as my own belief in the critical importance of the topic, that inspired my focus on the crime of aggression.

Over the years, I have been privileged to work with a group of hugely talented individuals and scholars, from Ambassador Christian Wenaweser, who, among other positions, led the negotiations of the Special Working Group on the Crime of Aggression, to the handful of academics and others who have been committed to seeing the crime defined and a workable solution as to jurisdiction achieved, including: Astrid Reisinger Coracini, Claus Kreß, Sina Alavi, Jutta Bertram-Nothnagel, Enid Adler, Carrie McDougall, Roger Clark, Noah Weisbord, David Donat Cattin, Marion Crepet, Stefan Barriga, Jörn Eiermann, and Leena Grover.

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I dedicate the book to the people of Ukraine: may you see justice done.

Contents

1	Background on the Crime of Aggression and Structure of the Book	1
1.1	Introduction and Relevance of the Topic	2
1.2	Aim, Structure, and Approach of This Book	10
1.3	Terminology	10
1.3.1	Crime of Aggression	11
1.3.2	International Justice	11
1.3.3	State Responsibility versus Individual Criminal Responsibility	12
1.3.4	The International Criminal Court	13
1.4	Overview of the Chapters	15
	References	18
2	The Development of the Crime of Aggression: Historical Background to the 1998 Rome Conference	23
2.1	Introduction	24
2.2	<i>Jus ad Bellum</i> , <i>Jus in Bello</i> , and the Early Peace Movement	24
2.2.1	Early <i>Jus ad (contra) Bellum</i> Theory	24
2.2.2	The Early Peace Movement	26
2.2.3	Development of <i>Jus in Bello</i>	27
2.2.4	Continued Activism in the Peace Movement	30
2.3	Bold Visions to Prevent War—The Covenant of the League of Nations and the Kellogg-Briand Pact	31
2.4	The Nuremberg Tribunal—Prosecuting Crimes Against Peace	34
2.5	The UN Charter—Advancing the Goals of International Peace	36
2.6	Legal Developments During the Cold War to the 1998 Rome Conference	40
2.7	Conclusion	43
	References	44

3	The Development of the Crime of Aggression: From the Rome Statute to the Present	51
3.1	Introduction	52
3.2	Inclusion of the Crime of Aggression in the Rome Statute of the International Criminal Court	52
3.2.1	The Rome Negotiations	52
3.2.2	The Definition of the Crime	54
3.2.3	Conditions for the ICC's Exercise of Jurisdiction	58
3.2.4	Activation of the ICC's Jurisdiction	61
3.2.5	The Lack of ICC Jurisdiction Over the Crime of Aggression Committed Against Ukraine	64
3.3	The Need to Remedy the Gap in Crime of Aggression Jurisdiction	66
3.4	Conclusion	67
	References	69
4	The Russian Federation's Invasion of Ukraine: The Crimes Committed and Why the Elements of the Crime of Aggression Are Likely Satisfied	73
4.1	Introduction	74
4.2	The Commencement and Course of the Invasion	74
4.2.1	The Earlier Illegal Annexation of Crimea and the Role of Russian Proxy Forces in the Donbas	81
4.2.2	Russian Military Hierarchy and Military Units Involved	84
4.2.3	The Role of Belarus in Allowing Its Territory to Be Utilized in the Invasion	87
4.2.4	North Korean Involvement, Russian Recruitment, and Wagner Forces	87
4.2.5	The Role of Cyber Operations as Part of Russia's Invasion	89
4.3	Key Atrocities and Harm Suffered During the Invasion	91
4.3.1	Overall Harm	91
4.3.2	Key Atrocities	92
4.4	Application of the Elements of the Crime of Aggression	105
4.4.1	Elements of the Crime	105
4.4.2	Act of Aggression	106
4.4.3	A "Manifest" UN Charter Violation	111
4.4.4	Planning, Preparation, Initiation, and Execution	114
4.4.5	The Leadership Clause and Who Might Fit Within It	117
4.4.6	Intent and Knowledge	121
4.5	Conclusion	123
	References	123

5	Calls to Establish an International Tribunal on the Crime of Aggression for the Situation of Ukraine	137
5.1	Introduction	138
5.2	Early Calls for the Establishment of a Tribunal	139
5.2.1	The Proposal by Philippe Sands and Gordon Brown	139
5.3	Calls to Establish an International Tribunal	141
5.3.1	Why Establish an International Tribunal	142
5.3.2	Advocates of an International Tribunal	145
5.3.3	The Yale Club Meeting and Features of the Proposed Tribunal	147
5.3.4	Debate About Some of the Proposed Key Features	155
5.4	The Views of Ukraine and Other States in Support of an International Tribunal Established Through the United Nations	174
5.5	Conclusion	178
	References	178
6	An Opposing Plan: Calls for Establishing a Ukrainian Hybrid Chamber to Prosecute Aggression	189
6.1	Introduction	190
6.2	The Competing “Hybrid” Tribunal Proposals	190
6.2.1	The Proposals by Germany, the United Kingdom, and the United States	191
6.3	The Weaknesses of the Hybrid Proposals	193
6.3.1	The Constitutional Problem	193
6.3.2	The Immunity Problem	194
6.3.3	The Legitimacy Problem	197
6.3.4	The Absence of the Traditional Benefits Associated with Hybrid Tribunals	198
6.3.5	Ukrainian Opposition to the Hybrid Approach	201
6.3.6	The Motivations of the Proponents	202
6.4	The Resulting Stalemate in the Core Group Negotiations	204
6.5	Conclusion	206
	References	206
7	Agreement on a Third Way: Establishing a Tribunal Through the Council of Europe	211
7.1	Introduction	212
7.2	Negotiations Within the Core Group for a Tribunal Established Through the Council of Europe	213
7.3	Key Issues During the Negotiations	215
7.3.1	The Definition of the Crime of Aggression to Be Utilized	215
7.3.2	Whether Personal Immunities Would Exempt Top Leaders from Prosecution	218

7.3.3	Whether the Tribunal Would Have a Fully Independent Prosecutor or Receive Cases Referred or Transferred from Ukraine	219
7.3.4	Whether the Tribunal Would Be Able to Conduct Trials <i>in Absentia</i>	220
7.3.5	Weighing All the Compromises	221
7.4	The Final Agreement on the Tribunal Statute	224
7.4.1	Some of the Tribunal's Key Features	225
7.4.2	Resolution of the Most Contentious Issues	233
7.4.3	The Role of the Management Committee and the Enlarged Partial Agreement	244
7.5	Key Challenges	246
7.6	Conclusion	247
	References	249
8	Advancing Peace and Justice More Broadly: The Need to Harmonize the International Criminal Court's Jurisdiction over All Four of Its Crimes	255
8.1	Introduction	256
8.2	The Gap in the ICC's Jurisdiction over the Crime of Aggression ...	256
8.3	Why Harmonize Jurisdiction over Rome Statute Crimes	261
8.4	The Proposal to Harmonize Jurisdiction	266
8.4.1	The Text of the Amendment Proposal	266
8.4.2	Entry into Force	269
8.5	State Opposition to Harmonizing Jurisdiction	271
8.6	State and Civil Society Support for Harmonizing Jurisdiction	274
8.7	The Special Session Negotiations and Outcome	276
8.8	Conclusion	280
	Post Scriptum	285
	References	285
Index		291

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Jennifer Trahan is a scholar and expert in the areas of international justice, international criminal law, and public international law, with a particular focus on the crime of aggression. She is a Clinical Professor at NYU's Center for Global Affairs, where she directs the Concentration in International Law & Human Rights. She is also Convenor of the Global Institute for the Prevention of Aggression. Starting shortly after Russia's invasion of Ukraine, she commenced serving as a special advisor to states and others on the establishment of a special tribunal for the crime of aggression against Ukraine.

Professor Trahan's prior book, "Existing Legal Limits to the Veto Power in the Face of Atrocity Crimes" (CUP 2020), won the Book of the Year Award from the American Branch of the International Law Association. She is featured in the documentary film "The Veto", produced by Tim Slade. The film and her writings have been part of an effort to seek an Advisory Opinion from the International Court of Justice recognizing existing limits to the veto power of the permanent members of the UN Security Council created by other obligations of international law.

She has also authored digests on the case law of the International Criminal Tribunal for the former Yugoslavia and the International Criminal Tribunal for Rwanda, published by Human Rights Watch, where she served as Counsel to the International Justice Program earlier in her career.