INTERNATIONAL LEGAL REGULATION AND PROSECUTION OF CRIMES OF AGGRESSION

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Purpose

In light of current international events, it would be important to once again examine the international legal meaning of the crime of aggression. In this regard, the subject paper retrospectively considers the progressive development and systematization of rules on the prohibition of aggression in international law. As a fundamental form of "leadership crime" directed against international peace, aggression is considered through the analysis of relevant international legal sources, starting from the Versailles Peace Treaty, through the Covenant of the League of Nations and other contractual acts concluded after the First World War, to the Nuremberg Statute of the International Military Court, the Charter of the United Nations, and General Assembly Resolution 3314 of 14 December 1974, which for the first time in history provides its international legal definition in a comprehensive manner. Considering that the purpose of the paper is not limited exclusively to the definition of aggression present in international public law, the paper will provide an adequate explanation of the meaning of aggression in international criminal law, which resulted from the definition of aggression adopted at the Revision Conference of the International Criminal Court held in 2010 in Kampala, where it was formally included in the text of the Rome Statute (Article 8*bis*), which opened up space for the prosecution of this international crime.

Design/Methods/Approach

The paper is conceptually designed in such a way as to follow the evolution of the legal regulation of the matter of aggression. Considering the various forms of manifestation of this crime in international practice so far, it is clear that it is necessary to re-examine its meaning by determining the range of definitions accepted in international public and international criminal law. In this regard, historical, legal, comparative, linguistic, and teleological methods are used in the work. The paper examines the meaning of aggression through the analysis of relevant international legal acts concerning the general prohibition of aggression at the international legal level. Special emphasis is placed on the analysis of its meaning within the framework of the Rome Statute and the possibility of its prosecution after the establishment of the jurisdiction of the International Criminal Court in 2018.

Evolution of the Legal Regulation of the Aggression

Aggression as an idea was represented in the teachings of ancient philosophers such as Plato and Aristotle, for whom waging war was a "state of mind" or a "natural way to acquire goods" as an integral part of state economic practice. In Roman times, it was considered that aggression could be justified

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by a legitimate aim *(bellum justum et pium esse).* This emphasized the formal side of the war, which could be waged in accordance with Roman law. In the Middle Ages, aggression acquires a broader connotation within the medieval natural law teachings on just and unjust war. In the early patristic teachings of well-known Christian theologians such as St. Augustine, the state is born from aggression, and in order to be valid, it must be ruled with justice. For the Christian theologian and scholastic Thomas Aquinas, justice comes not only from divine laws *(lex divine)* but also from natural laws *(lex naturalis)*, which recognize the legal force and legitimacy of laws in the domain of nature and the human community *(lex humana),* in which reason rules. During the following centuries, these theological ideas were elaborated in legal philosophy and the doctrine of international law, and more or less all theorists and philosophers who dealt with the state and law, such as Thomas More, Hugo Grotius, Alberico Gentili, Francisco de Victoria, Thomas Hobbes, Francis Bacon, Gottfried Wilhelm Leibniz, Baruch Spinoza, Richard Zuch, Christian Wolff, Emmerich de Vattel, Jean-Jacques Rousseau, Montesquieu, Immanuel Kant, and others, promoted their own ideological concepts about just and unjust war (Rivijer, 1898: 215-217; Brownlie, 1963: 5-18; May, 2016:273). In the history of international law, the Peace of Westphalia established in 1648 was an important event for the development of international relations and therefore, for the development of the concept of aggression. This historical event marked the official recognition of the principle of state sovereignty and legal equality, which excluded aggression as a type of unauthorized state act. Aggression meant the violation of international agreements and was directly aimed at the very survival of states. Because of this, it was considered to be opposed to the maintenance of international peace and the established balance of power (Lassaffer, 2004). Although it was justified by various quasi-legal reasons, the aggression had no basis in international law. In other words, for the sake of defense against aggressors, in the period of several centuries after the Peace of Westphalia, the great powers created "sacred" and other types of alliances in order to decide on the basis of their own discretion whether a situation represents aggression or not, when, in order to defend and with an appeal to *casus belli,* to decide on the use of force in international relations. Such a situation lasted until the First World War, when the idea of its legal arrangement matured. After the end of the First World War, the issue of the legal regulation of aggression was put on the agenda of international lawyers and politicians (Le Fir, 1934: 309; Popović, 1931: 178; Radojković, 1934: 194; Sukijasović, 1967: 49; Vasilijević, 1968: 15; Perazić, 1986: 53; Dimitrijević, 2020: 190, etc.). At that time, the idea prevailed in the international community that world peace cannot be preserved without the establishment of a fairer international order and system of collective security. At the base of that new order, the cornerstone should have been the prohibition of aggression, i.e., waging an aggressive war. The attempt to try German Emperor Wilhelm II based on the provisions of the Versailles Peace Treaty, which confirmed the responsibility of Germany and its allies for waging a war of aggression, was unsuccessful. The emperor should have been declared responsible more on the basis of ethical norms "for a supreme offense against international morality and the sanctity of treaties". However, that did not happen because the emperor fled to the Netherlands, which refused to extradite him. Since until then the international community had not regulated the crime of aggression and waging an aggressive war, it was questionable whether the emperor could be tried *ex post facto*. The debate on this issue did not lead to completely satisfactory results, and the prevailing view was that retroactive trial was not possible for criminal acts that were not legally regulated. Therefore, the issue of international legal regulation of aggression has been postponed for a future period. At the Peace Conference in Paris during April 1919, the Pact of the League of Nations was adopted, which was then included in the Versailles Peace Treaty and other peace treaties concluded after the First World War. By the Pact, the member states were obliged to respect the independence and territorial integrity of each member state and, before resorting to war, they were obliged to try to resolve mutual disputes peacefully by diplomatic means (Article 10). The Pact, however, did not fully specify the scope of this guarantee, which is why the question of the illegal use of force in international relations remained open. Thus, on the one

hand, the Covenant of the League of Nations left the possibility of waging war in the event that a period of three months has passed since the arbitration decision was made or after the unanimously adopted report of the Council of the League of Nations (Article 12, paragraph 1 and Article 15, paragraph 7), that is, when the member state refuses to enforce the judgment (Article 13, paragraph 1), as well as when the dispute falls under the exclusive jurisdiction of the states (Article 15, paragraph 8). On the other hand, the Covenant of the League of Nations did not allow recourse to war if peaceful means such as arbitration, a court or the Council of the League of Nations were provided for the settlement of disputes, or if three months had not passed since the date of their decision, i.e., the unanimously voted report of the Council of the League of Nations (Article 12, paragraph 1). Also, the Covenant does not allow resorting to war against a party that agreed with such decisions and reports of the Council (Article 13, paragraph 4), nor resorting to war by a non-member against a member of the League of Nations (Article 17, paragraphs 1 and 3) (Mc Dougal & Feliciano, 1961: 131). Since the Covenant of the League of Nations did not distinguish in a relevant way the connection between aggressive acts and the possibility of waging a legal war (which later proved disastrous in the international community), attempts to correct this situation were made at other levels of the League of Nations. Thus, during the conclusion of the Treaty on Mutual Assistance of 1923, a negative definition of the term aggression was formulated based solely on the subjective criterion of the existence of aggressive intent. As this was not acceptable, the formulation of aggression was further elaborated by Article 10 of the Protocol for the Pacific Settlement of International Disputes (Geneva Protocol) from 1924. According to the Geneva Protocol, any state that the Council of the League of Nations unanimously designates as such is an aggressor. This specifically meant that the aggressor was only a state that acted contrary to the Covenant of the League of Nations and this Protocol. Such a limitation was not satisfactory because it arbitrarily allowed the possibility of aggression against non-contracting states. However, the Geneva Protocol still confirms that the League of Nations system for settling disputes by peaceful means ensures the suppression of international crimes and that war of aggression constitutes a violation of the solidarity that exists in the international community, which in itself is an international crime. The Geneva Protocol was criticized in the Council due to the absence of real decision-making power of the League of Nations on these issues, which is why it did not enter into force. Efforts to legally regulate aggression, however, continued outside the League of Nations system. Thus, during 1924, within the framework of the Conference on Disarmament, a draft Treaty on Disarmament and Security was prepared in which the approach from the Geneva Protocol was confirmed. A further step forward was made by the Treaty on Mutual Guarantees (the so-called Rhine Pact), concluded between Germany, France, Great Britain, Belgium, and Italy in 1925, in Locarno. In addition to treaty guarantees of non-aggression, the Rhine Pact contained specific wording for ordinary and qualified forms of aggression. In this sense, a distinction is made between two groups of acts of aggression. The first includes attack, invasion, and waging a war of aggression, while the second group includes crossing the state border, opening hostilities, and concentrating armed forces on the territory of the demilitarized zone. In case of violation of the provisions of the Rhine Pact on the prohibition of aggression, the possibility of addressing the Council of the League of Nations was envisaged. The next act that should be highlighted refers to the Declaration concerning wars of aggression adopted in September 1927 by the Assembly of the League of Nations. It declared that war was an "international crime". In the Resolution adopted in February of the following year at the Sixth International Conference of American States in Havana, it is prescribed that "war of aggression constitutes an international crime against the human species". Although the reactionary politics of the great powers prevailed in this period, the great powers nevertheless contributed to the progressive development of the regulation of the prohibition of waging aggressive war. Thus, the General Treaty for the Renunciation of War (Brian-Kellogg Pact) of 1928, which was created after long-term negotiations between France and the United States of America, prohibited war as a means of resolving international disputes. Unlike the Pact of the League of

Nations, which leaves the possibility of waging war, albeit in exceptional situations, the Bryan-Kellogg Pact rejects this possibility because it establishes that states, accepting its provisions, "renounce war as a tool of their national policies in mutual relations" (Article 1) (Pržić, 1934: 191–196). Therefore, aggressor states cannot emphasize the justification of their attack on another state, and any state that resorts to armed activities is considered an aggressor. The weakness of the mentioned approach was reflected in the lack of institutional mechanisms for its application, which left the possibility for different arbitrary interpretations (and which was demonstrated in international practice by Japan's invasion of Manchuria, Italy's attack on Ethiopia, and German aggression against Austria and Czechoslovakia) (Avramov, Kreća, 2008: 588). Further attempts to regulate aggression followed in the proposal of the Act on the Definition of Aggressors, which was made into a supplementary protocol for the needs of the Conference on the Reduction and Limitation of Armaments of 1933. The definition of aggression contained in this document includes a declaration of war against another state, an armed invasion without a declaration of war, an invasion by land, sea, or air forces without or against government authorization, bombing the territory of other states, blockade of a coast or port, and providing support to armed groups formed on one's own territory for invasion (YILC, 1951: 36). Article 2 of the proposal stipulates that no reasons of a political, military, economic, or other nature can serve as a justification or excuse for any type of aggression. Although this proposal (better known in diplomatic history as the Litvinov-Politis definition or Soviet definition) served to draft the Act on the Definition of Aggressors, the proposal itself was not adopted. However, the definition of aggression from this proposal was found in several important treaties that the then Soviet Union concluded with other countries, the most important of which is the multilateral Convention for the Definition of Aggression signed in London in July 1933, which promoted the so-called the *principle of priority* by which the aggressor is considered to be the state that first started with some of the prohibited aggressive acts included in the Litvinov-Politis definition. Unfortunately, even this approach to the regulation of aggression did not experience any wider success and support from the international community, which again does not mean that in the light of later events it did not represent a turning point in the history of defining aggression and its consequences, which is also noticeable in the work on regulation after the Second World War (Broms, 1977: 311). However, the overall evaluation of the international legal regulation of aggression under the auspices of the League of Nations and at the aforementioned international conferences held between the two world wars speaks in favor of the fact that the established system of international security has proven to be ineffective. Namely, due to the lack of support from the great powers, the League of Nations was left without the possibility to effectively intervene against states that threatened international peace. Such a situation led to the Second World War, in which the idea of waging an aggressive war was embodied in bloodshed all over the world. At the conference held in London in October 1942, the Allied Governments announced that a United Nations War Crimes Commission would be set up for the investigation of war crimes. In the Moscow Declaration of 1943, the three main Allied Powers (United Kingdom, United States, USSR) issued a joint statement that the German war criminals should be judged and punished in the countries in which their crimes were committed, but that, "the major criminals, whose offences have no particular geographical localization", would be punished "by the joint decision of the Governments of the Allies". At the international conference of the Allied Powers held in August 1945 in London, the Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis was reached (International Humanitarian Law Databases, 2023). At the same time, the International Military Tribunal in Nuremberg was established, and its Charter was adopted. According to the Charter, this Tribunal was supposed to serve for "fair and quick trial and punishment of the main war criminals of the European axis" (Bartoš, 1954: 384). Its jurisdiction was based on existing customary international law and treaties that condemned crimes against peace, war crimes, and crimes against humanity (Ferenz, 2015: 188). Although the Charter did not contain a definition of "aggressive war" (nor was there such a finding in the judgment), neverthe-

less, the Tribunal, after reviewing the facts and evidence, determined that certain defendants had planned and waged aggressive wars against twelve nations and were therefore guilty of a number of different crimes such as murders, exterminations, and other inhuman acts committed not only against members of different armies but also against the civilian population. The Tribunal held that the issue should not be considered further because wars of aggression were "wars in violation of international treaties, agreements or assurances." The term "assurance" means any peace pledge or guarantee given by states (even unilaterally) (YILC, 1950: 276; Trial of the Major War Criminals before the International Military Tribunal, 1947: 216). Hence, according to Article 6(a) of the Statute of the International Military Tribunal, the crime of aggression is classified as a crime against peace, which includes the planning, preparation, initiation, or waging of a war of aggression or a war in violation of international treaties, agreements, or guarantees, or participation in a common plan or conspiracy for the execution of one of the aforementioned acts (Nirnberška presuda, 1948: 11; Prljeta, 1992). The illegality of wars of aggression follows from this definition. The International Military Court established that such wars were prohibited by international law even before the adoption of the Charter (primarily on the basis of international customs), which, according to it, was important not only for determining the responsibility of the state but also for conducting individual criminal proceedings against war criminals in accordance with the legal principle – *nullum crimen sine lege, nulla poena sine lege.* Although it was perfectly fine from the point of view of the legitimacy of the trial, from the point of view of international criminal law, such a position was not completely consistent because it was not realistically based on the aforementioned principle of legality in all its segments (Brownlie, 1963: 150–166; Dinstein, 2005: 118; Škulić, 2015: 22). A similar formulation of aggression is contained in the Control Council Law No. 10 of 1945 and in the Charter of the International Military Tribunal for the Far East in Tokyo (*Historical Review of Developments Related to Aggression*, 2002). This Tribunal was established in 1946 by the proclamation of American General McArthur, who was the Supreme Commander in the Far East for the Allied Powers. Before this Military Tribunal, some of the accused were convicted of planning, preparing, launching, or waging a "declared or undeclared war of aggression" (Ferencz, 2000: 48; UN Preparatory Commission for the International Criminal Court, 2002: 44–114). This legal outcome was soon legitimized in the United Nations system, first through General Assembly Resolution 95 (I) of 11 December 1946, and then through the work of the International Law Commission, which codified the Nurenberg Principles from the Nuremberg Charter and the judgment of the International Military Tribunal (Kaseze, 2005: 128; Bartoš, 1954: 386; Anggadi, French & Potter, 2012: 146; YILC, 1950; Trial of the Major War Criminals before the International Military Tribunal, 1947). Although with that confirmation it was considered that the existence of aggression was generally accepted in customary law, its precise definition was missing. Therefore, within the United Nations system, it was decided to leave the issue to the Security Council, which would decide on the existence of aggression in each specific case (UNCIO, 1945: 448: 448; Gavranov, 1969: 26). This approach has fueled justified doubts about the possibility of finding any satisfactory solution. However, already at the Fifth Session of the General Assembly in 1950, where one of the main topics was the discussion of the rights and duties of states in the event of an outbreak of hostilities, the awareness of higher common interests prevailed. The general political climate in the world, which was "overshadowed" by the crisis on the Korean Peninsula, also contributed to this. The largest number of countries, especially those from the Third World, expressed their willingness to finally regulate aggression under the auspices of the United Nations. Recognizing the complexity of the issues posed by aggression, especially in the conditions of the exacerbated Cold War crisis, the General Assembly, through its Special Committee formed in 1967, gradually managed to secure the acceptance of the draft definition of aggression. On the proposal of the Sixth Committee, the General Assembly adopted Resolution 3314 (XXIX) on 14 December 1974, which included a definition of aggression (GAOR, 1974: 846, etc.). Previously, the Code on Crimes against Peace and Security was drawn up within the prescribed competences of

the Commission for International Law. The original Draft of the Code of Commissions took into account the principles of the Nuremberg Statute. It included the criminal responsibility of individuals but not of abstract entities (YILC, 1951: para. 52). According to the opinion of the Commission, until a permanent international criminal court is established, the Code should be applied by domestic courts. After the Commission completed the first Draft of the Code at its third session held in 1951, it submitted the text to the General Assembly for consideration (YILC, 1951: paras. 55, 57). A revised Draft of the text was adopted at the sixth session of the International Law Commission in 1954. Questions related to punishment were omitted from the text, as it was considered that this issue could be resolved at a later stage (YILC, 1954: para. 49–51, 54). After that, the General Assembly formed a Special Committee to draft the Code on Crimes against International Peace and Security. In the period from 1953 to 1996, the Committee changed its composition, scope, and way of working, facing several issues of state and individual responsibility. (GAOR, 1952: para. 35; 1957: 51; 1974: 846, etc.). Finally, the Draft was adopted in 1996 (YILC, 1996). It did not cover the state's responsibility for aggression, but only the responsibility of individuals (McCormack & Simpson, 1994: 1–55). Article 16 of the Code stipulates that "an individual who, as a leader or organizer, actively participates in or orders the planning, preparation, initiation or conduct of aggression committed by the state, shall be liable for the crime of aggression". However, analyzing the essential content of the crime of aggression and the individual responsibility that this crime entails, it cannot be said that this responsibility is not related to the responsibility of the state that committed the act of aggression through individuals. Hence, it is rightly claimed that the state act of aggression is the *conditio sine qua non* for the individual criminal responsibility of an individual (for so-called *accessory liability*). All the more so because the state as an abstract entity is incapable of acting alone, which is why aggression can only be carried out with the active participation of individuals who have the power to plan, prepare, launch, or implement aggression (highest state officials)? The International Military Tribunal in Nuremberg clearly recognized this reality, stating that "crimes against international law are committed by people, not abstract entities, and only by punishing individuals who commit such crimes can the provisions of international law be enforced" (Nazi Conspiracy and Aggression: Opinion and Judgment, 1947: 51). In the period after the adoption of the Draft Code on Criminal Offenses against Peace and Security of Mankind, the Commission for International Law made a significant step towards the adoption of the draft Statute of the International Criminal Court. At the Diplomatic Conference held in Rome in July 1998, this draft was adopted (Rome Statute), and at the same time, the International Criminal Court (ICC) was established as a permanent international tribunal based in The Hague. (Crawford, 1994). The Rome Statute entered into force upon ratification by the requisite sixtieth state on 1 July 2002. It enjoyed a certain authority because it contained the views of eminent international legal experts and representatives of the most important legal systems in the world, and at the same time, solutions that confirmed the existing customary rules and legal principles in the matter of international criminal law. Hence, it is most likely generally accepted that the crime of aggression exists in international customary criminal law, although its precise definition for the purposes of determining individual criminal liability remains a subject of dispute (Jia, 2015: 569, 571). All the more so because after the Nuremberg and Tokyo trials, there was no prosecution for aggression, and this crime remained in an undefined state until the establishment of the ICC. Article 5 of the Rome Statute limits the jurisdiction of the Court *ratione materiae* in such a way that it is mentioned that the Court has jurisdiction to judge only the most serious crimes, which have been declared as such by the entire international community *(crimina juris gentium)*. In addition to war crimes, crimes against humanity, and genocide, the most serious international crimes also include aggression. In international criminal law, these crimes are considered "core crimes", which, *stricto sensu,* entail direct criminal liability (Max Planck Encyclopedia of Public International Law, 2009: 871–882). However, regarding the crime of aggression, the Rome Statute did not go further and did not define this crime, which left room for its different interpretations in

state judicial practice (Krivokapić, 2017: 66–67). In order to overcome this situation, the Rome Statute provided that the jurisdiction of the ICC would not be exercised for the crime of aggression until a generally accepted definition of this crime was adopted. In this sense, Article 5, paragraph 2 of the Rome Statute provides: "The Court is competent for the crime of aggression after the regulations adopted in terms of Art. 121 and 123, establish the elements of being of this criminal offense, and thus fulfill the previous conditions for establishing the jurisdiction of the Court. Those regulations must be in accordance with the relevant provisions of the Charter of the United Nations". Therefore, during 2002, the Assembly of the member states of the Rome Statute formed the Special Working Group on the Crime of Aggression (SWGCA), which dealt with the issue of aggression. Since the crime of aggression is closely related to the use of force by the state, unlike war crimes, genocide, and crimes against humanity, in which individual criminal responsibility is independent of the existence of state responsibility, it was necessary to amend the Rome Statute. This amendment was postponed until the first Review Conference, which, according to Article 123 of the Rome Statute, should have been held seven years from the date of its entry into force. The first Revision Conference of representatives of member states of the Rome Statute was held on 11 June 2010 in Kampala (Uganda). It adopted the Resolution No. 6 with the new Article 8*bis*, which finally defined the crime of aggression. At the same time, Annex III of this Resolution contains seven "Understandings" that should serve as a supplementary means of interpreting the adopted amendments (Heller, 2012: 1–19). The adoption of the definition of the crime of aggression in the Rome Statute represents a major progressive step that could pave the way for the prosecution of crimes against peace in the future, especially after the activation of the ICC's jurisdiction starting from 17 July 2018 (Amendments to the Rome Statute of the International Criminal Court on the Crime of Aggression, 2010; Official Records, 2017; Dixon, McCorquodale & Williams, 2011: 543–544; McDougall, 2013: 205–280).

Definition of Aggression According to Resolution 3314 (XXIX) of the UN General Assembly

Article 1 of Resolution 3314 (XXIX) defines aggression synthetically as "the use of armed force by one state against the sovereignty, territorial integrity or political independence of another state or, which is in any other way inconsistent with the Charter, as stated in this definition". Before listing specific cases of aggression, Article 2 of the Resolution states that "the initial use of armed force in violation of the Charter constitutes *prima facie* evidence of the commission of an act of aggression". According to this part of Article 2, aggression is limited to immediate armed aggression. However, the provision does not exclude the possibility of a *lato sensu* interpretation, because in the second part of the provision it is stipulated that the Security Council retains the discretionary authority to qualify the situation in a different way, which is stated by the wording that, "The Security Council may, in accordance with the Charter, conclude that the declaration that if one act of aggression was committed, it would not be justified taking into account other important circumstances, including the fact that the respective acts or their consequences are not sufficiently dangerous". Article 3 of the Resolution lists concrete examples of aggression. Enumeration of aggressive acts does not presuppose a declaration of war, so aggression is represented by: a) The invasion or attack by the armed forces of a State of the territory of another State, or any military occupation, however temporary, resulting from such invasion or attack, or any annexation by the use of force of the territory of another State or part thereof; b) Bombardment by the armed forces of a State against the territory of another State or the use of any weapons by a State against the territory of another State; c) The blockade of the ports or coasts of a State by the armed forces of another State; d) An attack by the armed forces of a State on the land, sea or air forces, or

marine and air fleets of another State; e) The use of armed forces of one State which are within the territory of another State with the agreement of the receiving State, in contravention of the conditions provided for in the agreement or any extension of their presence in such territory beyond the termination of the agreement; f) The action of a State in allowing its territory, which it has placed at the disposal of another State, to be used by that other State for perpetrating an act of aggression against a third State; g) The sending by or on behalf of a State of armed bands, groups, irregulars, or mercenaries, which carry out acts of armed force against another State of such gravity as to amount to the acts listed above, or its substantial involvement therein. The presented definition shows that the concept of aggression in general and special aspects consists of three groups of elements: 1) Objective elements that include the use of force and the initial initiation of the use of force; 2) Subjective elements that sublimate an aggressive intention or intention and, 3) Subject and object of aggression. The examples listed *exempli causa*, from a) to e), represent forms of direct armed aggression, while the examples listed under f) and g) fall under the form of indirect unarmed aggression. All examples are, as can be seen from the text of the Resolution, formally and legally equal. In Article 4 of the Resolution, it is stated that the mentioned list is not final and that the Security Council can determine that other acts also constitute aggression in the sense of the provisions of the Charter. It follows from this that the enumeration made in Article 3 of the Resolution is not limited and is even less legally binding since the Security Council, in accordance with its discretionary powers prescribed by the Charter, can in any case arbitrarily interpret which act constitutes aggression and which does not according to this Resolution. Unfortunately, the mentioned decision left the "door wide open" to legal uncertainty and thus, to voluntaristic decisions of the Security Council. In specifying aggression, Article 5 of the Resolution further clearly describes that, "no reason of any nature, political, economic, military or any other, can justify aggression". The aforementioned provision directly refers to the duty of states not to intervene in the internal or external affairs of other states. It is also significant that it stipulates that a war of aggression constitutes a crime against peace for which international legal responsibility follows. Also, the provision prohibits violation of the territory of other states or acquisition of some special benefits through aggressive actions. Article 6 of the Resolution regulates the permissible cases of use of force. This provision confirms that the Resolution should not be interpreted in a way that expands or narrows the reach of the provisions of the Charter, including the provisions related to functional powers to use force. This article of the Resolution essentially does not prejudge the functions of the Security Council provided for by the Charter (Cahin, 2003: 535; Brownlie, 2003: 705). At the same time, it indirectly differentiates between aggression and the right to self-defense prescribed by Article 51 of the Charter. The possibility of applying the right to self-defense will depend on the assessment of the existence of aggression (Dimitrijević, 2012: 157–191). If one party commits armed aggression in the manner defined above or in any other manner that qualifies as aggression, the affected party has the right to resort to individual or collective self-defense in accordance with the Charter. In Article 7 of the Resolution, the right to self-determination of peoples who were under colonial administration and who found themselves within the framework of the new system of guardianship and administration of the United Nations is affirmed. Their struggle for emancipation and independence does not fall under the term aggression. In this sense, this provision stipulates that the definition of aggression does not prejudice the realization of the right to self-determination of peoples if the peoples were forcibly deprived of that right, as well as their right to fight in this direction and to demand support in accordance with the principles of the United Nations Charter and the Declarations on the principles of international law on friendly relations and cooperation between states in accordance with the UN Charter. Article 8 of the Resolution confirms the principle of functional interpretation of its provisions in such a way that, "in interpretation and application, all provisions are interconnected so that each provision should be interpreted in connection with other provisions". Although the introductory part of Resolution 3314 (XXXIX) states that maintaining international peace and security and taking effec-

tive collective measures to prevent and eliminate threats to peace and prevent aggression is one of the basic goals of the United Nations, from the content of the Resolution, it cannot be concluded that that was also its basic intention since the system of collective security established by the Charter remained the same. This is all the more so because the Resolution does not bind states *stricto sensu*, and especially not the Security Council, in which the application of the principles and rules contained in the Resolution is conditioned by the unanimity of its permanent members (Schwebel, 1972: 446). If we add to the mentioned shortcomings the circumstance that there is no complete agreement in the international community on new forms of aggression, which, for example, imply the initial initiation of an armed conflict with the use of new methods of hybrid warfare (e.g., chemical or biological weapons of mass destruction or the execution of mass terrorist attacks), then it is completely clear that the aforementioned crimes can remain permanently unpunished. However, the prescribed obligation of states to resolve their disputes peacefully, not to use armed force against the people in exercising their right to self-determination and not to violate or appropriate the territory of other states represents a significant "progressive development" of customary rules and principles that per se have corrective importance in the application of general international law contained in the Charter of the United Nations, which were further elaborated and confirmed in General Assembly Resolution 2625 of 24 October 1970 on the principles of international law on friendly relations and cooperation between states in accordance with this Charter (Degan, 1976: 55–57; Račić, 2015: 293). Expressing the hope that the definition of aggression will lead to the prevention of acts of aggression, the Resolution emphasizes the need for simplified implementation of measures to prevent them as well as to eliminate harmful consequences for the rights and interests of victims of aggression. At the same time, it also expresses the desire to further formulate principles by which, in the light of changed circumstances, it would be possible to determine the existence of aggression (Broms, 1977: 299; Henkin et al., 1993: 896, etc.). Viewed from today's perspective, Resolution 3314 (XXXIX) did not achieve much since the permanent members of the Security Council retained their functional powers and the right of veto, which was an effective means of preventing decisions on aggression, and the Resolution itself was formally reduced to a non-binding instruction or recommendation, without a valid legal scope and with a clearly defined purpose in international practice (Šahović, 2008: 194).

Definition of Aggression According to the Kampala Amendments to the Rome Statute

In paragraph 1 of the added Article 8*bis* of the Rome Statute, crime of aggression means "the planning, preparation, initiation or execution, by a person in a position effectively to exercise control over or to direct the political or military action of a State, of an act of aggression which, by its character, gravity and scale, constitutes a manifest violation of the Charter of the United Nations" (Resolution RC/Res. 6, 2010). From the aforementioned wording, it can be concluded that the amended Rome Statute revises the standard accepted at the Nuremberg and Tokyo trials, according to which only a person who is in a position to "shape or influence" the state's policy can be held responsible for aggression. The introduction of such a provision on aggression as a "leadership crime", in paragraph 1 of Article 8*bis*, represents a real deviation from the previous international practice, which was based on treating aggression as a "supreme crime" (Heller, 2007: 477–497). Such "evolution" could be argued by the assessment of the ICC to use its capacities to prosecute those persons who are most responsible for the aggression (Hajdin, 2017: 545). After all, this is also confirmed by Article 25(3) *bis* of the Rome Statute, which further specifies who can bear responsibility for crimes of aggression, and in this connection, responsibility is conditioned "only to persons in a position effectively to exercise control over or to

direct the political or military action of a state". On the one hand, this specification to some extent transposes the standard of "effective control" present in international law on state responsibility into international criminal law because state responsibility requires that the state either issue instructions or conduct and direct armed actions, while individual responsibility requires an individual to be in a position to effectively or directly control the situation and military actions. Essentially, in this way, the definition of aggression as a "crime of leadership" is limited, since compared to other "core crimes" under the jurisdiction of the ICC, it makes the crime of aggression quite unique. On the other hand, the application of "effective control" standard only to the main perpetrators leads to a situation where other perpetrators and accomplices of the crime of aggression remain unpunished, which would be contrary to the intention of the creators of the Rome Statute and the legal legacy from the trial of the main war criminals after the Second World War. In this sense, it is emphasized that even non-officials, such as responsible industrialists or corporate actors, could be subject to criminal prosecution for the crime of aggression. This expanded interpretation also includes a political dimension of criminal responsibility for the crime of aggression, which indicates the connection that exists between this crime and acts of the state that can be included under the definition of aggression (Graziani & Mei, 2017: 57–60; Van der Vyver, 2010–2011: 17). In paragraph 2 of the Article 8*bis*, incriminating acts are listed using the enumerative method, regardless of whether war has been declared, and which, *inter alia*, include: a) The invasion or attack by the armed forces of a State of the territory of another State, or any military occupation, however temporary, resulting from such invasion or attack, or any annexation by the use of force of the territory of another State or part thereof; b) Bombardment by the armed forces of a State against the territory of another State or the use of any weapons by a State against the territory of another State; c) The blockade of the ports or coasts of a State by the armed forces of another State; d) An attack by the armed forces of a State on the land, sea or air forces, or marine and air fleets of another State; e) The use of armed forces of one State which are within the territory of another State with the agreement of the receiving State, in contravention of the conditions provided for in the agreement or any extension of their presence in such territory beyond the termination of the agreement; f) The action of a State in allowing its territory, which it has placed at the disposal of another State, to be used by that other State for perpetrating an act of aggression against a third State; g) The sending by or on behalf of a State of armed bands, groups, irregulars or mercenaries, which carry out acts of armed force against another State of such gravity as to amount to the acts listed above, or its substantial involvement therein (Resolution RC/Res. 6, 2010; Škulić, 2011: 178–180). Consequently, all the listed acts of aggression indicate that "act of aggression" means 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" (Resolution RC/Res. 6, 2010; Jovašević, 2011: 226–227). Analyzing the said formulation, it is concluded that the definition of aggression in the Statute is *mutatis mutandis* harmonized with the definition of aggression contained in the General Assembly Resolution 3314 (XXIX) from 14 December 1974 (Sunga, 1998: 65). Also, according to Article 5, paragraph 2 of the Statute of the ICC, the definition is harmonized with the relevant provisions of the Charter of the United Nations, and above all, with its prohibition of the use of force in international relations (Article 2, paragraph 1(4)). However, the provision from Article 8*bis* of the amended Rome Statute does not foresee the possibility for the ICC to expand the list of acts of aggression in addition to those expressly stated in this provision, which according to Resolution 3314 of the General Assembly, the Security Council can do in relation to the established list of acts of aggression. As a rule, the ICC acts in accordance with the *nullum crimen sine lege* principle, which does not allow any deviations and exceptions from the established definition of the crime of aggression. Since Article 10 stipulates that its amendments shall not be interpreted as limiting or prejudice in any way the existing or developing rules of international law for purposes other than the purposes of the Rome Statute, it is clear that the definition of aggression was adopted at the first Revision Conference in Kampala confirmed

the will of the wider international community to permanently regulate the issue of criminal liability of individuals for the crime of aggression without affecting its legal qualification present in international public law (Rimski statut Međunarodnog krivičnog suda, 2001). However, the definition of the crime of aggression present in international criminal law gave, in a certain sense, normative weight to the definition of aggression in public international law *(ius ad bellum)*. That is why it is assumed that state acts of aggression represent an essential element of the criminal act of aggression in addition to the element of individual acts of aggression, which, according to the general international legal rule on attribution, can be attributed to the responsibility of the state for internationally wrongful acts (YILC, 2001; Kreβ, 2017: 412). In continuation of the above observations, a couple of main observations about court jurisdiction should be highlighted. Namely, the amended Rome Statute in Articles 15*bis* and 15*ter* defines two-tiered jurisdiction (when the procedure is initiated by state referrals or *proprio motu* by the prosecutor, that is, referrals by the Security Council), for the prosecution of the crime of aggression. In that sense, the Rome Statute expressly provides that the determination of an act of aggression by some authority outside the ICC does not prejudge the finding of the Court itself. In other words, the decision of the Security Council to determine an act of aggression in accordance with the functional powers from Article 39 of the United Nations Charter does not bind the ICC. The ICC has complete judicial independence in relation to the Security Council because, according to the Statute, it must make its own assessment as to whether aggression has or has not occurred. In the case of the referral of the state and the *proprio motu* investigation of the Prosecutor, there is a specially developed procedure in which the Prosecutor must first determine whether the Security Council made a decision on the act of aggression. In the event that the Security Council has determined that there is an act of aggression, the Prosecutor can continue with the investigation. If the Security Council has not made a decision on this, the Prosecutor must wait six months before he can proceed with the investigation, provided that the Pre-Trial Division has approved the commencement (Article 15*bis*) (Heinsch, 2010: 734–735). If the Security Council makes a referral to the ICC in accordance with the functional powers from Article 39 of the United Nations Charter that refer to the entire international community, the prosecutor has the authority to investigate the crime of aggression regardless of the territory where the crime was committed or the nationality of the perpetrator. In such situations, it is possible to carry out an investigation against the perpetrator in states that have different legal status, such as states that are parties and that are not parties to the Statute or that have "opt-out" statutes (Article 15*ter*). In the latter case, States parties to the Statute have the option to "opt-out" of the jurisdiction of the ICC by submitting a declaration to the ICC Secretary before committing an act of aggression. The declaration must be submitted before the act of aggression is committed. This possibility refers to the case when jurisdiction is established on the basis of a referral of the state or *proprio motu*, and where "opt-out" also covers the case of citizens of states that are not parties to the Rome Statute.

The Functional Powers of the Security Council and the Jurisdiction of the ICC in Relation to the Crime of Aggression

The topic of international legal regulation and prosecution of aggression, in addition to the analyzed issues, also includes the issue of the delimitation of the functional powers of the Security Council in relation to state acts of aggression and the jurisdiction of the ICC in relation to the prosecution of individual perpetrators of criminal acts of aggression. This delimitation generally originates from the dual nature of the international responsibility of states and individuals. In this sense, the functional powers of the Security Council should not be understood as a prejudicial download of "quasi-judicial" responsibilities because there are no realistic grounds for that in the Charter of the United Nations

(Schabas, 2004: 32–33; Gargiulo, 1999: 68, etc.). Institutional relations between the ICC and the United Nations are generally regulated by a special agreement that formally recognizes the international legal subjectivity, permanence, and independence of the Court (Relationship Agreement between the United Nations and the ICC, 2004). Article 4, point 3 of the Agreement stipulates that: "Whenever the Security Council considers issues related to the activities of the Court, the President of the Court or the Prosecutor may turn to the Council, at his invitation, to provide assistance in relation to issues within the jurisdiction of the Court". Furthermore, since 17 July 2018, since the ICC has officially acquired jurisdiction to prosecute perpetrators of crimes of aggression, the Security Council, acting in accordance with its functional powers from Chapter VII of the United Nations Charter, has the possibility to refer to the ICC a disputed situation that represents in his assessment, an act of aggression, which activates the powers of the ICC to investigate and prosecute the perpetrators of the crime of aggression. The Charter of the United Nations is the legal basis upon which the ICC can investigate such crimes without any consent requirement by the States involved. In doing so, the Security Council should respect the prescribed rule of *nullum crimen sine lege,* as well as the provisions of the Rome Statute on the jurisdiction of the ICC. In this sense, the possibility for the Security Council to indicate which crimes it believes have been committed in a given situation does not prevent the ICC from qualifying certain behavior differently. The jurisdiction of the Security Council therefore remains limited by the jurisdiction of the Court in relation to other "core crimes", which the Court might otherwise qualify. In this regard, the personal jurisdiction of the ICC remains attached to adult citizens of member states or non-member states of the Rome Statute that have accepted the jurisdiction of the Court on an *ad hoc* basis or the jurisdiction can be based on a decision of the Security Council. The territorial jurisdiction of the ICC includes criminal offenses committed on the territory of the state, that is, criminal offenses committed by a citizen on the territory of a member state of the Rome Statute. This jurisdiction can be based on an *ad hoc* basis or on the basis of a relevant decision of the Security Council. Finally, the temporal jurisdiction of the ICC applies only to crimes committed after the entry into force of the Rome Statute, i.e., after 1 July 2002, which applies to other "core crimes" except crimes of aggression (Dimitrijević et. al., 2005: 2225, etc.; *Cryer*, Friman, *Robinson & Wilmshurs, 2014: 166–169*). Considering all aspects of the jurisdiction of the ICC, it follows that when the Security Council, acting on the basis of Chapter VII of the UN Charter, presents to the Prosecutor a situation that it considers to be a crime of aggression and is under the jurisdiction of the ICC, then there are no limitations *ratione loci* and *ratione personae* that could apply in other situations since the Prosecutor can be asked to conduct an investigation against individuals in the territory of any state, including states that are not parties to the Rome Statute, and regardless of their nationality. In the absence of this referral by the Security Council, the Prosecutor would have the right to initiate an investigation *proprio motu* or at the request of a state party to the Rome Statute. In such situations, the Prosecutor should first determine whether the Security Council made a decision that determined that an act of aggression had been committed by the state in question. If such a decision is not made within six months of the date on which the Prosecutor notified the Security Council, the Prosecutor shall have the right to proceed with the investigation, provided that the ICC Pre-Trail Division has authorized him to commence the investigation. Therefore, there is no requirement for the Security Council to actively determine the existence of an act of aggression or to authorize ICC investigations for the Court to proceed. It is very important to see that Article 15bis of the amended Rome Statute created a regime based on consent, which reduced the scope of the Court's jurisdiction. Hence, where the jurisdiction of the Court is triggered by a state or by the Prosecutor *propio motu,* the Court shall not exercise its jurisdiction over the crime of aggression when committed by a national of or on the territory of a state that is not party to the Rome Statute. Also, in the event that the procedure is initiated by the state or the Prosecutor *proprio motu*, the Security Council has the right, according to Article 16 of the Rome Statute, to request the ICC not to initiate the investigation procedure, i.e., to suspend it for 12

months, which was already demonstrated in the practice of the ICC regarding the time-limited exemption of members of UN peacekeeping missions from judicial jurisdiction (Etinski, 2004: 224). The jurisdiction of the ICC for the crime of aggression was activated by Resolution No. 10, adopted at the session of the Assembly on 14 December 2017, to enter into force on 17 July 2018 with a delayed deadline (Assembly of States Parties to the Rome Statute of the ICC, Official Records, 2017). On that occasion, states interpreted the scope of the changes to the Rome Statute from Kampala rather restrictively. Namely, they established a dual regime of jurisdiction of the ICC for every case referred to it by the Security Council for resolution, regardless of the consent of the state for the crime of aggression, and also for cases when the Prosecutor acts *proprio motu* or on the basis of the request of the state, with the fact that the state on whose territory the aggression was committed and the state of citizenship of the perpetrator of this criminal act ratified the amendments to the Rome Statute (Bandov, Ogorec, 2020: 65). At the same time, it should be borne in mind that the role of the ICC in the enforcement of jurisdiction over the crime of aggression is, conditionally speaking, not independent, but that there is an influence not only of the Security Council, but also of the member states of the Rome Statute. Therefore, according to this provision, the ICC cannot initiate proceedings to determine responsibility for acts of aggression against states that have not consented to the jurisdiction of the ICC. This rule is also confirmed in Article 121(5) of the Rome Statute, which stipulates that: "In respect of a State Party which has not accepted the amendment, the Court shall not exercise its jurisdiction regarding a crime covered by the amendment when committed by that State" (Akande & Tzanakopoulos, 2017: 35–36). Accordingly, it is clear that the Rome Statute demarcated the jurisdiction of the ICC in relation to the Security Council. Namely, in each individual case in which there is a well-founded suspicion that aggression has been committed, its objective and subjective (material and mental) elements of criminal law (*actus reus* and *mens rea*) are, as a rule, determined by the ICC, while the political background and legal qualification in terms of the provisions of the Charter are determined by the Security Council, adhering to its functional powers prescribed by Chapter VII of the Charter in relation to the maintenance of international peace and security. In this sense, it is very important to note that according to Chapter VII of the Charter, for the exercise of the aforementioned functional powers, it is assumed that there is a threat to peace, a breach of peace, or an act of aggression in interstate relations. Although the Charter does not clearly define these terms anywhere, in the current practice, the Security Council has determined their presence, existence, and content in each specific case. In doing so, the Security Council often avoided taking a specific position on the legal nature of the situation (especially in the case of non-international conflicts). Such behavior was not in accordance with its obligations to preserve the peace nor with the functional authorization prescribed in Article 39 of the Charter, which foresees the prior determination of the existence of a threat to the peace, a breach of the peace, or an act of aggression (Komarnicki, 1949: 85; Oppenheim, Lauterpacht, 1952: 52; Wright, 1956: 525). When determining the existence of threats to peace, the Security Council is faced with legally unclear situations, in contrast to situations that arise as a result of a breach of peace or an act of aggression. The prevailing view in doctrine is that a threat to peace is caused by state behavior that is not necessarily characterized by military operations or operations involving the use of armed force, or even the threat of force. Namely, it is considered a threat to peace when there is an immediate danger of its violation. When determining the second condition from Article 39 of the Charter, the Security Council examines the use of any means of coercion and unjustified external influence that, by threat or application, reaches the level of disturbing the peace (UNICIO, 1945: 8). The state of breach of peace is closely related to acts of aggression, which results from the interpretation of the goals of the United Nations provided for in Article 1, paragraph 1(1) of the Charter. Violation of the peace, according to this provision, is one of the forms of aggression. Any aggression is a breach of the peace, but not every breach of the peace is aggression at the same time. It follows from this that, in order for a breach of peace to constitute an act of aggression, it would be necessary for armed aggression or an armed attack to have

been carried out, i.e., for armed force to have been used (*agression armée*). This is exactly what the difference between endangering and breaching the peace is based on. Consequently, the use of armed force in international relations, the intensity and duration of which have reached a certain level, is a necessary minimum for distinguishing threats from violations of international peace. Namely, in situations where there would be a breach of the peace, regardless of whether it is also aggression, the actions of the Security Council are practically conditioned by the provisions of Chapter VII of the Charter. In the event of a threat to the peace, the factual situation that indicates whether the threat is potential or has already occurred is also taken into account. In the first case, the procedure before the Security Council takes place based on the provisions of Chapter VI. The transformation of a potential threat into a real one leads to the transformation of the factual and legal situation, which turns the initiated procedure under Chapter VI into a procedure under Chapter VII of the Charter. When determining the third condition from Article 39 of the Charter, the Security Council is authorized to investigate whether there is aggression. Since the Charter of the United Nations does not contain a definition of aggression, nor does it define its legal term, the interpretation is made in the context of the term "aggression" used in Article 1, paragraph 1(1) of the Charter, which defines the goals of the United Nations. These goals, among other things, also refer to the maintenance of international peace and security, which is related to the provisions of Article 2, Paragraph 1(4) of the Charter, which provides for a general prohibition of the use of force and the threat of force in international relations, and Article 39 of the Charter, which foresees the activation of the Security Council in case of violation of the aforementioned prohibition. If to this is added the provision from Article 51 of the Charter that stipulates the right to self-defense against any armed attack, it would be logical that it would be possible for the Security Council to determine the existence of an act of aggression based on the threat or use of force. This presumption foresees the fact that the threat of force or the use of force under the Charter is illegal, unless it is carried out in self-defense, in the process of executing the decisions of the United Nations bodies, i.e., in the cases prescribed in Articles 106 and 107 of the Charter, which refer to the taking of measures against enemy states from the Second World War (Kreća, 2007: 170). Finally, it should be concluded that aggression inevitably causes serious and dangerous consequences for world peace and security. If armed force is used in aggressive actions, the consequences will consist of a breach of peace and immediate armed aggression. In the case of the use of some other types of aggressive actions, for example, subversive, unconventional, or hybrid forms of warfare, the consequences will be manifested through a threat to peace or through unarmed, i.e., indirect aggression. It is quite certain that in both of these cases, aggressive actions would entail international legal responsibility. However, for the first type of aggression, it would be international legal responsibility *in concreto*, while for the second type, political and not legal responsibility or condemnation would follow. This conclusion is indicated by the provisions of the Charter of the United Nations, which condition the system of collective security by prior examination of threats and violations of the peace, i.e., acts of aggression (Šahović, 1967: 57–66; Jelić, 1965: 60–72). Unfortunately, this does not lead to any encouraging conclusion, because the mere existence of the definition of aggression in international public law and international criminal law does not presuppose any special guarantee of the successful functioning of the collective security system of the United Nations (which has been repeatedly demonstrated in international practice when unilaterally undertaking so-called *humanitarian* or *pro-democratic interventions*) (Dimitrijević, 2009: 92–96). Hence, it would probably be logical to conclude that even the ability of the ICC to prosecute all perpetrators of crimes of aggression cannot be up to the task, as shown by its practice so far.

Findings

From the paper in question follows the finding that the international legal definition and prosecution of aggression were a long and arduous task with an unpredictable outcome and legal consequences. The first attempts to formulate aggression through a universally binding definition took place after the end of the First World War, within the framework of the League of Nations and at the multilateral political level. The impossibility of reaching a consensus on this issue was partially rectified after the Second World War at the trials of the main war criminals of the Axis Powers in Nuremberg and Tokyo. Then, in fact, the principles of international law on individual criminal responsibility, which were contained in the Statute and judgments of the International Military Tribunal in Nuremberg and the International Military Tribunal for the Far East, were confirmed. However, this generally did not solve the problem of aggression affecting the *ius ad bellum*. Only with the introduction of the rule on the prohibition of the use of force and the wording of Article 39 of the Charter, on the basis of which the Security Council has the discretionary right to decide on the maintenance or establishment of international peace, was a partial compromise made. This is because for the great powers and permanent members of the Security Council, the mentioned "solution" was much more acceptable than for the rest of the world, because in situations where one of the permanent members of the Security Council would be the aggressor, the possibility of Security Council decisions would be prevented by their right of veto. This certainly speaks of the true state of international relations and the fact that the use of the right of veto in the Security Council calls into question the principle of legal equality as well as the general legal principle that "no one should be a judge in his own cause" *(nemo debit esse judex in propria causa)* (Caesius, 1999: 144). Therefore, it was necessary to reach any compromise in order to continue the discussion on the legal regulation of aggression. This happened with the loosening of Cold War restraints, when the policy of *détente* between the then superpowers was promoted, which created the possibility of reaching a final agreement on the regulation of aggression in public international law under the auspices of the United Nations. With the adoption of the famous General Assembly Resolution 3314 (XXXIX) of 14 December 1974, aggression was finally defined. The definition contributed to the progressive development not only of public international law but also of international criminal law, as it served as the basis for defining the crime of aggression first in the Draft Code of Crimes against the Peace and Security of Mankind of the United Nations International Law Commission from 1996 and then in the amended Rome Statute of the ICC. This certainly made great progress in determining individual criminal responsibility because aggression cannot essentially be separated from the state's responsibility. Namely, according to the general rule, the crime for which an individual should be held accountable can also be attributed to the state if the individual worked on behalf of the state. Thus, according to the definition contained in the Draft Code of Crimes against Peace and Security, it is confirmed that the crime of aggression can only be committed with the active participation of individuals who have the power to plan, prepare, initiate, or carry out aggression (which refers to the highest state officials). This definition of aggression, along with the definition of aggressive acts contained in General Assembly resolution 3314, served as a basis for defining the crime of aggression in the amended Rome Statute of the ICC adopted in 2010 at the first ICC Revision Conference in Kampala (Uganda). In Article 8*bis* of the amended Rome Statute, aggression is described as "the planning, preparation, initiation or execution, by a person in a position effectively to exercise control over or to direct the political or military action of a State, of an act of aggression which, by its character, gravity and scale, constitutes a manifest violation of the Charter of the United Nations". With regard to specific illegal acts, which as a rule are against the prohibition of the use of force against the sovereignty, territorial integrity, and political independence of states, this additional article of the Rome Statute *mutatis mutandis* contains the acts enumerated in the definition from General Assembly resolution 3314. Given that the provisions of the Rome Statute stipulate that its amendments shall not

be interpreted as limiting or prejudicing in any way the existing or developing rules of international law for purposes other than the purposes of this Statute, it is clear that the definition of aggression adopted at the conference in Kampala confirmed the will of the wider international community to permanently regulate the issue of criminal liability of individuals for the crime of aggression without affecting its legal qualification present in international public law. Accordingly, and taking into account the objective *(actus reus)* and subjective elements *(mens rea)* of this criminal act, as well as its manifestations in reality related to its character, gravity, and scale of harmful consequences, the amended Rome Statute gave the ICC the authority to prosecute perpetrators of aggression, i.e., "persons who are in a position to effectively exercise control or direct the political or military action of the state" (which is why the crime of aggression is treated as a "leadership crime" that threatens international peace). In this way, a wider part of the international community created a new mechanism to enforce the most important rule of public international law – the prohibition of the use of force in international relations (which *per se* does not refer to the application of the right to individual and collective self-defense, as well as actions that would be authorized by the Security Council in accordance with the Charter of the United Nations). Consequently, the ICC, to a certain extent and depending on the limitations of its jurisdiction, would be able to investigate and prosecute the leaders of states responsible for the crime of aggression, that is, for the most serious forms of violence due to the illegal use of force against other states. It certainly contributes to a more efficient international legal order, but also to the efficiency of national justice systems, which, according to the principle of complementarity, retain responsibility for the fair trial of perpetrators of crimes of aggression on behalf of the entire international community (Clark, 2013). Finally, it should be noted that there is an open question regarding the legal nature of the Rome Statute, which leaves doubt regarding the aforementioned statement. Namely, in the theory of international law, opinions are divided because some believe that the provisions of the Statute are of a procedural and not substantive legal nature, which further indicates that aggression is present primarily in international customary law. *A contrario* interpretation would mean that the provisions of the Rome Statute are valid for the committed crime of aggression if the perpetrator was under the jurisdiction of the ICC at the time of the crime. In the latter case, which is more prevalent, the legality of the proceedings against the perpetrators of the crime of aggression would not be questioned except in case of violation of the provisions of the Rome Statute itself (Milanović, 2012: 23). Therefore, it seems that an authentic interpretation of this issue would eliminate possible doubts as well as on other issues concerning the acceptance of obligations from the amendments to the Rome Statute, which is, after all, an essential prerequisite for the legality of prosecuting the perpetrators of the crime of aggression, but also for achieving international peace and justice (Zimmerman, 2012).

Originality/Value

The value of this work for science derives from the historical and comparative legal analysis of the most important international legal acts that determine the meaning of one of the "core crimes" in international and international criminal law. At the Versailles Peace Conference, and then within the League of Nations and at regional conferences devoted to key political issues, attempts were made to legally regulate aggression and to prohibit the waging of an aggressive war. Although these attempts led to limited legal sanctioning of aggressive war, all these attempts "more or less" failed. The cause was the reactionary policy of the great powers that undermined the collective security system established by the League of Nations. All of this resulted in the complete collapse of the system of international relations and the outbreak of the Second World War. The execution of numerous acts of aggression during the Second World War postponed the issue of international legal regulation of aggression for

the post-war period. However, the Second World War was a demonstrative example of how international relations should not develop. The main assumption for that thesis was the protection of international peace and security, which could not go separately without establishing a prohibition on the use of force in international relations. Under the auspices of the United Nations, that prohibition was generally established in its Charter, which was the first step towards realizing the idea of the need for international legal regulation of acts of aggression. International legal acts and resolutions adopted by the United Nations on this matter in the previous period, therefore, have great value for international law. In this sense, the subject analysis indicates that aggression is beyond any doubt one of the "core crimes" that threatens the vital values of states, from sovereignty and territorial integrity to political independence. It causes serious and dangerous consequences for world peace and security, which is why it is contrary to general international law contained in the UN Charter. Unlike the international legal definition of aggression, which concerns determining the responsibility of states for violating *ius ad bellum*, the international criminal law definition of aggression adopted by the ICC refers to determining the legal responsibility of individuals who are in an effective position to control or direct the political and military actions of the aggressor state. In this sense, this paper has original value because it points to the insufficiently specified delimitation of the functional powers of the Security Council on the one hand and the jurisdiction of the ICC to judge in each individual case the individuals responsible for the crime of aggression on the other hand. At the same time, when there is a well-founded suspicion that aggression against the state has been committed, its objective and subjective (material and mental) elements, as a rule, are determined by the ICC, and the political background and legal qualification in terms of the provisions of the Charter are determined by the Security Council, adhering to its functional powers prescribed in Chapter VII of the United Nations Charter, which refers to the maintenance of international peace and security. But, for the sake of truth, it should also be mentioned that the Security Council, as the supreme executive and political body of the United Nations, in its long-term practice did not demonstrate its functional powers in a legally consistent manner, which left room for various voluntaristic interpretations (Gaja, 2002: 124, etc.). In such a situation, defining the conditions for criminal prosecution for the crime of aggression requires delicate work on more precisely harmonizing the competences and methods of action of the Security Council and the ICC (Trahan, 2019: 471–483). This is primarily because, in light of the complexity of modern warfare and the involvement of non-state actors in armed conflicts, the limited nature of responsibility for the crime of aggression requires finding an appropriate balance between the goals of advancing international criminal justice and protecting peace in the world. (Boas, 2013; Graziani & Mei, 2017: 57; Liakopoulos, 2020: 153).

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