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## Secção

# Investigação Científica / Scientific Research<sup>\*</sup>

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# The Crime of Aggression and Human Security

## O Crime de Agressão e Segurança Humana

Maria Francisca SARAIVA \*

**Abstract:** Putin's 2022 war in Ukraine began a global debate about the circumstances under which the crime of aggression can be prosecuted in international courts and tribunals. This article discusses alternative International Law strategies for holding those responsible for crimes of aggression fully accountable, which emphasise the need to redefine the crime of aggression from a human rights perspective. With an emphasis on human security, the text seeks to promote an interdisciplinary discussion of the subject between International Law and International Relations. This concept, developed within the framework of international relations, emphasises the individual as the referent of security analysis.

**Keywords:** Crime of Aggression; Human Security; Human Rights

**Resumo:** A guerra da Ucrânia, iniciada por Putin em 2022, desencadeou um debate internacional sobre as condições em que o crime de agressão pode ser julgado em tribunais internacionais.

Este artigo discute estratégias alternativas propostas pelo Direito Internacional para responsabilizar integralmente os responsáveis por crimes de agressão, que apontam para a necessidade de redefinição do crime de agressão numa perspetiva de direitos humanos. O texto pretende fomentar o debate interdisciplinar entre o Direito Internacional e as Relações Internacionais sobre o tema, numa perspetiva de segurança humana. Este conceito, desenvolvido no âmbito das Relações Internacionais, enfatiza o indivíduo como referente da análise de segurança.

**Palavras-Chave:** Crime de Agressão; Segurança Humana; Direitos Humanos.

### 1. Introductory remarks

The calls for an international tribunal to prosecute the crime of aggression committed by the Russian senior political and military leaders began soon after Russia launched a full-scale war on Ukraine in early 2022.

According to the Rome Statute of the International Criminal Court (ICC), aggression is one of the four core international crimes, alongside war crimes, genocide, and crimes against humanity (Article 5)<sup>1</sup>. However, because the ICC cannot examine

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<sup>1</sup> ICC, *Rome Statute of the International Criminal Court (1998)*, The Hague: ICC, 2021.

the crime of aggression in Ukraine due to jurisdictional limitations,<sup>2</sup> Ukraine and the Council of Europe signed an agreement in Strasbourg on 25 June 2025, to establish a Special Tribunal for the Crime of Aggression against Ukraine, with the mandate to prosecute senior political and military leaders for the crime of aggression against Ukraine.<sup>3</sup> Nevertheless, the Special Tribunal can only bring charges against those individuals accountable for Russia's criminal act of aggression against Ukraine under certain conditions.<sup>4</sup>

Due to these shortcomings, some believe that amending the ICC's conditions for exercising jurisdiction over the crime of aggression as outlined in Articles 15 *bis* and 15 *ter* of the Statute<sup>5</sup> could be a step forward in alleviating the current general state of impunity for the crime of aggression. ICC States Parties have committed to reviewing the Kampala Amendments of the crime of aggression seven years after the Court begins exercising its jurisdiction,<sup>6</sup> in a three-day special session of the Assembly of States Parties in June 2025.<sup>7</sup>

However, as MacDougall pointed out, gaining the necessary support for expanding the jurisdictional regime will be extremely challenging due to sensitive legal and political issues.<sup>8</sup> Even if the required support is obtained, Article 121, paragraph 4 stipulates that the amendment must be ratified by seven-eighths of the States Parties to enter into force.<sup>9</sup>

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<sup>2</sup> As will be explained in section 3.

<sup>3</sup> COUNCIL OF EUROPE, *Frequently asked questions - special tribunal for the crime of aggression against Ukraine*, 2025. Available from: <<https://www.coe.int/en/web/portal/frequently-asked-question>>

<sup>4</sup> The Court will not be able to prosecute sitting Heads of State, Heads of Governments and Foreign Ministers (so-called "troika members") because "personal immunities" will be granted to the members of the Troika. See COUNCIL OF EUROPE, *ibidem*.

<sup>5</sup> ICC. *Resolution RC/Res.6 The crime of aggression (2010) (The Kampala Amendments)*, Article 15 bis, paragraph 5. Adopted at the 13th plenary meeting on 11 June 2010. Available from <<https://crimeofaggression.info/2013/01/rcres-6-the-crime-of-aggression-2010/>>.

<sup>6</sup> If the amendment is adopted, the Court will have the authority to prosecute the crime of aggression if at least one state—either as an aggressor state or as a state that is a victim of aggression—is a party to the amendments on crime of aggression. See GRZEBYK, Patrycja. Myths around the review process of the Kampala amendments on the crime of aggression. *Ejiltalk*, June 6 2025. Available from <[ejiltalk.org/myths-around-the-review-process-of-the-kampala-amendments-on-the-crime-of-aggression/](https://ejiltalk.org/myths-around-the-review-process-of-the-kampala-amendments-on-the-crime-of-aggression/)>.

<sup>7</sup> It was decided to convene a Special Session in 2029 in New York to consider the proposal for amendment of the document deposited with the Secretary General in April 2025. ICC Press Release. *Assembly of states parties held a three-day special session on the review of amendments of the crime of aggression*, 10 July 2025. Available from <<https://www.icc-cpi.int/news/assembly-states-parties-held-three-day-special-session-review-amendments-crime-aggression>>.

<sup>8</sup> MACDOUGALL, Carrie. The imperative of prosecuting aggression committed against Ukraine. *Journal of Conflict & Security Law*. 2023, vol. V, n<sup>o</sup> 2, pp.203–230. Available from <<https://doi.org/10.1093/jcs/krad004>>.

<sup>9</sup> ICC, *Rome Statute*, *op. cit.*

The article aims to explore alternative avenues of accountability for the crime of aggression. It seeks to understand whether this crime, generally linked to the defence of state sovereignty and distinct from other more serious international crimes - such as war crimes, crimes against humanity, and genocide - can be conceptualised and prosecuted as a crime against humanity from a human security perspective in the ICC or in other international tribunals or courts.

This article contributes to the broader field of transitional justice. The text mainly addresses the crime of aggression; however, there are many other topics worth exploring. For instance, the relationship between the ICC and other formal transitional justice mechanisms, as well as the ICC's role in peace processes, should be examined from a human security perspective. Additionally, the connection between human security and informal justice mechanisms, as well as how the Court can become more focused on victims, warrants greater attention.

This research agenda, in our opinion, requires a dialogue between International Law (IL) and the discipline of International Relations (IR). Indeed, interdisciplinary research can bring IL "back into" the study of IR, allowing for a real conversation between these two disciplines. We identified a gap in the literature on this subject. It is worth noting that only Christine Chinkin and Mary Kaldor have attempted to bridge the gap in the area of International Criminal Justice so far.<sup>10</sup>

Therefore, a promising research agenda would be to examine how human security can help address options for prosecuting crimes of aggression at the ICC or elsewhere, as policymakers seek workable solutions for international criminal liability in cases of aggressive wars.

From our perspective, holding those responsible for this serious international crime accountable will effectively deter countries from engaging in armed conflicts, contributing to overall peace.

Section 2 provides a liberal analysis of the relationship between International Criminal Justice and human security, emphasising the latter's normative and policy-oriented approach.

Section 3 investigates the contrasting viewpoints on rethinking the crime of aggression from a human security perspective, underlying the human dimension of

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<sup>10</sup> The book *International law and new wars*, by Chinkin and Kaldor, is one of the few interdisciplinary discussions on this topic. See CHINKIN, Christine and KALDOR, Mary. *International law and new wars*. Cambridge: Cambridge University Press, 2017.

aggression.

Section 4 discusses the relevance of those theoretical debates to the study of International Relations.

## 2. International criminal justice and human security

Some scholars have long advocated interdisciplinary scholarship between IL and IR.<sup>11</sup> “International law and international politics cohabit the same conceptual space,”

<sup>12</sup> Slaughter notes.

Comparing the liberal perspectives of IL to the liberal approach in IR, in our opinion, is a useful starting point when analysing the difficulties that contemporary International Criminal Justice faces, especially when dealing with the contentious problem of the criminalisation of aggression.

These theoretical frameworks share overlapping research interests and scholarly agendas.

One of the most important liberal views of IL is the “humanisation” of the IL thesis. Liberal scholarship on the topic focuses primarily on the impact of Meron’s “humanisation” thesis on particular branches of IL, such as International Humanitarian Law and International Criminal Justice.<sup>13</sup> Meron’s “humanisation” theory reflects the liberal international order commitment to universal human rights based on each individual’s value and dignity. According to Meron, jurists need to embrace the principles of ethics and human rights and see themselves as advocates for public awareness of these pressing issues.<sup>14</sup>

There are different traditions of liberal thought in IR, but they are all primarily concerned with normative issues and human rights.

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<sup>11</sup> See ARMSTRONG, David, FARRELL, Theo and LAMBERT, H  lene. *International law and international relations*. 2nd ed. Cambridge: Cambridge University Press, 2012; SIMMONS, Beth A. and STEINBERG, Richard H. (Eds.). *International law and international relations*. Cambridge: Cambridge University Press; 2007, BIERSTEKER, Thomas J. et al. (Eds.). *International law and international relations: bridging theory and practice*. London: Routledge, 2007; BECK, Robert J. International law and international relations scholarship. In ARMSTRONG, David (Ed.), *Routledge handbook of international law*. London: Routledge, 2009, pp.13-43; DUNOFF, Jeffrey L. and POLLACK, Mark A. (Eds.). *Interdisciplinary perspectives on international law and international relations: the state of the art*. Cambridge: Cambridge University Press, 2013.

<sup>12</sup> SLAUGHTER, Anne-Marie, International law in a world of liberal states. *European Journal of International Law*, 1995, vol.6, n  1, pp. 503–538, p.503.

<sup>13</sup> See especially MERON, Theodor. *The humanisation of international law*. The Hague: Academy of International Law, 2006.

<sup>14</sup> PELTONEN, Aleksi. Theodor Meron and the humanisation of international law. In TALLGRE, Immi and SKOUTERIS, Thomas (Eds.), *The new histories of international criminal law: retrials*, Oxford: Oxford University Press, 2019.



Liberal internationalism in IR emphasises the significance of law in fostering international cooperation and underscores the normative imperatives of world politics.<sup>15</sup> As Andrew Moravcsik points out, “liberal theory in IR supports normative evaluation and critique of existing international law”<sup>16</sup>, highlighting the importance of human rights and peace.

While significant progress has been made in interdisciplinary research on some IL problems, more work is needed to address pressing global issues such as armed conflicts and violence. Both disciplines are concerned about the phenomenon of aggressive war, which invariably involves acts of armed violence. However, as already said, surprisingly, the crime of aggression has not benefited from interdisciplinary discussions, with one important exception in the IR literature: Wilson's study<sup>17</sup>.

This article identifies a gap in the body of research on the crime of aggression within the field of IR, since only IL scholars have so far looked at the crime of aggression from a human rights perspective.<sup>18</sup> By placing this international crime within the framework of a human rights-based human security approach, the paper offers a fresh viewpoint on aggression that is largely unknown in IR theory. Furthermore, it aims to identify shared values that can contribute to a forward-thinking vision of rules-based global governance in the realm of International Criminal Justice, ultimately fostering the development of progressive legal frameworks.

A liberal concept close to Liberal internationalism, human security, first appeared in the field of IR in the mid-1990s. Human security shifts the focus from the traditional view of state security to prioritise the security of individuals. As outlined by Sorpong,<sup>19</sup> human security is fundamentally about protection from harm, stressing human survival

<sup>15</sup> DOYLE, Michael and RECCHIA, Stefano. Liberalism in international relations. In BADI, Bertrand, SCHLOSSER, Dirk-Berg and MOLINO, Leonardo (Eds.), *Encyclopedia of political science*. Los Angeles: Sage, 2011, pp.1434-1439.

<sup>16</sup> MORAVCSIK, Andrew. Liberal theories of international law. In DUNOFF, Jeffrey L. and POLLACK, Mark A. (Eds.), *Interdisciplinary perspectives on international law and international relations: the state of the art*. Cambridge: Cambridge University Press, 2013, p. 110.

<sup>17</sup> WILSON, Pane. (2009). *Aggression, crime, and international security: Moral, political, and legal dimensions of international relations*. London: Routledge.

<sup>18</sup> See REDALLI, Chiara. The human dimension of peace and aggression. *International Law Studies*, 2020, vol. 96, pp.602-641. The author comments and analyses the various positions on this issue and theorises the right to peace.

<sup>19</sup> SORPONG, Peon, *Introduction to human security studies: theories, methods, and themes*. Singapore: World Scientific, 2014.



and well-being.<sup>20</sup> Its study is considered a subfield within contemporary Security Studies. The truth is that human security ideas continue to capture the attention of modern scholars from various traditions other than Liberalism, as the concept emphasises the individual as the referent of security analysis and aims to influence policies in the security realm directly.<sup>21</sup>

However, despite this attractiveness, human security has been criticised from different angles. Traditional security conceptions challenge this approach, arguing that the concept of human security is too radical. Some non-traditional security approaches, in contrast, depart from orthodox security studies by considering human security to be "uncritical" and simple.<sup>22</sup>

Human security encompasses two key ideas: freedom from want and freedom from fear. "Freedom from want", in its broadest sense, refers to the need for basic necessities, including food, health, care, and education. This broad focus on material security originates from the 1994 United Nations Development Programme (UNDP) Report, which highlights development concerns.<sup>23</sup>

Although countries and international organisations have advocated for a more limited approach since the late 1990s,<sup>24</sup> human security still requires greater conceptual clarity. The concept should not be confused with what is merely desirable or politically advantageous. Applied too broadly and indiscriminately, it risks losing its significance.

The narrow interpretation of human security, which emphasises freedom from fear, directly links security to human rights. This focus on human rights gained considerable influence in countries such as Canada and Australia.<sup>25</sup> Freedom from fear addresses threats to people's lives and physical integrity, particularly the problem

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<sup>20</sup> ANDERSON-RODGERS and CRAWFORD, Kerry F. *Human security: theory and action (peace and security in the 21st century)*. New York: Rowman & Littlefield Publishers, 2018.

<sup>21</sup> NEWMAN, Edward. Critical human security studies. *Review of International Studies*, 2010, vol.36, pp.77-94; PELTONEN, Aleks, *op. cit.*

<sup>22</sup> *Ibidem*.

<sup>23</sup> UNDP. *Human Development Report 1994*. New York: United Nations, 1994.

<sup>24</sup> Partly due to rising criticism in academic and political circles. See EDITORIAL Human Security 5 Years After. *International Relations*. February-May 2020, vol.42, pp.5-10.

<sup>25</sup> CHINKIN, Christine and KALDOR, Mary, *op cit.*

of protection from physical violence in the context of armed conflict and the potential for violence.<sup>26</sup>

Another view favours a conceptual distinction between the broad perspective, the “humanitarian approach,” and the narrow interpretation. The broad perspective encompasses the global economy, development, and globalisation. The “humanitarian” perspective addresses how International Criminal Justice responds to war crimes, crimes against humanity, and genocide.<sup>27</sup> A more focused approach considers the human consequences of armed conflict, particularly the threats posed to civilians by oppressive governments and situations of state failure. It also highlights discussions around topics such as armed humanitarian intervention and the Responsibility to Protect (R2P).<sup>28</sup> The more stringent understanding relates to natural law and the rule of law.<sup>29</sup>

We believe that one of the most promising ways to address human security today is the “humanitarian approach” that examines individual criminal responsibility through the lens of human rights. This is because this approach acknowledges that accountability for the most serious crimes of international concern is a serious matter that must be addressed. As a result, we see no reason to exclude the study of aggression from this research agenda.

According to the standard definition, aggression occurs when one country uses armed force against another country without legal justification<sup>30</sup> in the context of an armed conflict. Due to this traditional, sovereignty-focused understanding of the crime of aggression, known as “the supreme international crime”, aggression has been largely overlooked in discussions about the humanitarian need to prioritise individual security within the broader framework of International Criminal Law. The reasons for this forgetfulness are difficult for us to understand; as the attention has shifted to the protection of human beings, it is critical to reconsider the crime of aggression from a human security perspective. To do so, this article seeks to combine the liberal IL perspective with the liberal institutionalist views on human security in the field of IR.

<sup>26</sup> DUFFIELD, Mark. Seguridad humana: ligar desarrollo y seguridad en una era de terror. *International Relations*. February-May 2020, vol.43, pp.11-32.

<sup>27</sup> CHINKIN, Christine and KALDOR, Mary, *op. cit.*

<sup>28</sup> NEWMAN, Edward, *op. cit.*

<sup>29</sup> CHINKIN, Christine and KALDOR, Mary, *op. cit.*

<sup>30</sup> COALITION TO THE INTERNATIONAL CRIMINAL COURT. What is the crime of aggression. Available from <<https://www.coalitionfortheicc.org/crime-aggression-July-2025>>

### 3. Reconceptualising the crime of aggression through the lens of human security

The ICC Statute establishes a distinct jurisdictional framework for the crime of aggression compared to other international crimes. While, in the absence of a referral from the Security Council to the ICC, the Court has jurisdiction over war crimes, crimes against humanity, and genocide when committed by a non-state party on the territory of a state party (or on the territory of a state that has accepted the Court's jurisdiction on an *ad hoc* basis), non-state parties are totally exempt from the crime of aggression, as either aggressor or victim.<sup>31</sup> Second, even a State Party can avoid these triggers by lodging an "opt-out" declaration with the ICC Registrar.<sup>32</sup>

Later, at the 2010 Review Conference of the ICC's Rome Statute in Kampala, the individual crime of aggression was defined as the planning, preparation, initiation, or execution of an act of aggression by a person in a leadership position.<sup>33</sup> Article 8 *bis*, paragraph 2 clearly states that aggression primarily governs relations between states: "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."<sup>34</sup>

It is both desirable and challenging to change the current conditions so that the ICC can expand its jurisdiction over the crime of aggression, as was previously mentioned. Without revisiting the Kampala amendments, our proposal offers an alternative liberal perspective to this situation, aiming to contribute to the debate on whether the use of force in international affairs is justifiable from a human rights-based approach within the framework of human security.

As previously stated, the concept of human security has gained acceptance among academics from a range of theoretical backgrounds, as this line of research has developed into a subfield of contemporary Security Studies.

Liberal institutionalism is a long-standing tradition that emphasises the dignity and freedom of the individual, making it one of the most important approaches to human rights. Within this paradigm, human security focuses on increasing the safety and well-

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<sup>31</sup> ICC. *Resolution RC/Res.6 The crime of aggression (2010)*, o.p. cit.

<sup>32</sup> *Ibidem*, Article 15 *bis*, paragraph 4.

<sup>33</sup> *Ibidem*, Article 8 *bis*.

<sup>34</sup> *Ibidem*, Article 8 *bis*, paragraph 2.

being of all people, emphasising its deep roots in the liberal tradition.<sup>35</sup>

In this paper, we argue that world peace is a fundamental value inseparable from human rights. By reframing the ICC's competence in adjudicating cases of alleged crimes of aggression through a human security lens, we provide an opportunity to link international peace with the defence of human rights.

We suggest a theoretical approach that stands in stark contrast to other liberal viewpoints, such as the Responsibility to Protect and the idea of armed humanitarian intervention. Because they permit states to use force to defend human dignity, those strategies directly violate the rules of state sovereignty and the prohibition against the use of force. Our proposal highlights the need to maintain strict limitations on the use of force and calls for a re-prioritisation centred on human dignity. We argue that a significant paradigm shift occurs when the crime of aggression is reexamined through the lens of human security. This paradigm shift suggests that the criminalisation of aggression can be reconciled with the "humanisation" of IL, which places the human being at the centre of the normative debate. This approach seeks to maintain IL as a normative system that holds individuals accountable for aggressive wars.

Furthermore, as Sorpong notes, from the standpoint of human security, *ad hoc* and hybrid tribunals, as well as international criminal courts like the ICC, were established to enhance individual security<sup>36</sup> within the framework of global governance<sup>37</sup>.

The "humanisation" of International Criminal Justice has placed a high priority on crimes against humanity, which occur when committed as part of a widespread or systematic attack directed against any civilian population, as detailed in Article 7, paragraph 1 of the Rome Statute<sup>38</sup>. Such crimes are a violation of individuals' lives and dignity. The crime of aggression, on the other hand, is primarily seen as state-driven and is traditionally viewed as a violation of state sovereignty.

The prevailing view is that an attack by one state on the territory of another generates individual criminal liability.<sup>39</sup> It is an international crime that affects the

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<sup>35</sup> PELTONEN, Aleks, *op. cit.*

<sup>36</sup> SORPONG, Peon, *op. cit.*

<sup>37</sup> *Ibidem.*

<sup>38</sup> ICC, *Rome Statute*, *op. cit.*

<sup>39</sup> DIENSTEIN, Yoram. The crime of aggression under customary international law. In SADAT, Leila (Ed.), *Seeking accountability for the unlawful use of force*. Cambridge: Cambridge University Press, 2018.

relationship between states. However, Bassiouni highlights that the development of *jus ad bellum* reflects several objectives meant to uphold shared values, including preserving world order, preserving peace, and minimising both material and human harm.<sup>40</sup> The implication of this is that the definition of aggression is a topic of intense discussion in IL.

The liberal perspective highlighted how *jus ad bellum* has maintained the stability of the world order as the core value of the contemporary era. Unlike that conventional vision of world order, the idea of human security requires an entirely different understanding of *jus ad bellum*, meaning that, beyond the state-centric perspective, Liberalism advocates for a more expansive conceptualisation of the crime of aggression, suggesting a human rights agenda. Some scholars believe that employing alternative prosecutorial strategies, based on the Court's current jurisdiction, might be more effective in mitigating the current climate of impunity surrounding this crime.<sup>41</sup>

To address the issue, some IL scholars have recently questioned the sovereignty approach to the crime of aggression and attempted to reinterpret it in terms of human rights.

Benjamin Ferencz, chief prosecutor in the Nuremberg trials, championed the creation of the ICC and the prosecution of the crime of aggression to end wars. Ferencz proposed redefining aggression as a crime under the ICC Statute's definition of crimes against humanity to expand the discussion on what constitutes aggression and how to establish personal criminal responsibility,<sup>42</sup> in line with the International Military Tribunal at Nuremberg (IMT), which declared that aggressive wars were wrong because they were "essentially an evil thing."<sup>43</sup>

The definition put forth by Ferencz states that "any person responsible for the illegal use of armed force in violation of the UN Charter, which unavoidably and inevitably results in the death of large numbers of civilians, should be subject to punishment for his individual criminal responsibility in the perpetration of a crime

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<sup>40</sup> BASSIOUNI, M. Cherif. The status of aggression in international law from Versailles to Kampala – and what the future might hold. In SADAT, Leila (Ed.), *Seeking accountability for the unlawful use of force*. Cambridge: Cambridge University Press, 2018, pp.7-56.

<sup>41</sup> EINARSEN, Terje. Prosecuting aggression through other universal core crimes at the International Criminal Court. In SADAT, Leila (Ed.), *Seeking accountability for the unlawful use of force*. Cambridge: Cambridge University Press, 2018, pp.377-385.

<sup>42</sup> FERENCZ, Benjamin. The illegal use of armed force as a crime against humanity, *Journal on the Use of Force and International Law*, 2015, vol. 2, nº1, pp.187-198.

<sup>43</sup> FERENCZ, Donald M. Continued debate over the crime of aggression: a supreme international irony. *Harvard International Law Journal*, 2017, vol.58, pp.24-27; DANNENBAUM, Tom, *op. cit.*

against humanity".<sup>44</sup>

The Rome Statute provides a list of acts that qualify as crimes against humanity, which includes murder, enslavement, and rape. Additionally, it states that "other inhumane acts of a similar character that intentionally cause great suffering or serious injury to a person's body or mental or physical health" are also considered crimes against humanity.<sup>45</sup> Ferencz believes that the precise character of "other inhumane acts" as crimes against humanity allows for the potential inclusion of other unpredictable forms of serious inhumanities.<sup>46</sup>

Other academics, besides Ferencz, tried to "humanise" aggression. For example, Mégret proposed a more radical cosmopolitan definition, some years ago, which is more inclusive, viewing aggression as a crime against humanity that concerns the global community, which is humanity.<sup>47</sup>

Mégret concurs that aggression is wrong because it results in suffering, death, and destruction. According to him, these acts are fundamentally crimes against human rights and, as a result, jeopardise human security<sup>48</sup>.

According to Mégret's radical cosmopolitanism, aggression is viewed as a violation of the rights of the individuals and communities it affects; this includes all killings, whether they are just or not. Every individual impacted by war has their rights to life and personal integrity violated. There is also a violation of the right to peace. This proposal includes the civilians and military personnel of the aggressor state, who are put in danger by such decisions, as well as the citizens of the attacked nations and their armed forces.<sup>49</sup>

Another influential scholar, Tom Dannenbaum, in his 2017 article "Why Have We Criminalised Aggressive War?",<sup>50</sup> argues that the dominant normative perspective treats the crime of aggression as a macro wrong against a foreign state. His idea that aggressive war is a crime because it entails "the unjustified killing and infliction of human suffering"<sup>51</sup> runs counter to this sovereignty-focused viewpoint. Dannenbaum suggests that aggression can be understood as a modified form of a crime against

<sup>44</sup> FERENCZ, Benjamin, *op. cit.*

<sup>45</sup> REDALLI, Chiara, *op. cit.*

<sup>46</sup> FERENCZ, Benjamin, *op. cit.*

<sup>47</sup> MÉGRET, Frédéric. What is the specific evil of aggression? *A three-way typology*. SSRN, March 28, 2012. Available from <[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2546732](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2546732)>.

<sup>48</sup> *Ibidem*.

<sup>49</sup> *Ibidem*.

<sup>50</sup> DANNENBAUM, Tom, *op. cit.*

<sup>51</sup> *Ibidem*, p. 2017.

humanity, perpetrated ordinarily through a violation of sovereignty. He clarifies that this human suffering is an unjust killing that leads to the erosion of human security.<sup>52</sup>

The author concludes by saying that even soldiers who engage in these criminal wars ought to have the internationally recognised right to refuse to take part.<sup>53</sup>

Dannenbaum is primarily interested in the “humanisation” of IL. In his view, the growing trend towards “humanising” IL emphasises individuals and supports the creation and preservation of a humane order that prioritises human rights and human values. As a result, he observes that the “humanisation” process has had a significant positive impact on International Criminal Law.<sup>54</sup>

In her work on the conflict in Ukraine, MacDougall makes a similar argument that the Russian invasion of Ukraine has caused more than just civilian casualties.<sup>55</sup> The author suggests that Ukrainian fighters and members of the Russian armed forces are also victims, as many were compelled to participate in the war under false pretences. Additionally, there are indirect victims, including those affected by energy and food crises, as well as nations whose interests have been jeopardised by this unprecedented attack on the international order.<sup>56</sup>

As scholars like Einarsen<sup>57</sup> correctly point out, the ICC has other accountability mechanisms that could be used to prosecute the crime of aggression. The argument is that aggression could systematically be incorporated into all stages of investigation and prosecution of other crimes over which the ICC clearly has jurisdiction - in particular, crimes against humanity and some war crimes. Furthermore, to broaden Ferencz's proposal and enhance the efficiency of applying the current legal framework to crimes against humanity, the author investigates different aspects of the crime against humanity beyond the unlawful use of force as “other inhumane acts.”

Other academics use the same underlying vision to further amplify strategies for criminalising the unlawful use of armed force. Indeed, although the analysis of armed conflicts with an internal dimension is outside the scope of this paper - and of the crime of aggression -, it is interesting to present Ventura's ideas. In response to Ben Ferencz's formulation, Manuel Ventura makes the following argument:

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<sup>52</sup> *Ibidem*,

<sup>53</sup> *Ibidem*.

<sup>54</sup> *Ibidem*.

<sup>55</sup> MACDOUGALL, Carrie, *op. cit.*

<sup>56</sup> *Ibidem*.

<sup>57</sup> EINARSEN, Terje, *op. cit.*



“Where in an armed conflict crimes (e.g., murders, rapes, etc.) are committed as part of a widespread or systematic attack against civilian population, and if the initiation of that war - whether international or non-international - had no legal justification, had civilians as its target, and was part of that attack on the civilian population, then those responsible for initiating the war could be guilty of the illegal use of force as a crime against humanity (other inhumane act) along the lines proposed by Ben Ferencz.”<sup>58</sup>

As stated in the introduction to this article, liberal IR scholars should be interested in these IL’s findings to develop new political solutions to hold aggressors accountable for the aggressive wars they promote.

We are not overlooking the discussion regarding alternative methods for judging mass atrocity crimes,<sup>59</sup> focusing on the jurisprudence of the International Criminal Tribunal for the former Yugoslavia and the International Criminal Court for Rwanda, as well as the Special Court for Sierra Leone.

This jurisprudence addresses specific modes of criminal responsibility that reflect the reality of international crimes. These crimes often involve a plurality of perpetrators engaging in collective criminal activities, each performing important and interrelated aspects of the larger crime.

In fact, the leadership clause of the Rome Statute is often considered too narrow. However, the ICC made a deliberate decision not to apply, for example, the concept of joint criminal enterprise (JCE), which involves contributing to an activity of several individuals embarking on criminal activity with a common purpose that is carried out either jointly or by some members of this plurality of persons<sup>60</sup>, and the concept of aiding and abetting aggression (substantially contributing to the perpetration of the crime) if their contribution toward the formulation of aggressive state policies was truly

<sup>58</sup> VENTURA, Manuel J. The illegal use of force (other inhumane act) as a crime against humanity: an assessment of the case for a new crime at the international criminal court. In SADAT, Leila (Ed.). *Seeking accountability for the unlawful use of force*. Cambridge: Cambridge University Press, 2018, pp.386-425, p.388.

<sup>59</sup> AQUILINA, Kevin & MULAJ, Klejda (2024) The International Criminal Court and responsibility for mass atrocities: Can JCE enhance capacity to hold masterminds accountable?, *Contemporary Justice Review*, 27:2-3, pp.132-156.

<sup>60</sup> DIAKONIA (2013). *International crimes and accountability: A beginner's introduction to the duty to investigate, prosecute and punish*, p.7. Available from: <<https://apidiakoniase.cdn.triggerfish.cloud/uploads/sites/2/2021/07/international-crimes-and-accountability-a-beginners-introduction-to-the-duty-to-investigate-prosecute-and-punish.pdf>>.

indispensable<sup>61</sup>. The primary reason is that the statute does not include them, despite these concepts being integral to the cosmopolitan goals of legal equality and the accountability of all individuals<sup>62</sup>.

While they may endorse cosmopolitan goals, they differ from our proposal because our focus is broader. We acknowledge the necessity of employing various strategies to hold leaders accountable, but our emphasis lies on the ultimate outcomes of these strategies, particularly the values we aim to protect. Although sovereignty is crucial for peace, the primary objective remains clear: we seek to preserve individual-focused human rights as our core value.

As stated in the Preamble to the Rome Statute, international crimes are acts that “shock the conscience of mankind” and “threaten the peace, security and well-being of the world”<sup>63</sup>. Aggression is no different from war crimes, crimes against humanity or genocide. Ultimately, although the crime of aggression has a unique nature as a political crime, the central debate revolves around what should be understood by the term sovereignty and who should be protected.

#### 4. Challenges to IR Theory

Over the past decades, the concept of aggression in IL has been pushed to the periphery of legal debate.

The ideas discussed in this article, which focus on criminalising acts that cause human suffering, provide hope that the repression of this long-forgotten crime will once again become a reality. According to this normative and transformative paradigm, for law to be effective, it must change to meet the needs of the society it is meant to protect.

However, because the IL “humanisation” of law thesis is not sufficiently policy-oriented, it is difficult to raise awareness among the political elites about the phenomenon.

For its part, a defining characteristic of the concept of human security is that it originated in policy and later moved to academia.

The human security approach differs from the “humanisation” of the IL thesis in its strong capacity to influence policymakers’ views of the world, thereby impacting

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<sup>61</sup> *Ibidem*, p. 7.

<sup>62</sup> WILSON, *op. cit.*, p.169.

<sup>63</sup> ICC, *op. cit.*, p.1.

policy. Human security and problem-solving are inextricably linked. However, as Newman observes, problem-solving's primary weakness is its weak normativity.<sup>64</sup>

As noted above, there is a gap in the human security literature regarding a satisfactory way to deter the crime of aggression. The only noteworthy exception is the work of Mary Kaldor and Christine Chinkin.

Therefore, we propose that the “humanisation” of aggression approach should be more policy-oriented to be critical and relevant, while human security must be reconceptualised to be more aligned with Critical Studies, in line with Newman's proposal for Critical Human Security Studies.<sup>65</sup> Chinkin and Kaldor,<sup>66</sup> in turn, advocate a second-generation model of human security, proposing an emancipatory peace that emphasises that International Criminal Justice mechanisms, as vehicles for ending impunity and deterring future crimes, contribute to achieving general peace, deepening the view of the individual as a referent.

This proposal's underlying assumption is that, although IL occasionally protects the interests of the ruling class, it can also serve as a tool of resistance for the weak.

Two additional benefits come from considering aggression as a human security issue.

Firstly, the reformulation of the crime of aggressive war eliminates the argument that the concept of human security is overly broad and thus ineffective. As already explained, while our proposal advocates for a re-prioritisation of human dignity, it emphasises the importance of maintaining strict limits on the use of force.

Critics have argued that much human security scholarship is too concerned with the admissibility and desirability of humanitarian intervention in the face of the worst human rights violations. There are some claims that humanitarian intervention is linked to liberal cultural imperialism and Western hegemony. Relying on the human rights agenda, our alternative liberal approach sidesteps these objections by offering an opportunity to view aggression as a crime against humanity within the confines of the international regime that governs cross-border force.

This does not necessarily mean that the crime against humanity approach solves all conceptual problems. There are, after all, crucial questions to consider. As Ventura pointed out: “the illegal use of force as another inhumane act is narrower than

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<sup>64</sup> NEWMAN, Edward, *op. cit.*

<sup>65</sup> *Ibidem.*

<sup>66</sup> CHINKIN, Christine and KALDOR, *op. cit.*

aggression, since it must have as its target the civilian population rather than combatants.<sup>67</sup> Whatever the case, of course, we cannot forget that modern conflicts have changed significantly, with civilians frequently becoming the direct targets of violence.

Secondly, some human security scholars have suggested that human security studies have the potential to improve state and global security. According to Anderson-Rodgers and Crawford<sup>68</sup>, States can advance their strategic interests while enforcing normative policies both domestically and internationally to achieve lasting peace, thinking as rational decision-makers.

Human security scholarship should, therefore, reinforce the idea that international justice can find ways to hold leaders accountable. To do so, IR theory needs to examine the political conditions under which States Parties to the ICC, as well as judges and the prosecutor, may readily accept and adopt this paradigm shift.

In conclusion, there appear to be promising avenues for a successful collaborative agenda that require immediate investigation. Therefore, to stop the atrocities that governments commit against their populations, this research agenda needs to be expanded as soon as possible.

## 5. Final Remarks

Aggression is clearly a violation of humanity's most basic values and interests. In 2022, Russia invaded Ukraine, raising the question of whether Russian leaders should be held responsible for their acts of aggression. The case of Ukraine demonstrates that the ICC lacks full jurisdiction over the crime of aggression under the Rome Statute. Additionally, the newly established Special Tribunal for the Crime of Aggression against Ukraine will not have the authority to prosecute current heads of state, heads of government, and foreign ministers. Therefore, if the ICC were to adopt our proposal, a permanent court could prosecute those responsible without further delay.

Therefore, this article examined the feasibility of developing alternative procedural strategies to mitigate the current impunity for the crime of aggression at the ICC or other tribunals or courts. According to this agenda, the article suggests a theoretical dialogue between the "humanisation" of IL approach, a liberal IL thesis

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<sup>67</sup> VENTURA, Manuel J, *op. cit.*, p.418.

<sup>68</sup> ANDERSON-RODGERS and CRAWFORD, Kerry F., *op. cit.*, p.280.

deeply rooted in International Human Rights Law and International Humanitarian Law, and the liberal human security debate to reframe the crime of aggression from an IR perspective. Surprisingly, we found that the crime of aggression was not adequately covered in the literature on human security.

The fact that both perspectives are normative and concerned about the phenomenon of aggressive war was the reason behind this decision. As the text explains, this agenda places a higher priority on a human dignity-centred approach than the traditional definition of aggression, which emphasises the illegal use of force by one state against another.

According to our findings, while the ICC does not have jurisdiction over all forms of aggressive warfare, it does have the capacity to hold perpetrators accountable, prosecuting the crime of aggression as a crime against humanity under the Rome Statute.

We concluded that the intersection of these perspectives is beneficial to both theoretical approaches. As a result, a closer relationship between the two disciplines is required to make the “humanisation” of IL more policy-oriented and human security studies a more critical reflection on the analysis of this pressing issue.

In summary, the primary argument of the paper is that exploring cross-disciplinary collaboration in the study of war and aggression is a pressing next step in the human security agenda.

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