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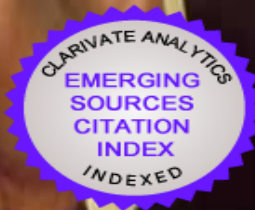
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**PROHIBITION OF AGGRESSION AS A
MANIFESTATION OF ANTHROPOCENTRICISM IN
INTERNATIONAL LAW: GENESIS OF THE PRINCIPLE
AND FORMATION OF THE DEFINITION**

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ABSTRACT

The article considers the issues of formation and approval of the principle of prohibition of aggression in international relations through the prism of the doctrine of anthropocentrism in modern international law. Particular attention is paid to international legal acts prohibiting the use of force in international relations and defining the concept of aggression. It has been revealed that the assertion of the principle of

prohibition of aggression allowed international law to move towards anthropocentrism, filled it with new meaning: starting from interstate, aimed at "serving" the right for a war ("jus ad bellum") by limiting the means and methods of warfare, to international right that proclaims and protects the rights of human beings and peoples. The role and significance of the activities of the United Nations and the International Criminal Court in developing a universal definition of aggression are analyzed. It is concluded that today there is an urgent need to adopt a universal definition of the crime of aggression at the international level. Adoption of such a definition will help prevent crimes of aggression and will make it possible to combat modern manifestations of aggression in the international arena more effectively.

Key words: crime of aggression, principle of prohibition of aggression, anthropocentrism, definition of aggression, International Criminal Court.

INTRODUCTION

Scientific, practical problems.

Respect, protection and defense of human rights are nowadays one of the core ideas and at the same time guidelines of both national and international law. However, humanity has come to such a quintessence only within the last century, prohibiting aggression and establishing other important progressive norms of *jus cogens* in international law, which laid the foundation for building a modern system of human rights protection. There has been a transformation: from interstate law, which is focused on the pragmatic interests of states (political power, hegemony), to international law, focused on peacekeeping, ensuring the progressive

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development of mankind, protection of human rights and our planet as a whole.

However, despite the prohibition of the use of force in international relations, the proclamation of the principle of respect for human rights, it must be in fact acknowledged that military conflicts and wars, during which rights and freedoms are most severely violated, have not ceased. Merely during the last and present centuries have armed conflicts taken place, and in some regions like Iraq, Chechnya, Georgia, Libya, Syria, Ukraine, etc. they still do. Accordingly, these phenomena are unfortunately the phenomena that have always disturbed the international community, and those aspects of interethnic coexistence, which at the present stage of human development is the subject of increased attention. Philosophers, thinkers, scientists, statesmen and even ordinary citizens often inquire: how can war, as the most acute and brutal form of aggressive human behavior be eradicated from human existence. Today, the maintenance of international peace, human security, protection and respect for human rights are the most important issues facing almost every country in the world.

Purpose of the study.

Given this, the purpose of the article is to study the genesis of the formation and significance of the principle of prohibition of aggressive war for modern international law and the problem of establishing the optimal definition for such an international crime as aggression.

To achieve this goal, the following tasks were formulated:

1. study the historical formation and approval of the principle of prohibition of starting of aggressive war;
2. establish the role of the International criminal court in the formation of the definition of "aggression";
3. characterize the jurisdiction of the International criminal court on the crime of aggression.

RESULTS AND DISCUSSIONS

THE FIRST TOPIC: HISTORICAL FORMATION AND APPROVAL OF THE PRINCIPLE OF PROHIBITION OF STARTING OF AGGRESSIVE WAR (AGGRESSION)

1.1. The significance and role of the principle of prohibition of aggression to ensure and protect peace in the modern world

It is fair to say that in the legal literature aggression is *the most dangerous crime against the peace and security of mankind*. Nowadays war, that is an armed attack by one state on another, is seen as a barbaric way of resolving international conflicts, which is absolutely unacceptable in the modern world. However, before coming to such a conclusion, mankind has for a long time recognized the right of the state for a war ("*jus ad bellum*") as a natural right, approving the pragmatic ambition for expanding. Till the end of the World War I execution of a war had been considered not only as an inalienable right of each state, but also as the highest manifestation of its sovereignty in international relations, respectively, this right had been protected by the government of the nation (Gorokhovska, 2012). Therefore, undoubtedly, such a state of affairs could not contribute

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to the creation of norms of international law that would recognize such actions as unlawful and established international legal responsibility of the perpetrators for their actions.

Present prohibition on the start of an aggressive war belongs to the fundamental principles of international law, the so-called imperative norms which must be observed by the participants of international relations. Violation or disregard of this principle by certain actors in the international arena will lead to the leveling of the role and significance of national values. In such cases, the question often arises about the need for the existence of international law, its ability to perform a function of a factual regulator of international relations. The current international right is meant to serve the world, and its norms must have a "world-preserving" potential (Chekhovich, 2013). And the key importance in this sense is given to the principles of prohibition of aggression and respect for human rights, which are the core of modern international law.

1.2. The genesis of the principle of prohibition of aggression

The historical formation of the principle of the prohibition of the starting of the aggressive war became the basis for the formation of the modern definition of aggression and progress. There are several stages in this process.

The first stage falls at the end of the XIX century - the beginning of the XX century. It is during this period that international co-operation in a number of international acts enshrines the position that aggressive war is a criminal act. Together with this the specific prohibition of abuse of the prisoners of war and the wounded, therefore humane attitude to the

civilian population, protection of their life and health is already actively promoted at the level of international law. In particular, special sanctions for violating the rules of warfare were provided for example, in the St. Petersburg Declaration (1868), in the decisions of Brussels in 1973 (Ledyakh, 1973).

The prohibition of "aggressive wars" was enshrined in the Hague Conventions (1899 and 1907) on the Peaceful settlement of International disputes, in particular, it was claimed that the contracting parties "would seek the best possible protection of peacekeeping means", as well as the protocols on the intention of a peaceful settlement of international disputes have been signed.

The second stage falls between the two world wars. The First World War "cost" humanity 10 million killed and 10 thousand crippled. This once again showed the world the extreme danger of war as such. The first and most important document that governed the struggle for the complete exclusion of the arrest war against the peoples was the Decree of Peace (1917), which proclaimed the principle of renunciation of the arrest war and defined it as "the greatest evil of human rights." The huge impacts of the Decree of Peace on the worldwide nations lead to the emergence of separate declarations and protocols of the League of Nations on the prohibition of aggressive war (Lebedeva, 1975).

In general, it should be emphasized that at this stage the League of Nations has played an important role in the process of creating prohibitions on the establishment of the norms of prohibition of the aggression. The statute of this organization became the first document in which, at the interstate level, the commitment to not to opt for war as a

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means of resolving the issue was included. (article 10). The Article 11 of the statute proved that any war or threat of war, whether it directly or not affects any of the members of the League, is of the interest to the League of Nations as a whole and the state of the League must take action, In addition, the outlined issue was the subject of discussions at international conferences held under the auspices of the League of Nations. In particular, the need for a ban and the crime of aggression were emphasized in the draft of the Treaty on Mutual Assistance (1923) and Geneva Peace Treaty (1923). Unfortunately, both of these documents did not come into force.

The Declaration on Aggressive War (1927) developed by the League of Nations also declared an aggressive war a gross violation of international law, (Kostenko 2004).

At the same time, the practical meaning was minimized by fact that the Statute of the League of Nations not only didn't contain a direct ban on aggression, but also accepted turning to war on condition of compliance with current formal requirements (art.12, 13 and 15) so in fact legalized the war, consequently an aggression was considered an attack in terms of violating the regulations of the League of Nations (1919).

In 1928, an important event was the resolution of the Paris Pact to renounce the war as an instrument of international politics (known as a Pact of Brian Kellogg named after the initiators - Minister of Foreign Affairs of France Aristid Brian and US Secretary of State Frank Kellogg). This document can be considered as the first real attempt to the principle of the statement of the prohibition of the aggressive war, as it included the

corresponding multilateral commitment of the states to reject to use the armed forces. Interestingly, the Pact was signed outside the League of Nations. It has been ratified in many countries, including the United States, France, Great Britain, Germany, the Kingdom of Italy, Japan and the USSR. Notwithstanding the positive aspects given the fact that the Paris Pact exceeded the Statute of the Evil Nations, it's practical significance however was somewhat mitigated by the fact that the included principles were not supported by the effective system of sanctions in case of violation.

Another significant shortcoming of the Brian Kellogg Pact is the existence of reservations that have allowed the states to deviate from the commitments made. In addition, it must be taken into consideration that there was no clear understanding of aggression, as there was no clear definition of this concept, and at that time no international act including the aforementioned Pact, had been able to define a list of actions of the state, which should be regarded reasonable enough to start an aggressive war. Undoubtedly, this reduced the effectiveness of both the Statute of the League of Nations and the Brian Kellogg Pact, and thus created favorable conditions for a possible aggressor.

Later, in February 1933, a conference was held in Geneva, the subject of which was the issue of disarmament.

The Soviet side submitted a draft Declaration on the detection of an attacking party, in which the following was mentioned : the attacking party in an international conflict will be acknowledged as the state to take the first action – (1) to wage a war against another state (2) the armed forces of which invade the territory of another state even without a

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declaration of war; (3) armed forces that bomb territory or deliberately attack ships and aircraft of another state, etc.; (4) establish a naval blockade of the coast or ports of another state. Although this convention was not adopted, it has fulfilled its historic role. The definition proposed in it had been taken as the basis of the London Conventions on the definition of aggression, incorporated by the CRC in 1933 with 11 neighboring states (at that time it was one of the most precise definitions of aggression) (Inogamova-Khegai, 2003), and also influenced a number of international agreements concluded by other states (for example, the Inter-American Treaty on Non-Aggression and the Negotiating Procedure 1933, Inter-American Non-Intervention Convention 1936). Evidence of the fact that the definition stated in London Convention could be considered as significantly progressive, was that the Pact on the Balkan Entente (1934) was directly referring to the definition of aggression, stated in it.

The third stage begins after World War II and lasts until the 90s of the twentieth century. For international community to realize the urgency and need for universal accountability for aggression as the most dreadful crime against peace and security in the world mankind was forced to go through the events of World War II.

The principle of prohibition of aggressive war received a clear normative enshrinement (p. 4 of Article 2 of the United Nations Charter, 1945), in particular, the rejection of appliance the threat of forced actions or forced action itself, against territorial independence and territorial integrity of the state, as well as in any other way was proclaimed as an imperative norm of international law.

Consideration of the number and severity of violations of international and national law, and also the irreparable losses subsequent to the outcomes of the Second World War led to the creation of the International Military Tribunal in Nuremberg, the main task of which was to bring military criminals to justice for crimes against peace (crime of aggression in the modern sense), war crimes and crimes against humanity. Notwithstanding the significance of the provisions of the Nuremberg Tribunal, we must note that the very definition of "aggression" was absent. It was not clear what actions should be seen as a violation of the principle of starting an aggressive war. Therefore, the international community faced the next task - the development of the definition of "aggression".

On December 11, 1946, the UN General Assembly adopted Resolution 95 (I) (1946) "Confirmation of the Principles of International Law Recognized by the Statute of the Nuremberg Tribunal", which stated that "GA UN, first of all, recognizes the principles of international law documented by the Statute of the Nuremberg Tribunal, which were established in the decision of the Tribunal; secondly, suggests that the Committee on the Codification of International Law considers the introduction of draft provisions as a matter of priority; the purpose of which was to formulate such principles, to the general codification of crimes against the peace and security of mankind, or to the general international code.

Subsequently, UN Resolution 177 (II) (1947) was adopted pursuant to Resolution 95 (I), in which the Commission of International Law (based on Resolution 174 (II)) was instructed to formulate these principles and

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draft a code of laws regarding the crimes against peace and human safety (Cassese, 2009).

In 1950, the International Law Commission prepared a report in which the principles were more concretized. Principle VI codifies the three categories of crimes enshrined in the Statute of the Tribunal: crimes against peace, war crimes and crimes against humanity. Crimes against peace are defined in paragraph "a" of Principle VI as follows: "planning, preparation, resolution or conducting of an aggressive war; or war, which violates international agreements, treaties or certifications; participation in the general plan or conspiracy aimed at carrying out the above-mentioned actions". However, like the Statute and the verdict of the Tribunal, the Commission did not define "aggressive war" (Cassese, 2009).

In general, it should be noted that the substantial attempts of certain states regarding the emergence of the universal definition of "aggression" were not sufficiently successful. Therefore, for a long time no international legal document was signed, which could be compared in its significance with the Statute of Nuremberg 2007. The stated task turned out to be extremely difficult due to the pronounced political and ideological component of aggression. But it was clear that such a definition of aggression was necessary for the international community, both in the context of the development and needs of international criminal law and in terms of the law of international responsibility, peace and respect for human rights by minimizing recourse to armed conflict between states. (Koval & Andreichenko, 2017).

One of the active initiators of the definition of "aggression" was USSR. In particular, the Soviet project to define aggression in 1969, in paragraph 5 stipulated that armed aggression was an international crime against peace, which entailed political and material responsibility. Soviet representatives insisted on the principle of enumeration of aggressive actions, namely the compilation of their list. However, the proposals of the western countries were based on the principle of a «flexible» formula, when the so-called "legal" nature was laid down as the basis for understanding the term of aggression (Trainin, 1969).

An essential step towards a more thorough understanding of the principle of the prohibition of aggression and the creation of a universal definition of "aggression" was the adoption of the Declaration of Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations (1970). Among the actions of a state aimed at violating this principle, special emphasis was placed on the prohibition of occupation of the territory of another state in violation of the norms of international law.

Consequent to the lengthy discussions of the UN General Assembly adopted Resolution 3314 (XXIX) (1974) "On the definition of aggression", in which the aggressive war was recognized as a "crime against the international peace", as well as a "crime" which entails international responsibility. In addition, the Resolution emphasized that aggression is identified also as the termination of an armed force by a state against sovereignty or territorial subordination of another state.

When determining the aggressor, the indication of the priority (initiative) of the act of aggression is taken as the basis. That is, the

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concept of "aggression" from the standpoint of international law should include the indication of initiative, which means the establishment of any country first. The actions of countries that act as self-defense, if at the same time the state uses armed forces, are not considered an act of aggression. This also applies to the collective action of states that comply with the UN Charter in order to maintain or ensure peace and security. In addition, it should also be borne in mind that aggression is used as a crime against the security of mankind only in relation to international conflicts. Therefore, internal conflicts and wars within a certain country are not considered acts of aggression from the standpoint of international law.

The resolution already outlines the actions that should be attributed to aggression, from which it can be concluded which acts of the state should be regarded as a violation of the principle of non-alignment of the force or threat of force. Some researchers believe that the list of these acts should be taken as qualifying signs of aggression (Kostenko, (2002, p. 98). come to a dissimilar conclusions: any of the above acts should be considered as an act of aggression, and each act should be considered as an independent manifestation of aggression and, accordingly, as a crime.

It should also be emphasized that the above list is not exhaustive, insofar as the UN Security Council can determine that other acts can be recognized as an agreement of the United Nations. It is also noteworthy that the above-mentioned resolution did not address individual criminal liability for acts of aggression, which is why it caused it. First and foremost, is the definition of aggression given in this resolution relevant to criminal acts committed by individuals?

In the legal literature, the legitimacy and topicality of the definition of the concept and the list of actions contained in this Resolution are still being discussed. Thus, some scholars generally point out that now in the current realities of the "Definition of Aggression" of 1974 is obsolete. I. Boyko (2010) considers that it is necessary to add more points than 7 to the list of actions considered as aggression. It is fundamental at least to take into account the emergence of new "technologies" of harm and new types of threats (for example, interference of the work with the automatic informational systems).

In addition, the researcher points out that the great past is that the UN Security Council can determine the other acts as aggression, because no international body authorized to designate an aggressor can be absolutely objective.

It should also be noted that this Resolution 3314 (1974) emphasizes that no circumstances can justify the crime of aggression. The aspect of all the severity of the crime of aggression is taken into account: "Aggressive war is a crime against international peace." And, of course, all the conquests that were made as a result of aggression cannot be legitimate. In order to recognize the fact of aggression, a gross violation of the principles of international law must be confirmed which the aggressor state will be responsible for.

I.K. Miller-Schieke (2001) mentions that Resolution 3314 can only be regarded as the statement of the political situation, which was proclaims at the very moment of the hour, as the list of acts of aggression is not considered universal.

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B.-S. Baek (2006) promoted a universal definition of aggression, as it would not rely on an illustrative (synthetic) change of possible acts of aggression.

The discourse in science is also seen around the “threshold issue” of aggression, so that defining certain signs of aggression, which allowed to differentiate the aggression of the borderline conflicts of other similar proceedings. In this case the whole of the acts of aggression, the widespread violence, the appearance of the attack are meant.

The fourth stage begins in the late 90's of XX century and continues to this day.

This stage is connected with the next important event in the process of approving the principle of banning the outbreak of aggressive war and coordination of the positions of the states with the aim of adopting a universal definition of aggregation – via negotiations on the need of creation of an international institution under whose jurisdiction the crimes that provide individual criminal liability for this type of crime would be subjected to. As a result of the negotiations, the International Criminal Court (hereinafter - ICC) was established. The activities of this institution are carried out in accordance with the Rome Statute (1998), which sets out the main principles regarding the organization and functioning of the ICC.

Among the crimes that fall under the jurisdiction of this Court (paragraph d), part 1 of Art. 5), the crime of aggression is envisaged. However, if, in relation to other crimes (genocide, crimes against humanity, war crimes), the Statute contained the expanded provisions

instantaneously, where their definitions were disclosed therefore regarding the aggression - there were only certain cautions. Thus, it was recorded in accordance with paragraph 2 of Art. 5 of the Statute (1998), that the Court will exercise jurisdiction over the crime of aggression, as soon as a provision is adopted in accordance with Articles 121 and 123, which contains the determination of this provision and the conditions under which the Court will exercise jurisdiction over the revealed offense. In fact, this meant that the ICC had no jurisdiction over the crime of aggression until the states that are members of this Statute reached a compromise. Also, the provisions of the cited article of the Statute indicated that the final text, which is the definition of the sign of the crime of aggression, should be agreed in accordance with the corresponding statements of UN Statute. According to the UN Charter (Article 39), the UN Security Council has the exclusive competence to determine the fact of committing an act of aggression.

For further more thorough and comprehensive study of this issue, a Special Working Group was established in 2002 to determine the crime of aggression (2007), which began its work under the support of the ICC and is one of its responsibilities, is to report Assembly of State to the ICC.

Its main purpose was to develop the universal definition of "aggression" on the basis of specific implications of the states, which would be suitable for the general application by all members of the international community (Cryer, Friman, Robinson & Wilmshurst, 2007).

Thus, the above allows us to state that of all the international crimes within the competence of the ICC (Article 5 of the ICC Statute), the crime of aggression was considered exceptional before the adoption of the

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amendments to the ICC Statute. This was indicated, first of all, by the fact that in relation to it there was no definition, secondly, there is no fixed list of actions, which are manifestations of aggression, and as a result, there is no list of constitutive elements of the crime.

One of the significant shortcomings of the Statute is that the ICC could not immediately exercise jurisdiction over the crime of aggression only after accepting the definition of the crime in accordance with the law, which was expected at the time of adoption of the Rome Statute, could take quite a long time. Thus, the Belarusian researcher I.V. Fisenko (1999) stated the following in this regard: "Considering that the elaboration of the definition of aggression adopted by the Security Council in 1974 took more than 20 years, it can be assumed that the declarative nature of mentioning the aggression as an offence, which is part of the ICC's competence, will be preserved for a long time, as the elaboration of the definition of the crime of aggression will be rather time-consuming "(p. 53-61).

At the same time, there were other opinions on this issue. In particular, according to E.N. Trikoz (2011), such a delayed practical implementation does not diminish the fact of international criminalization of the aggression, which is aimed at ultimately strengthening international law and order and preventing serious international crimes.

Among other things I.V. Fisenko (1999) drew attention to the fact that the crime of aggression has brought the ICC to exclusive jurisdiction much closer than others. The scientist substantiates his position with the following: if according to item 3 of Art. 20 of the ICC Statute, crimes of

genocide against humanity and war crimes may also come to trial in national courts; therefore, a re-examination in the ICC, except in some cases, is impossible, consequently a crime of aggression, in contrast to other crimes, could be examined in ICC even after trial in a national court.

**THE SECOND TOPIC: ELABORATION OF THE
DEFINITION "AGRESSION" WITHIN THE ACTIVITY OF
THE INTERNATIONAL CRIMINAL COURT**

Let us trace the course of elaboration of the definition of "aggression" in the context of the implementation of the ICC. Hence, the representatives from 120 countries had began working in the Preparatory Commissions before the ratification of the ICC Statute on February 26, 2001,

The first problem in discussing the issues of aggression in the Preparatory Committees was the multipolar approach of the representatives of the states to the definition. In particular, Russian representatives offered to give a general definition. On the other hand, the representatives of the separate Arab states, on the contrary, were inclined to a detailed definition, that is, to give a clear list of relating to the aforementioned actions. The situation was also complicated by the Resolution of the UN General Assembly "On the definition of aggression"

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of 1974, the text of which we have already referred to. With this approach, some permanent NATO members have stated that they were unwilling to subscribe to such an interpretation.

Another problem was the issue of indentifying the proclaimer of the act of aggression to have been carried out. The meeting discussed an option in which the UN General Assembly could appeal to the UN International Court of Justice to determine whether an act had been committed. As a result, it was decided to provide a procedure for re-consideration of the Roman Statute in order to subsequently introduce the relevant provisions referring to the aggression.

A working group on the crime of aggression was set up in 2007 to define the concept of an act of aggression, as well as the circle of persons who may be responsible for its commission. This group was faced with a difficult task: given the significant differences regarding the exact meaning of the phrase in Art. 5 (2) of the Statute, which stipulates that any provision on crimes of aggression shall be "consistent with the relevant provisions of the Statute of the United Nations". On this occasion, the representatives of the states expressed different opinions. Thus, many states adhere to the position according to which the Security Council must conclude that the act of aggression had been committed, based on their authorities outlined in Chapter 7 of the UN Charter, before the ICC can gain jurisdiction over the crime of aggression. However, other states did not support such an interpretation. As a result, the work was being conducted rather languidly.

According to official sources, in February 2009, a working group on defining the concept of "crime of aggression" completed five years of work. The next session of the Assembly of the ICC member states took place at the UN headquarters in New York. Within the framework of the session, the working Group defined the concept of "crime of aggression". The final report on the results of its work had been accepted. This was announced at a press conference in New York by the Chairman of the Working Group, Mr. K. Venevezer, a permanent Representative of Liechtenstein to the United Nations (2009).

K. Venevezer noted that the report of the Group on the issue of the notion of aggression and the definition of the object of judicial review for the commission of such acts will be investigated on the conference on revision of the Rome Statute in Uganda in 2010, and also pointed out that during the preparatory session for the conference, the state will be able to settle the remaining disagreements. Among the aforementioned disagreements, he mentioned, in particular, the question of whether the ICC can proceed to the investigation of the act of aggression, if, for this reason, there is no UN Security Council designation. The permanent members of the UN Security Council, who have the right of veto, insisted that without the decision of the UN Security Council that the aggression was committed, the court could not proceed to investigate it. Many other states categorically opposed to such a proposal. They feared that in this way the "powers of this world" were trying to protect themselves and their leaders from international persecution as a criminal liability for committing the act of aggression.

From May 31 to June 11, 2010, a long-awaited conference of the States Parties to the Rome Statute on Amendments was held in Kampala,

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Uganda. Three blocks of issues were brought up for discussion at the conference, among which the adoption of the definition of aggression was taken into consideration. The report of the Group on the definition of aggression and disagreement of states was inspected at the conference and, accordingly with its results it was determined that the jurisdiction of the ICC extends only to crimes of aggression, which will be committed in a year after 30 states have ratified the new additions to the Rome Treaty (Part 2 of Article 15-ter of the Rome Statute). On July 17, 2019, the required number of the ratifications of these amendments was received, therefore in fact from that moment on the ICC had the opportunity to bring to justice those responsible for committing the acts of aggression.

As it turns out, despite the many difficulties and problems, the adoption of the definition of aggression can be considered an event of global scale, because for the first time in almost half a century the states have been able to achieve the compromise, which is vital for the establishment of an effective institution of international criminal liability for the commission of acts of aggression. However, the significance of this event is overshadowed by the controversial (ambiguous) nature of the decisions made as a result of the conference in Kampala.

After all, the definition of "aggression" had been formally adopted, amendments to the ICC Statute (the Rome Statute) had also been prepared and offered for the accession of other states, however the procedure for the ICC's jurisdiction over the acts of the aggression leaves a lot of unresolved issues, which should be reconsidered in the near future, considering the ongoing armed conflicts in different regions of the world.

For the purposes of the Roman Statute, the crimes of aggression were defined in Art. 8 bis as “planning, preparation, initiation or implementation by a person who is able to effectively exercise leadership and control over political or military forces, an act of aggression which, by virtue of its nature, seriousness and scale, is a gross violation of the “Charter of the United Nations” (Amendments on the crime of aggression to Rome Statute of the International Criminal Court, 2010).

The act of aggression is regarded as the use of force by one state against another, not covering the cases of use of force as self-defense and action, authorized by UN Security Council.

It should be emphasized that the prepared amendments, as well as in the case of the Resolution (1974) of the UN 3314 (XXIX) "On the definition of aggression", contain an inexhaustible list of actions that must be qualified as aggression (for example, the invasion of military forces, bombing, blockade, etc.). And this is obviously the result of the fact that this list of actions was adopted from this Resolution.

It is essential to clarify the legal status of the subject of the crime of aggression in the amendments. The abovementioned is considered a person who was able to actually exercise leadership or control over the political or military actions of the state (this provision is duplicated in paragraph 3-bis of Article 25 of the Statute).

Legal doctrine often emphasizes that aggression belongs to the category of "leadership" crimes, and it is on this basis that the Rome Statute defines the subject in accordance with the tradition established by the Nuremberg and Tokyo tribunals (Heller, KJ, 2007, 496-497).

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It should be noted that the other positions also exist. Thus, some researchers believe that such a definition of the subject of the crime of aggression is unjustifiably narrowed, as it can be committed (or involved in the commission) by other persons, such as "private economic entities" interested in the act of aggression (Timoshkov, SG, 2016). Some authors usually affirm that the crime of aggression is committed by an official who is in the civil service and (or) acts on behalf of the state, or a person who is not an official but endowed by the state with special powers to organize, lead or manage an act of aggression (Lobach, DV, 2011, p. 81). Thus connection of the state with such person is shown by virtue of the very nature of aggression as a typical state crime. That is, the possibility of committing an act of aggression is associated with the special status of the perpetrator of this crime, which has real opportunities and authority to commit this crime. One way or another, the amendments to the Rome Statute limit the range of subjects of the crime of aggression. As it is acknowledged, the activities of the International Criminal Court are not strictly attached to the tradition and results of previous international ad hoc tribunals. However, the experience of such tribunals (especially the International Criminal Tribunal for the Former Yugoslavia), in whose decisions similar or very similar features were established, may be useful in establishing a sign of actual leadership or control over a state's political or military actions.

THE THIRD TOPIC: JURISDICTION OF THE INTERNATIONAL CRIMINAL COURT ON THE CRIME OF AGRESSION

In accordance with the provisions of Art. 15-bis and 15-ter of the Rome Statute, the International Criminal Court may exercise its jurisdiction over the crime of aggression after July 17, 2019 in two cases: when the situation is referred by the UN Security Council or when the situation is transferred *proprio motu* (on its own initiative).

In the first case, the UN Security Council and the International Criminal Court operate in a kind of tandem. In transmitting the situation, the UN Security Council does not take into account whether the State concerned has agreed with the jurisdiction of the Court in this respect (paragraph 2 of the Amendments). That is, if there is a relevant decision of the UN Security Council, it is enforceable regardless of the status of participation in the Rome Statute of the "State concerned" and its recognition of the jurisdiction of the International Criminal Court. However, if we assume that such an "interested state" is one of the permanent members of the UN Security Council, which has the right to veto, then will such a transfer of the case to the ICC? Of course, in this situation such a state will implement its right to veto. Thus, international prosecution for the crime of aggression in the transfer of the situation by the UN Security Council is possible only if the United Kingdom, China, Russia, the United States, France and, accordingly, citizens of these states are excluded from the circle of "interested states".

Reassigning of the situation by the state *proprio motu*. This method of establishing the jurisdiction of the International Criminal Court on the crime of aggression on all grounds can be considered as minor, as it is possible in the absence of a decision of the UN Security Council after six months from the date of notification by the applicant state (parts 7, 8 of Article 15 bis Rome statute). However, even if the abovementioned

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condition is met, there are two most serious limitations in establishing the jurisdiction of the International Criminal Court on the crime of aggression at the request of the applicant State, namely: the ICC cannot exercise its jurisdiction over the crime of aggression committed by a state which is not a member of the Rome Statute, or committed on the territory of such a state (paragraph 5 of Article 15-bis); The ICC cannot exercise its jurisdiction over a crime of aggression, even if it is committed by nationals of a State party to the Rome Statute, but that State itself has declared non-recognition of such jurisdiction (Article 15-bis, paragraph 4). In the first case, the situation is more or less clear: citizens of all states who have not signed the Rome Statute or withdrawn their signature are excluded from the jurisdiction of the International Criminal Court for the crime of aggression. In the second case, the case is more complicated. According to K. Kress (2018), a heated debate has revolved around how the jurisdiction of the International Criminal Court will be exercised in situations involving member states of the Rome Statute. According to the first position, the Court cannot exercise jurisdiction in situations where the offense is committed on the territory or by a national of a State party to the Rome Statute which has not ratified the amendment. According to another position, the ratification of the amendments by the State party provides the International Criminal Court with the “necessary jurisdiction” required by Part 2 of Art. 12 of the Rome Statute. This means that the Court, in particular, has jurisdiction over an offense of aggression committed in the territory of a State Party to the Statute by a national of another State Party, even if that other State has not ratified the amendment.

The resolution, which activated the Kampala amendments, seems to have endorsed the first approach, but included a clause guaranteeing the independence of judges in resolving a jurisdictional dispute, leaving room for a different interpretation of these provisions in the future.

This situation regarding the exercise of the ICC's jurisdiction over the crime of aggression suggests that it is now very difficult to initiate international criminal prosecution for the abovementioned offense of aggression. Therefore there are many problems regarding the issue. Accordingly, there may even occur a subject of the expediency of the existence of such a permanent body of criminal justice. Most recognized authorities in the field of international criminal law do not currently have answers.

Thus, it can be declared, that although the long process of formulating and adopting a unified definition of the crime of aggression at the international level has apparently succeeded, the detailed inspection of it allows to comprehend an extensive incompleteness of this process. The peculiarities of the crime of aggression provided for in the draft amendments to the Rome Statute, as well as the mechanism of adoption of amendments, illustrate the actual absence of a mechanism of prosecution of individuals to international liability for its actions, as well as a rather disappointing prospect of positive alterations in the near future.

International conflicts, which often escalate into armed conflicts, nowadays not only do not stop, but have a tendency to update the methods and means of military action. Many new phenomena have emerged, in particular, such as the "hybrid war", the "cyber war", the "information war", and the "undeclared war". Entities committing acts of aggression

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have also expanded, hence at the beginning of the last century there was a discussion about bringing an individual to criminal liability on the basis of international criminal law, currently this issue has been resolved, but the discussion is ongoing around terrorist organizations as subjects of the crime of aggression, as well as the prosecution of the aggressor state to the international accountability.

As it appears, it is in the interest of each of the states and the international community as a whole, concerning the object of the crime, to clarify the meaning of the concept of "aggression", taking into account all these new trends in international development. After all, as T.W. Benett (2012) reasonably states, although existing inaccuracies and therefore gaps in existing normative definitions help certain entities to avoid the responsibility, which accordingly causes a concern, yet it is very problematic to consolidate the political content of this crime, since this process requires long-term legal action.

Summarizing the above, it can be clearly stated that a list of actions that are qualified as acts of aggression had been formed in modern international law. The international legal doctrine makes it possible to conclude that the act of aggression can be regarded as a crime committed by the state and as an individual implementation of the state. However, there are many issues that need to be resolved or those that are not fully resolved. This once again emphasizes the urgent need to develop a universal definition of "aggression", which would take into account all the latest trends in the modern world when committing acts of aggression.

CONCLUSIONS

Thus, in view of the above, it can be stated that the principle of prohibition of aggressive war has come a long way: from complete non-recognition and disregard to approval at the normative level as a basic principle of international law - the imperative norm of international law ("*jus cogens*"), violation of which entails the onset of international legal liability of the state and individual responsibility of the highest bodies of the state and the military command of the state in the framework of international criminal law. In fact, the assertion of this fundamental principle of international law has allowed international law to move towards anthropocentrism, therefore filled it with new sense. If earlier international law had been perceived as an interstate law, which was aimed at "serving" the right for a war ("*jus ad bellum*") by limiting the means and methods of warfare, then at the present this law proclaims and protects the rights of man and nations. Human rights issues are organically intertwined with international law, and the individual gradually acquires international legal personality. International law has moved from the coordination of actions of states to the realization of the goals of the international community: protection of peace, ensuring the progressive development of mankind, protection of human rights, protection of our planet. And the first step in this direction was the proclamation of the prohibition of aggressive warfare as the most barbaric way of resolving disputes between subjects of international law. And although wars have not disappeared from the practice of international communication, their number has decreased significantly. Perhaps humanity will still need a long time to develop and implement more effective means of counteracting and preventing armed conflicts, and even more - to completely eradicate this phenomenon of human existence as

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such that opposes the universal values. Undoubtedly, there are many problems now and there will probably be even more in the future, but the main issue is that the international community is moving in the right direction.

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