

ANALYSIS OF CRIME OF AGGRESSION IN 2026 UNITED STATES AND ISRAEL MILITARY STRIKES AGAINST IRAN

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ABSTRACT

Although the prohibition on the use of force has been established in international law, contemporary armed conflicts continue to challenge its application, particularly regarding aggression. This study aims to analyze the qualification of the 2026 military strikes by the United States and Israel against Iran as a crime of aggression under the Rome Statute of the International Criminal Court (ICC), and to examine the use of self-defense and its implications for international law enforcement. The research employs a normative juridical method using statutory and conceptual approaches, supported by primary and secondary legal materials. The findings indicate that the military action fulfills the elements of the crime of aggression due to absence of United Nations Security Council authorization and lack of a valid self-defense justification. Furthermore, the study reveals that the expansion of self-defense, particularly preventive self-defense, poses a serious threat to international legal norms. The limitation of ICC jurisdiction weakens enforcement of international criminal law against powerful states. This study concludes that strengthening legal frameworks is essential to ensure accountability. It is recommended that international legal mechanisms be reformed to enhance consistency and fairness in addressing acts of aggression.

Keywords: *Crime of Aggression; ICC; Self-Defense; Use of Force; International Law*

INTRODUCTION

The use of force in international relations constitutes a fundamental issue in modern international law that continues to generate debate, particularly in the context of contemporary armed conflicts. The Charter of the United Nations explicitly prohibits the use of force, as stipulated in Article 2(4), which provides that all states shall refrain from the threat or use of force against the territorial integrity or political independence of any state.¹ This provision serves as the primary foundation of the *jus ad bellum* system, which aims to maintain international peace and security. However, in practice, this norm is often confronted with complex global political dynamics, particularly when major powers invoke self-defense to justify military actions. In international law, the right to self-defense is recognized under Article 51 of the United Nations Charter, but it may only be exercised in response to an actual armed attack and must comply with

¹ Piagam Perserikatan Bangsa-Bangsa, Pasal 2 ayat (4).

the principles of necessity and proportionality.² However, developments in state practice indicate a tendency to expand the scope of self-defense to include pre-emptive and preventive self-defense, which remain highly contested within international legal doctrine.³

This phenomenon is reflected in the 2026 military strikes carried out by the United States and Israel against Iran. These actions raise serious questions regarding the legality of the use of force under international law, as well as their potential qualification as a crime of aggression. From the perspective of international criminal law, the crime of aggression constitutes one of the most serious offenses threatening global peace, as defined in Article 8 bis of the Rome Statute of the International Criminal Court (ICC).⁴

However, the application of the concept of the crime of aggression is not without interpretative challenges, particularly with regard to the element of “manifest violation” of the United Nations Charter. This element serves as the threshold for determining whether a use of force can be classified as aggression. In practice, this concept remains largely abstract and lacks clear parameters, thereby creating legal uncertainty.⁵ Moreover, the effectiveness of enforcing the crime of aggression also faces significant challenges, particularly due to the jurisdictional limitations of the International Criminal Court (ICC). This is largely because not all states, including major powers, are parties to the Rome Statute, thereby creating a gap between international legal norms and global political realities.⁶

From a theoretical perspective, international law is not merely understood as a set of norms, but also as a reflection of power relations within the international community. Therefore, the analysis of the crime of aggression cannot be separated from the study of *jus ad bellum*, international criminal law, and theories on the legitimacy of the use of force.⁷ Based on the foregoing, the research problem of this study is formulated as follows: how can the 2026 military strikes by the United States and Israel against Iran be qualified as a crime of aggression under the Rome Statute of the International Criminal Court (ICC), and how is the invocation of self-defense in such actions assessed under international law, including its implications for the enforcement of international law?

The objective of this study is to analyze the qualification of such actions as a crime of aggression, to examine the limits of the use of self-defense under international law, and to evaluate

² Yoram Dinstein, *Perang, Agresi dan Pembelaan Diri*, Cambridge: Cambridge University Press, 2021, hlm. 210.

³ Christine Gray, *Hukum Internasional dan Penggunaan Kekuatan*, Oxford: Oxford University Press, 2018, hlm. 150.

⁴ Statuta Roma International Criminal Court, Pasal 8 bis.

⁵ Stefan Barriga dan Claus Kreß, *The Crime of Aggression: A Commentary*, Cambridge: Cambridge University Press, 2010, hlm. 67.

⁶ Kevin Jon Heller, “The Uncertain Future of the Crime of Aggression”, *American Journal of International Law*, Vol. 114 No. 2, 2020, hlm. 98.

⁷ Malcolm N. Shaw, *Hukum Internasional*, Cambridge: Cambridge University Press, 2021, hlm. 820.

the effectiveness of international law enforcement mechanisms, particularly through the ICC. This study is expected to contribute theoretically to the development of international law, especially in relation to the crime of aggression and *jus ad bellum*, and practically to serve as a reference for policymakers and the international community in strengthening the enforcement of laws governing the unlawful use of force.

METHOD

This study constitutes legal research employing a normative juridical approach, focusing on the analysis of applicable legal norms derived from both statutory regulations and doctrines of international law. The normative approach is used to assess the conformity of military actions within the framework of international law, particularly in relation to the crime of aggression and the use of force.⁸ The nature of this research is descriptive-analytical, aiming to systematically describe relevant facts and legal norms, which are then analyzed to draw conclusions regarding the legal qualification of the research object. The approaches employed in this study include the statute approach and the conceptual approach. The statute approach is conducted by examining the provisions of the United Nations Charter, particularly Article 2(4) and Article 51, as well as the Rome Statute of the International Criminal Court (ICC), specifically Article 8 bis. Meanwhile, the conceptual approach is used to analyze doctrines and theories of international law related to the crime of aggression, *jus ad bellum*, and self-defense.⁹

The data sources in this study consist of primary, secondary, and tertiary legal materials. Primary legal materials include statutory regulations and international legal instruments, such as the United Nations Charter and the Rome Statute of the ICC. Secondary legal materials comprise international law textbooks, scholarly journal articles, and previous studies relevant to the research topic. Meanwhile, tertiary legal materials include legal dictionaries, encyclopedias, and other sources that support the understanding of the legal concepts employed.¹⁰

Data collection was conducted through library research, involving the identification and review of various legal literatures relevant to the research problem, including books, scholarly journals, and official international documents. The data collection procedure was carried out by identifying, classifying, and systematizing legal materials in accordance with the research focus.

The data analysis technique employed is normative qualitative analysis, which involves interpreting and constructing legal norms through systematic and conceptual approaches. The analysis is conducted by linking provisions of international law with the legal facts arising from the 2026 military strikes, as well as comparing them with existing doctrines and practices of international law. Through this method, the study is expected to produce comprehensive legal

⁸ Soerjono Soekanto dan Sri Mamudji, *Penelitian Hukum Normatif*, Jakarta: Rajawali Press, 2015, hlm. 13.

⁹ Peter Mahmud Marzuki, *Penelitian Hukum*, Jakarta: Kencana, 2016, hlm. 93.

¹⁰ *Idem.*, hlm. 141.

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arguments and contribute to the development of international law, particularly in relation to the crime of aggression.

DISCUSSION

Qualification of the Crime of Aggression in the 2026 Military Strikes by the United States and Israel Against Iran

According to Gerhard Kemp, aggression is a crime under customary international law that developed as a result of the wars and conflicts of the 20th century and is a political and legal response to these tragedies.¹² Historian Niall Ferguson, as quoted by Kemp, has shown that World Wars (WWI) I and II had an unparalleled geopolitical impact with the highest percentage of battlefield deaths of the world's population. Ferguson called the impact of WWII the greatest man-made catastrophe of all time. This can be seen from the death toll reaching 1.3 percent of the world's population. Thus, according to him, what the Nuremberg Tribunal stated was that war is inherently evil. Starting a war of aggression is not only an international crime, but a supra-international crime that is more horrific than ordinary war crimes, namely the accumulation of all existing crimes.¹¹

In the Charter of the International Military Tribunal (IMT) dated August 8, 1945, Article 6 paragraph a:¹² "Crimes against Peace: namely, planning, preparation, initiation or waging of wars of aggression, or a war in violation of international treaties, agreements or assurances, or participation in a common plan or conspiracy for the accomplishment of any of the foregoing." In the 1974 UN General Assembly Resolution 3314 (XXIX) defines aggression:¹³ "Aggression is 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, as set out in this Definition."

Based on the UN General Assembly Resolution of December 14, 1974, there are several categories of aggression that can be considered international crimes:¹⁴

First, an invasion or attack by the armed forces of one State on the territory of another State, or a temporary military occupation resulting from such an invasion or attack, or the annexation by armed force of the territory or part of the territory of another State. *Second*, shelling, or the use of weapons, by the military forces of one State that attacks the sovereignty of another State. *Third*, a blockade of ports or coastlines by one State using military force against another State. *Fourth*, an attack by the military forces of one State against the land, sea, or air forces, naval,

¹¹ Gerhard Kemp, Individual Criminal Liability for the International Crime of Aggression, (Dissertation of Stellenbosch University, 2008), p 319.

¹² Charter of the International Military Tribunal, http://www.icls.de/dokumente/imt_statute.pdf

¹³ Joachim Gewehr, Defining Aggression for the International Criminal Court, Dissertation. p 21

¹⁴ Article 3 UN General Assembly Resolution, December 14, 1974

or air fleet of another State. *Fifth*, the use of military force by a State within the territory of another State with the consent of the receiving State, contrary to the conditions stipulated in the treaty, or the extension of their presence in that territory beyond the termination of the treaty. *Sixth*, an act by a State within the permitted territory, which is a place of exile for another State, to commit an act of aggression against that other State (third). *Seventh*, sending by or on behalf of a country in the form of a gang, group, militia or armed mercenary army, which carries out actions with military force against another country such as carrying out various maneuvers or actions as mentioned above, or its substantial involvement in them.

In relation to the above matter, the determination of an act as a crime of aggression under international law must be based on the provisions of the Rome Statute of the International Criminal Court (ICC), particularly Article 8 bis. Under this provision, the crime of aggression is defined as the planning, preparation, initiation, or execution of the use of armed force by a state against the sovereignty of another state, which constitutes a manifest violation of the United Nations Charter.¹⁵

In the context of the 2026 military strikes by the United States and Israel against Iran, such actions can be analyzed based on the core elements of the crime of aggression. First, there is the use of armed force across borders directed at the sovereign territory of Iran. Such use of force, if not based on authorization from the United Nations Security Council or a valid claim of self-defense, in principle constitutes a violation of the prohibition on the use of force under international law.

Second, such actions must meet the threshold of a manifest violation. In recent developments of international law, this element is interpreted based on three main indicators: the character, scale, and gravity of the act. This approach aligns with modern doctrinal developments emphasizing that not all uses of force can be classified as aggression, but only those that constitute a serious violation of the international order.¹⁶

In this case, the 2026 military strikes demonstrate an aggressive character, as they were conducted offensively without a clear legal basis. In terms of scale, the actions involved significant and coordinated military force. In terms of gravity, the strikes have the potential to create regional instability and threaten international peace and security. Accordingly, all three indicators are cumulatively satisfied. Furthermore, from the perspective of contemporary international criminal law, the crime of aggression is also understood as a leadership crime, meaning that it can only be committed by individuals who exercise effective control over a state's political or military

¹⁵ Statuta Roma International Criminal Court, Pasal 8 bis.

¹⁶ Claus McDougall, "Expanding the ICC's Jurisdiction Over the Crime of Aggression," *Journal of International Criminal Justice*, Vol. 22 No. 3-4, 2024, hlm. 543.

actions.¹⁷ This indicates that criminal responsibility is not only attributed to the state, but also to individuals who occupy positions of power.

Furthermore, recent developments indicate that the application of the crime of aggression continues to face significant challenges, particularly due to the ICC's limited jurisdiction over non-party states. This results in a gap between international legal norms and their implementation in practice. As highlighted in recent studies, these jurisdictional limitations constitute a major obstacle to the enforcement of the crime of aggression, thereby prompting discussions on the establishment of ad hoc international tribunals as an alternative mechanism for enforcement. From the perspective of modern international law, this condition demonstrates that the crime of aggression is not merely a normative issue, but is also closely linked to global political dynamics. Therefore, a more comprehensive approach is required in assessing whether an act constitutes aggression, one that considers not only the legal text but also the broader context and its impact on the international order.¹⁸

Accordingly, based on the analysis of the elements of the crime of aggression, it can be concluded that the 2026 military strikes by the United States and Israel against Iran normatively meet the qualification of a crime of aggression under the Rome Statute of the ICC. However, the enforcement of law against such actions continues to face structural challenges within the international legal system, particularly with regard to jurisdictional limitations and the political influence of major powers.

Analysis of the Use of Self-Defense and the Limits of Pre-emptive and Preventive Self-Defense in International Law

The invocation of self-defense in international law constitutes one of the most controversial issues in the practice of *jus ad bellum*. Normatively, Article 51 of the United Nations Charter recognizes the inherent right of states to exercise self-defense in the event of an armed attack. However, this provision cannot be interpreted expansively without limits; rather, it must comply with strict conditions that have developed within international legal doctrine.¹⁹ In the context of the 2026 military strikes by the United States and Israel against Iran, the invocation of self-defense becomes problematic due to the absence of evidence of an actual and imminent armed attack. In contemporary international legal scholarship, Milanović emphasizes that “self-defence cannot be invoked in the absence of an actual or imminent armed attack,” indicating that self-defense may only be justified where there is a real and immediate threat.²⁰

¹⁷ Coalition for the International Criminal Court, “The Crime of Aggression,” diakses melalui <https://crimeofaggression.info> pada tahun 2025.

¹⁸ M. Ghazali, “The Position and Role of the International Criminal Court (ICC) in International Crime Resolution,” *International Journal of Law*, 2025, hlm. 112.

¹⁹ Piagam Perserikatan Bangsa-Bangsa, Pasal 51.

²⁰ Marko Milanović, *Use of Force in International Law*, Oxford: Oxford University Press, 2021, hlm. 95.

Developments in state practice indicate an expansion of the concept of self-defense to include pre-emptive and preventive self-defense. Pre-emptive self-defense refers to defensive action taken against an imminent threat, whereas preventive self-defense is undertaken to avert threats that remain potential in the future.²¹ However, the majority of international law scholars reject the legitimacy of preventive self-defense, as it lacks a solid legal basis in the United Nations Charter. Ruys states that “preventive self-defence lacks a solid basis in international law and risks undermining the prohibition of the use of force,” indicating that this concept has the potential to undermine the fundamental principles of international law.²²

When examined in relation to the 2026 case, the actions undertaken by the United States and Israel are more appropriately categorized as preventive self-defense, as they are based on assumptions of future threats rather than an ongoing or imminent armed attack. This indicates a deviation from the principles of international law governing the use of force. From a legal-philosophical perspective, this phenomenon reflects the tension between legal norms and power realities in international relations. Koskenniemi asserts that “international law oscillates between normative ideals and political realities,” indicating that international law often operates within a constant tension between idealism and state interests.²³

Therefore, a reconstruction of the conceptual limits of self-defense is necessary to prevent its misuse. In classical doctrine, the use of force in self-defense must satisfy three principal criteria: immediacy, necessity, and proportionality. Tsagourias and White emphasize that “the legality of self-defence depends on necessity and proportionality, which remain the cornerstone of the use of force doctrine,” indicating that these principles constitute the primary limits on the use of force.²⁴ This reconstruction is essential to preserve the integrity of international law and to prevent the legitimization of acts of aggression disguised as self-defense. Without clear limits, the concept of self-defense risks becoming a tool for states to justify unilateral military interventions.

Accordingly, the invocation of self-defense in the 2026 military strikes by the United States and Israel against Iran cannot be justified under international law, as it fails to meet the established criteria. This condition underscores the need to reaffirm the normative limits of self-defense to ensure that the principles of *jus ad bellum* continue to function as instruments for maintaining international peace.

²¹ Christian Henderson, *The Use of Force and International Law*, Cambridge: Cambridge University Press, 2023, hlm. 120.

²² Tom Ruys, *Armed Attack and Article 51 of the UN Charter*, Cambridge: Cambridge University Press, 2020, hlm. 140.

²³ Martti Koskenniemi, *From Apology to Utopia*, Cambridge: Cambridge University Press, 2021, hlm. 600.

²⁴ Nicholas Tsagourias dan Nigel White, *Collective Security: Theory, Law and Practice*, Cambridge: Cambridge University Press, 2022, hlm. 120.

Limitations of the International Criminal Court (ICC) Jurisdiction and Their Implications for the Enforcement of the Crime of Aggression

The crime of aggression, as one of the most serious international crimes, has been normatively regulated under the Rome Statute of the International Criminal Court (ICC). However, the implementation of law enforcement against this crime continues to face various challenges, particularly due to the limited jurisdiction of the ICC. This limitation arises from the provisions of the Rome Statute, which require either state ratification or a referral by the United Nations Security Council for the Court to exercise jurisdiction over the crime of aggression.²⁵

In the context of the 2026 military strikes by the United States and Israel against Iran, the issue of jurisdiction becomes highly critical, given that the states involved are not parties to the Rome Statute. As a result, the ICC lacks direct authority to prosecute those responsible for the crime of aggression. In recent scholarship, Kreß emphasizes that “the jurisdictional regime of the ICC over aggression remains politically constrained and legally fragmented,” indicating that the Court’s jurisdiction over the crime of aggression continues to be influenced by global political factors.²⁶ In the context of the 2026 military strikes by the United States and Israel against Iran, the issue of jurisdiction becomes highly critical, given that the states involved are not parties to the Rome Statute. As a result, the ICC lacks direct authority to prosecute those responsible for the crime of aggression. In recent scholarship, Kreß emphasizes that “the jurisdictional regime of the ICC over aggression remains politically constrained and legally fragmented,” indicating that the Court’s jurisdiction over the crime of aggression continues to be influenced by global political factors.²⁷ The implication of this condition is the emergence of impunity, whereby perpetrators of international crimes cannot be held legally accountable. This not only undermines the legitimacy of the ICC as an international law enforcement institution, but also erodes the confidence of the international community in the global legal system.

According to the author’s view, the limitations of the ICC’s jurisdiction in addressing the crime of aggression are not merely technical legal issues, but rather structural problems within the international legal system itself. The author argues that international law remains influenced by the dominance of major powers, resulting in the selective application of justice. This condition reflects a significant gap between ideal legal norms (*law in the books*) and their actual implementation in international relations (*law in action*). Furthermore, the author emphasizes that the concept of the crime of aggression, despite its significant normative development, is not yet

²⁵ Statuta Roma International Criminal Court, Pasal 15 bis dan 15 ter.

²⁶ Claus Kreß, “On the Activation of ICC Jurisdiction over the Crime of Aggression,” *Journal of International Criminal Justice*, Vol. 20 No. 4, 2022, hlm. 890.

²⁷ Marko Milanović, *International Law and the Use of Force*, Oxford: Oxford University Press, 2021, hlm. 210.

supported by effective and independent enforcement mechanisms. This is evident in the ICC's reliance on state consent and referrals from the United Nations Security Council, which in practice are often shaped by political interests.

From this perspective, the author argues that fundamental reforms to the ICC's jurisdictional framework are necessary, particularly in expanding its authority over the crime of aggression without relying entirely on state consent or political intervention by the United Nations Security Council. One alternative that may be considered is strengthening the principle of universal jurisdiction or establishing more independent ad hoc international tribunals. In line with this, Stahn states that "the future of international criminal justice depends on its ability to overcome political constraints and ensure accountability for all actors," indicating that the effectiveness of international criminal law largely depends on its capacity to overcome political barriers.²⁸

Accordingly, it can be concluded that the limitations of the ICC's jurisdiction in addressing the crime of aggression, particularly in the context of the 2026 military strikes, reflect structural weaknesses within the international legal system. The author emphasizes that without significant reforms, international law will continue to face challenges in enforcing justice universally, especially against major powers with dominant political and military influence.

CONCLUSION

Based on the findings of this study, it can be concluded that the 2026 military strikes by the United States and Israel against Iran normatively fulfill the elements of the crime of aggression as defined under the Rome Statute of the International Criminal Court (ICC), particularly due to the use of armed force without authorization from the United Nations Security Council and the absence of a valid self-defense justification. The relationship between the use of force and the concept of the crime of aggression indicates that the greater the deviation from the principles of *jus ad bellum*, especially the prohibition on the use of force, the stronger the qualification of such acts as aggression, particularly when they meet the threshold of a manifest violation based on indicators of character, scale, and gravity. On the other hand, the invocation of self-defense in this case lacks a sufficient legal basis, as it fails to satisfy the requirements of immediacy, necessity, and proportionality, thereby reinforcing that the expansion of interpretation toward preventive self-defense risks undermining the international legal order. Furthermore, the limitations of the ICC's jurisdiction in addressing the crime of aggression, particularly with respect to non-party states, demonstrate a significant relationship between global power structures and the effectiveness of international law enforcement, where the dominance of major powers contributes to weak legal accountability. Therefore, this study emphasizes that although the normative framework of

²⁸ Carsten Stahn, *A Critical Introduction to International Criminal Law*, Cambridge: Cambridge University Press, 2020, hlm. 300.

international law clearly regulates the prohibition of aggression, its enforcement remains heavily influenced by political and institutional factors, thus requiring the strengthening of jurisdictional mechanisms and international law enforcement to ensure that the principle of justice can be applied universally without discrimination.

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