

Rwanda's Aggression in Eastern Democratic Republic of the Congo: Avenues for Accountability

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Même dans le silence le plus lourd, les blessures du peuple congolais continueront de crier justice, car il n'y aura jamais de paix sans justice, sans réparation, ni garantie de non-répétition des crimes que le Rwanda commet en RDC.†

– Depaul Bakulu, Congolese human rights activist and slam poet

On January 27, 2025, the Rwandan military and an armed proxy group known as the March 23 Movement seized Goma—a city of over one million people in the Democratic Republic of the Congo (“DRC”)—in a lightning offensive. Two weeks later, they took over Bukavu, the second-largest city in eastern DRC. These advances are two of the most significant episodes in an armed conflict that began in November 2021 and has led to widespread extrajudicial killings, sexual violence, forced recruitment, and the displacement of over two million Congolese civilians.

This Article argues that Rwanda's conduct amounts to an act of aggression, an unlawful use of interstate force in violation of the United Nations Charter. The reason is straightforward—Rwanda has no credible self-defense claim for a military takeover of its neighbor's territory.

But accountability presents substantial challenges. International criminal prosecution of Rwandan officials is unlikely, as the International Criminal Court lacks jurisdiction over crimes of aggression in this case. And through years of shrewd diplomatic maneuvering, Rwanda has effectively shielded itself from meaningful political, financial, or legal consequences, such as the freezing of foreign aid.

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† Interview by Daniel Levine-Spound with Depaul Bakulu, in Cambridge, Mass. (Nov. 1, 2025) [“Even in the heaviest silence, the wounds of the Congolese people will continue to cry out for justice, because there will never be peace without justice, without reparation, or without the guarantee of non-repetition for the crimes that Rwanda is committing in the DRC.”] (translation by author).

Rwanda's efforts to escape accountability must not be allowed to succeed. Only by holding political leaders and states accountable can the international community deter future aggression and preserve an international legal order premised on the illegality of interstate force. This Article provides a roadmap for doing so—tracing the history, elements, and unique harms of the crime of aggression, documenting the ongoing conflict in the DRC, demonstrating why Rwanda's conduct constitutes aggression, exploring how Rwanda's attack fits within a broader trend of interstate force, and identifying sanctions that states could impose on Rwanda—and other aggressors—outside the context of individual criminal responsibility.

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INTRODUCTION

In November 2021, the March 23 Movement (“M23”), an armed group with close ties to the Rwandan government, began attacking Congolese military bases in the North Kivu province of eastern Democratic Republic of the Congo (“DRC”). The attacks roughly coincided with the breakdown of negotiations between the Congolese government and M23 regarding a host of contentious issues, including the proposed integration of M23 fighters into the Congolese military.¹

The conflict has since metastasized. In approximately four years, M23 has conquered huge swaths of Congolese territory, occupying dozens of cities and towns across the DRC’s North Kivu and South Kivu provinces.² In areas under its control, M23 has displaced Congolese authorities, set up parallel governance

1. Daniel Levine-Spound, *Will the World Respond to Potential Rwandan Aggression Against the Democratic Republic of the Congo?*, JUST SEC. (June 21, 2023), <https://www.justsecurity.org/86976/will-the-world-respond-to-potential-rwandan-aggression-against-the-democratic-republic-of-the-congo/> [https://perma.cc/WR6Q-RVUL]; Final Rep. of the Group of Experts on the Democratic Republic of the Congo (2025), transmitted by Letter dated 3 July 2025 from the Group of Experts on the Democratic Republic of the Congo Addressed to the President of the Security Council, ¶ 11, U.N. Doc. S/2025/446 (July 3, 2025) [hereinafter U.N. Group of Experts (2025)] (“The initial objective of M23 was to force the Government of the Democratic Republic of the Congo to accept its demands, including on amnesties, repatriation to the Democratic Republic of the Congo, integration into FARDC and allocation of political positions.”); Final Rep. of the Group of Experts on the Democratic Republic of the Congo (2022), transmitted by Letter dated 10 June 2022 from the Group of Experts Extended Pursuant to Security Council Resolution 2582 (2021) Addressed to the President of the Security Council, ¶ 69, U.N. Doc. S/2022/479 (June 14, 2022) [hereinafter U.N. Group of Experts (2022)] (“Recent attacks by M23/ARC stemmed from, inter alia, a lack of progress in the implementation of the Nairobi Declarations signed on 12 December 2013. Confidential negotiations between the Government of the Democratic Republic of the Congo and a delegation of M23 that had started in September 2020 and continued for 14 months, stalled. Six captured M23/ARC combatants stated that Makenga’s plan was to attack and occupy Bunagana, Rutshuru and Rumangabo towns, cut off the strategic Goma-Rutshuru road, and then take Goma, to force the Government to accept the demands of M23/ACR regarding amnesties, asset recovery, return to the Democratic Republic of the Congo, integration into FARDC and political positions.”).

2. Ken Matthyssen, *Shifting Frontlines: Visualizing the Evolution of the M23’s Territorial Influence in Early 2024*, INT’L PEACE INFO. SERV. [hereinafter IPIS] (June 20, 2024), <https://ipisresearch.be/publication/shifting-frontlines-visualizing-the-evolution-of-the-m23s-territorial-influence-in-early-2024/> [https://perma.cc/K9UU-LW97]; *The (New) M23 Offensive on Goma: Why This Long-Lasting Conflict Is Not Only About Minerals and What Are Its Implications?*—Q&A, IPIS (Feb. 6, 2025), <https://ipisresearch.be/publication/the-new-m23-offensive-on-goma-why-this-long-lasting-conflict-is-not-only-about-minerals-and-what-are-its-implications-qa> [https://perma.cc/HM5Q-DRE8].

structures, recruited and trained thousands of new combatants, and overseen the extraction and exportation of minerals.³ All signs point to long-term occupation.⁴

The humanitarian impacts of the armed conflict have been catastrophic. Since M23's emergence, approximately two million Congolese civilians have been displaced by the fighting, bringing the number of internally displaced persons ("IDPs") in the country to over seven million.⁵ The displacement crisis has led to spiking levels of sexual and gender-based violence, malnutrition, and disease, as millions of people contend with minimal or no humanitarian support.⁶ Human rights organizations have accused M23 of egregious violations, including extrajudicial killing, sexual violence, torture, enforced disappearances, and the forcible displacement of civilians.⁷

3. IPIS ET AL., LE M23 « VERSION 2 »: ENJEUX, MOTIVATIONS, PERCEPTIONS ET IMPACTS LOCAUX [M23 "VERSION 2": ISSUES, MOTIVATIONS, PERCEPTIONS AND LOCAL IMPACTS] 23 (2004), https://ipisresearch.be/wp-content/uploads/2024/06/20240403_Le-M23-version-2-Enjeux-motivations-perceptions-et-impacts-locaux.pdf [<https://perma.cc/79XH-GG92>]; United Nations [U.N.] Group of Experts (2025), *supra* note 1, ¶¶ 24–33.

4. See also Prasanta Kumar Dutta et al., *A Tinderbox Conflict in Congo Is Ready to Explode*, REUTERS (Mar. 5, 2025), <https://www.reuters.com/graphics/CONGO-SECURITY/MAPS/movayk-zaava/> [<https://perma.cc/6K8E-BVGQ>] (providing map of areas held by M23 rebels).

5. Claude Sengenya, *For Congolese Displaced by the M23 War, Host Families Offer a "Heart of Solidarity"*, NEW HUMANITARIAN (Apr. 11, 2024), <https://www.thenewhumanitarian.org/news-feature/2024/04/11/congolese-displaced-m23-war-host-families-offer-heart-solidarity> [<https://perma.cc/MSZ6-CALS>]; "Common Game Plan" Needed to Address DR Congo Displacement Crisis: A Resident Coordinator Blog, U.N. NEWS (July 9, 2022), <https://news.un.org/en/story/2022/07/1122162> [<https://perma.cc/2PY8-ZUMW>]. It should be noted that the Democratic Republic of the Congo's ("DRC") displacement crisis is multicausal and spans parts of the country outside of the reach of Rwanda or March 23 Movement ("M23")—in 2020, prior to M23's re-emergence, the DRC had over five million internally displaced persons ("IDPs"). *Democratic Republic of the Congo Crisis Response Plan 2020*, INT'L ORG. FOR MIGRATION [IOM], <https://crisisresponse.iom.int/response/democratic-republic-congo-crisis-response-plan-2020> [<https://perma.cc/MTY9-LGPS>]. But in 2024, it was estimated that the M23 conflict resulted in nearly three quarters of all internal displacements due to armed conflict. While over 200,000 individuals were internally displaced due to armed conflict involving the Allied Democratic Forces ("ADF") armed group, for instance, the M23 conflict has triggered more than two million displacements. Damian Uebersax, *M23 Conflict Caused Nearly 3 out of Every 4 Displacements in the DRC This Year*, INTERNAL DISPLACEMENT MONITORING CTR. (Sept. 23, 2024), <https://www.internal-displacement.org/expert-analysis/m23-conflict-caused-nearly-3-out-of-every-4-displacements-in-the-drc-this-year/> [<https://perma.cc/4925-53YV>].

6. MSF Reports Unprecedented Number of Sexual Violence Cases in DR Congo, MÉDECINS SANS FRONTIÈRES [DOCTORS WITHOUT BORDERS] (Sept. 30, 2024), <https://www.doctorswithoutborders.org/latest/msf-reports-unprecedented-number-sexual-violence-cases-dr-congo> [<https://perma.cc/4XCS-LUYS>]; UNFPA Democratic Republic of the Congo Situation Report—Humanitarian Response Scale Up: Ituri, North Kivu and South Kivu Provinces (01–31 August 2023), U.N. POPULATION FUND (Aug. 2023), <https://www.unfpa.org/resources/unfpa-democratic-republic-congo-situation-report-humanitarian-response-scale-ituri-north> [<https://perma.cc/3ED4-QEBE>].

7. DRC: M23's Rampant Human Rights Abuses Demand Concerted International Action, AMNESTY INT'L (Mar. 18, 2025), <https://www.amnesty.org/en/latest/news/2025/03/m23s-rampant-human-rights-abuses-demand-concerted-international-action/> [<https://perma.cc/CAF5-9WLW>]; DR Congo: M23 Armed Group Forcibly Transferring Civilians, HUMAN RIGHTS

The Congolese military and its allies have also been accused of serious violations.⁸

The crisis reached a new level in early 2025, when M23 took over Goma, capital city of North Kivu province—at least 2,900 people died in the fighting, while many thousands more were injured and displaced.⁹ M23 then moved south, taking over Bukavu, capital of South Kivu province, two weeks later.

But M23 has never fought alone. Since 2021, the Rwandan military, known as the Rwandan Defense Force (“RDF”), has consistently intervened militarily in the DRC on the side of the rebels. While troop levels have fluctuated, it is estimated that the number of RDF soldiers in eastern DRC has risen to between 7,000 and 12,000.¹⁰ And despite M23’s claims to the contrary,¹¹ Rwanda exercises “de facto control and direction over [M23] military operations.”¹² Stated simply, M23 is a Rwandan proxy force in an armed conflict fought principally between Rwanda and the DRC.

In summer 2025, diplomatic initiatives led by the United States and Qatar resulted in a “Peace Agreement” between the DRC and Rwanda and a “Declaration of Principles” between the DRC and M23.¹³ But as of this writing, fighting continues—and M23 and Rwanda continue to take over more Congolese

WATCH (June 18, 2025), <https://www.hrw.org/news/2025/06/18/dr-congo-m23-armed-group-forcibly-transferring-civilians> [https://perma.cc/Q3CY-JT4F]; *M23 Accused of Possible ‘War Crimes’ in Eastern DRC: Rights Group*, AL JAZEERA (May 27, 2025), <https://www.aljazeera.com/news/2025/5/27/m23-accused-of-possible-war-crimes-in-eastern-drc-rights-group> [https://perma.cc/XC3T-FL42].

8. *DRC: Warring Factions in Eastern DRC Commit Horrific Abuses Including Gang Rapes, Summary Executions and Abductions*, AMNESTY INT’L (Aug. 20, 2025), <https://www.amnesty.org/en/latest/news/2025/08/drc-warring-factions-in-eastern-drc-commit-horrific-abuses-including-gang-rapes-summary-executions-and-abductions/> [https://perma.cc/ZP32-J9VT].

9. Christophe Châtelot, *DRC War: In Rebel-Held City’s Morgue, ‘It’s Hell,’* LE MONDE, (Feb. 7, 2015), https://www.lemonde.fr/en/le-monde-africa/article/2025/02/07/drc-war-in-rebel-held-city-s-morgue-it-s-hell_6737900_124.html [https://perma.cc/J5F9-ZJX4].

10. Kumar Dutta et al., *supra* note 4; U.N. Group of Experts (2025), *supra* note 1, at 13 n.25 (“Former RDF and Rwandan intelligence reported that at least 10,000 RDF troops were deployed in eastern Democratic Republic of the Congo.”).

11. Sarah Dean & Larry Madowo, *Two Countries Signed a Peace Deal in Washington. On the Ground, Little Has Changed*, CNN (Sept. 22, 2025), <https://www.cnn.com/2025/09/22/africa/dr-congo-rwanda-peace-deal-trump-fighting-intl-cmd> [https://perma.cc/498Y-5MPH].

12. U.N. Group of Experts (2025), *supra* note 1, ¶¶ 34–55.

13. Peace Agreement Between the Democratic Republic of the Congo and the Republic of Rwanda, Dem. Rep. Congo-Rwanda, June 27, 2025, <https://www.state.gov/peace-agreement-between-the-democratic-republic-of-the-congo-and-the-republic-of-rwanda> [https://perma.cc/G7TJ-UYGC] [hereinafter DRC–Rwanda Peace Agreement]; *Doha Agreement Brings DR Congo Government and M23 Rebels a Step Closer to Peace*, U.N. NEWS, July 20, 2025, <https://news.un.org/en/story/2025/07/1165441> [https://perma.cc/MMD4-3A2X]; see also discussion *infra* Part VI (analyzing both deals).

territory.¹⁴ Soon after the signing of the Declaration of Principles, the United Nations (“U.N.”) accused M23 of killing over 300 civilians, one of the largest recorded massacres since the conflict began.¹⁵

This Article makes the case that Rwanda’s full-scale invasion of the DRC constitutes an unlawful “act” of aggression—an illegal use of force by one state against another in stark violation of the core prohibition on interstate force at the heart of the U.N. Charter.¹⁶ It argues further that individual Rwandan leaders have likely committed the “crime” of aggression, defined in the Rome Statute of the International Criminal Court (“ICC”) as the “planning, preparation, initiation or execution” of an act of aggression which “constitutes a manifest violation” of the U.N. Charter by its “character, gravity, and scale.”¹⁷ And finally, it contends that a forceful response from the international community is critical.

Accountability, however, is easier said than done. Aggression is one of the “core crimes” over which the ICC has jurisdiction, alongside war crimes, crimes against humanity, and genocide. But under the Rome Statute (the statute establishing the ICC), the jurisdictional requirements for aggression differ from those of other crimes—namely, *both* aggressor and victim state must accept the ICC’s jurisdiction for the court to prosecute aggression.¹⁸ Given that Rwanda (the aggressor state) has not accepted the court’s jurisdiction, Rwandan officials cannot be criminally prosecuted for an act of aggression, regardless of the fact that the DRC (the victim state) *is* a state party to the Rome Statute.¹⁹

But jurisdictional obstacles should not serve as an excuse for states’ failure to uphold the prohibition of the use of interstate force. States—and the international community more broadly—have the tools to hold Rwanda and other aggressors accountable, including through non-criminal means. It is vital that they do so.

The Article unfolds as follows: Part I provides an overview of the history and development of the crime of aggression, from its initial formulation in the lead-up to the post-World War II Nuremberg and Tokyo Tribunals to the “activation” of the ICC’s jurisdiction over the crime in 2018.

14. Richard Moncrieff, *The DR Congo-Rwanda Deal: Now Comes the Hard Part*, INT’L CRISIS GRP. (July 4, 2025), <https://www.crisisgroup.org/africa/great-lakes/democratic-republic-congo-rwanda/dr-congo-rwanda-deal-now-comes-hard-part> [https://perma.cc/86TR-8U7C].

15. *M23 Rebels Killed 319 Civilians in East DR Congo in July*, UN SAYS, AL JAZEERA (Aug. 6, 2025), <https://www.aljazeera.com/news/2025/8/6/m23-rebels-killed-319-civilians-in-east-dr-congo-in-july-un-says> [https://perma.cc/G42V-VUX8].

16. U.N. Charter pmbl., art. 2, ¶ 4.

17. See discussion *infra* Parts II, IV (explaining in detail “acts” and “crimes” of aggression, as well as the historical evolution of the crime).

18. See discussion *infra* Part II (analyzing in detail ICC’s jurisdiction over aggression).

19. *Id.*

Part II explores the Rome Statute's definition of aggression, including an analysis of both "acts" and "crimes" of aggression. It explains both the jurisdictional limitations that would likely prevent the ICC from prosecuting Rwandan officials for aggression, as well as how "immunity"—both personal and functional—would likely block aggression prosecutions in domestic courts.

Part III explores the ongoing armed conflict in eastern DRC involving Rwanda, DRC, M23, and a host of other states and non-state armed groups. This Part covers the 1994 Rwandan Genocide (also referred to as the Genocide against the Tutsi), the roots of M23's emergence (and initial defeat) in 2012 and 2013, and the most recent episode of the conflict (2021–2025), including the troubling 2025 agreements between the DRC, Rwanda, and M23 concluded in Doha and Washington, D.C.

Part IV makes the case that Rwanda's actions in eastern DRC constitute "acts" of aggression—both unilaterally and by proxy—and that Rwandan officials have committed "crimes" of aggression. This Part then explores two potential arguments that Rwanda might invoke to justify its use of force, including "self-defense" and the "responsibility to protect." Neither line of argument justifies Rwanda's military deployment into the DRC.

Part V explores the importance of accountability for *aggression*, specifically. Situating Rwanda's invasion of eastern DRC in a broader international context marked by unlawful instances and threats of interstate force—including Russia's invasion of Ukraine in 2022—this Part highlights the myriad harms that flow from aggression. Alone among international crimes, aggression is uniquely capable of capturing the *totality* of harms caused by unlawful uses of force.

Finally, Part VI explores multiple avenues through which the international community could hold Rwanda and its leadership accountable. In terms of criminal liability, the ICC's Assembly of States Parties ("ASP") could modify the Rome Statute such that the court could prosecute crimes of aggression committed by leaders of non-state parties. Alternatively, the international community could support the establishment of an ad hoc international criminal tribunal with jurisdiction over aggression in the DRC. Beyond the criminal context, other legal bodies, such as the African Court on Human and Peoples' Rights, could rule against Rwanda in ongoing cases. Finally, states and international institutions could address Rwanda's aggression through extra-judicial measures like sanctions, restrictions on military aid, and international isolation.

Ending Rwanda's aggression is vital for the people of eastern DRC. But the implications are global. Rwanda's actions are part of an alarming recent trend of states attacking or threatening to attack other states, with no plausible legal justification.²⁰ At a moment in which the U.N. Charter's fundamental

20. See discussion *infra* Parts V–VI.

prohibition of interstate force appears increasingly vulnerable, it is critical to hold aggressors—whether in Rwanda or elsewhere—to account. The lives of millions of civilians may depend on it.

I. AGGRESSION: A BRIEF HISTORICAL OVERVIEW

The concept of aggression is rooted in one of the central tenets of public international law—the prohibition of the use of interstate force. Article 2(4) of the U.N. Charter stipulates that, “All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state.”²¹ The Charter allows for only two exceptions to this general prohibition: (1) “individual or collective” self-defense “if an armed attack occurs;”²² and (2) authorization by the U.N. Security Council (“UNSC”) in response to “any threat to the peace, breach of the peace, or act of aggression.”²³ Aggression represents a violation of this fundamental prohibition.

Acts of aggression may give rise to both individual criminal responsibility and state responsibility. This Article predominantly focuses on the former, drawing on the Rome Statute of the ICC, the first international court with jurisdiction over the crime since the Nuremberg and Tokyo Tribunals established after the Second World War.²⁴ (While an analysis of state responsibility for aggression is beyond the scope of this Article, Part VI explores non-criminal options available to states and international institutions in response to aggression.²⁵)

21. U.N. Charter art. 2, ¶ 4.

22. *Id.* art. 51.

23. *Id.* arts. 39, 42; see also Mary Ellen O’Connell & Mirakmal Niyazmatov, *What Is Aggression?: Comparing the Jus Ad Bellum and the ICC Statute*, 10 J. INT’L CRIM. JUST. 189, 192 (2012) (“The general prohibition on the use of force by states is found in Article 2(4) [of the U.N. Charter], which also provides two exceptions to the prohibition. Article 51 permits individual and collective self-defense, and Articles 39 and 42 provide for the Security Council’s right to authorize force to restore international peace in the face of a ‘threat to the peace, breach of the peace or act of aggression.’”).

24. Rome Statute of the International Criminal Court art. 8 *bis*(2), July 17, 1998, 2187 U.N.T.S. 90 (entered into force July 1, 2002) [hereinafter Rome Statute]; *The Crime of Aggression—a Brief History*, THE GLOB. CAMPAIGN FOR RATIFICATION AND IMPLEMENTATION OF THE KAMPALA AMEND. ON THE CRIME OF AGGRESSION, [https://perma.cc/CJN4-W2LQ](https://crimeofaggression.info/history/).

25. As discussed above, the focus of this Article is on individual criminal liability rather than state responsibility. However, regarding the latter, the International Law Commission’s Articles on Responsibility of States for Internationally Wrongful Acts (“ARSIWA”) outlines core principles. Int’l L. Comm’n [hereinafter ILC], Draft Articles on Responsibility of States for Internationally Wrongful Acts, with Commentaries, in *Report of the International Law Commission on the Work of Its Fifty-Third Session*, U.N. GAOR, 56th Sess., Supp. No. 10, at 43, reprinted in [2001] 2 Y.B. Int’l L. Comm’n 1, 26–30, U.N. Doc. A/56/10 [hereinafter ILC, ARSIWA]. Namely, states responsible for an “internationally wrongful act”—defined as an “action or

As defined in the Rome Statute, an “act” of aggression refers to “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.”²⁶ The “crime” of aggression—for which individuals can be prosecuted—refers to the “planning, preparation, initiation or execution” of an “act of aggression” by a person “exercis[ing] control over or [directing] the political or military actions of a State,” provided that the act “constitutes a manifest violation of the Charter of the United Nations” due to “its character, gravity and scale.”²⁷ Thus, aggression encompasses both “the collective State act of aggression . . . at the macro level and the individual crime of aggression at the microlevel.”²⁸

The emergence of aggression is tied to the legal prohibition against interstate force. But while such a prohibition is fundamental to public international law as it currently exists, it did not emerge until the early 20th century. Oona Hathaway and Scott Shapiro argue, for instance, that under the “Old World Order,”—their designation of the European legal order before the 1928 Kellogg Briand Pact—waging war was “a legitimate method of sovereigns . . . to enforce rights against one another. The right to wage war, to conquer and seize booty, to destroy anything that is necessary to win all derives from this basic function of war.”²⁹ In their description of *The Law of War and Peace*, Grotius’ 1625 magnum opus, for example, Hathaway and Shapiro highlight the

omission” which is both “attributable to the State under international law” and “constitutes a breach of an international obligation of the State”—must (i) “cease that act, if it is continuing;” (ii) “offer appropriate assurances and guarantees of non-repetition, if circumstances so require;” and (iii) “make full reparation for the injury caused by the internationally wrongful act.” *Id.* arts. 2, 30, 31(1). ARSIWA articulates specific obligations related to “a serious breach by a State of an obligation arising under a peremptory norm of general international law,” including: (i) “States shall cooperate to bring to an end through lawful means any serious breach within the meaning of article 40;” (ii) “No State shall recognize as lawful a situation created by a serious breach within the meaning of article 40, nor render aid or assistance in maintaining that situation;” and (iii) “This article is without prejudice to the other consequences referred to in this part and to such further consequences that a breach to which this chapter applies may entail under international law.” *Id.* arts. 40(1), 41; *see also id.* ch. III. For a detailed analysis of state responsibility in the aggression context, specifically, see generally ADVISORY COMM. ON PUB. INT’L L., LEGAL CONSEQUENCES OF A SERIOUS BREACH OF A PEREMPTORY NORM: THE INTERNATIONAL RIGHTS AND DUTIES OF STATES IN RELATION TO A BREACH OF THE PROHIBITION OF AGGRESSION (Nov. 17, 2022), <https://www.advisorycommitteeininternationalallaw.nl/publications/advisory-reports/2022/11/17/legal-consequences-of-a-serious-breach-of-a-peremptory-norm> [https://perma.cc/5AA2-H2QR]; Frédéric Mégret, *State Responsibility for Aggression: A Human Rights Approach*, 58 HARV. INT’L L.J. (ONLINE) 62 (2017), <https://journals.law.harvard.edu/ilj/2017/04/state-responsibility-for-aggression-a-human-rights-approach/> [https://perma.cc/EKR3-8PGF]. For a discussion of steps available to states in response to aggression outside the criminal context, see *infra* Part VI.

26. Rome Statute, *supra* note 24, art. 8 *bis*(2).

27. *Id.* art. 8 *bis*(1).

28. KAI AMBOS, TREATISE ON INTERNATIONAL CRIMINAL LAW 222 (2021).

29. OONA HATHAWAY & SCOTT SHAPIRO, THE INTERNATIONALISTS 28 (2018).

following principle: “[T]he law of nature permits individuals and states to use force to prosecute their rights. . . . [A]ny right that could be enforced by courts could also be enforced by war if courts were unavailable.”³⁰ In such a schema, armed attacks cannot easily be distinguished as “legal” or “illegal,” given that “success”—rather than justification—“creates legal rights in war.”³¹

The end of the First World War in 1918 marked a potential shift. In a speech on the campaign trail, British Prime Minister David Lloyd George called for the prosecution of German Kaiser Wilhelm II, asserting that the war “was a frightful, terrible crime.”³² Such rhetoric marked a “radical departure” from the “Old World Order” in two ways—it assumed that both “embarking upon an aggressive war was a crime, *and* that a head of state could be held personally responsible for it.”³³

During the 1919 Paris Peace Conference, the United Kingdom and France advocated for the establishment of a special court to prosecute the Kaiser, including for his “legal responsibility for the war.”³⁴ Other states disagreed.³⁵ Belgium—concerned about future accountability for its brutal colonization of what is now DRC—argued that the Kaiser had the “right” to declare war as the sovereign, whether or not it was just.³⁶ The United States rejected the notion that a sovereign could be internationally prosecuted *at all*, given that “heads of state [are] answerable solely to their own people.”³⁷ Though a compromise was eventually reached—and a “Special Tribunal” agreed to—no trial took place.³⁸ Wilhelm II fled to the Netherlands, which refused to extradite him.³⁹

Failure to prosecute the Kaiser did not end efforts to prevent, or outlaw, armed conflict. In 1928, representatives of fifteen states signed the Kellogg-Briand Pact.⁴⁰ Under the pact, high contracting parties “condemn[ed] recourse to war,” “renounce[d] it, as an instrument of national policy,” and agreed to settle disputes “by pacific means.”⁴¹

30. *Id.* at 23.

31. *Id.*

32. Kirsten Sellars, *The First World War, Wilhelm II and Article 227: The Origin of the Idea of ‘Aggression’ in International Criminal Law*, in *THE CRIME OF AGGRESSION: A COMMENTARY* 21, 21 (Claus Kreß & Stefan Barriga eds., 2017) (citing *Coalition Policy Defined, Mr. Lloyd George’s Pledges*, *TIMES* (London), Dec. 6, 1918).

33. *Id.*

34. NOAH WEISBORD, *THE CRIME OF AGGRESSION: THE QUEST FOR JUSTICE IN AN AGE OF DRONES, CYBERATTACKS, INSURGENTS, AND AUTOCRATS* 34 (2019).

35. Sellars, *supra* note 32, at 28.

36. *Id.* at 34.

37. *Id.*

38. *Id.*; WEISBORD, *supra* note 34, at 34.

39. WEISBORD, *supra* note 34, at 34.

40. HATHAWAY & SHAPIRO, *supra* note 29, at 128–29.

41. General Treaty for the Renunciation of War as an Instrument of National Policy arts. 1–2, Aug. 27, 1928, 46 Stat. 2343, 94 L.N.T.S. 57.

But the Kellogg-Briand Pact had important limitations. First, and most blatantly, some of its signatories controlled vast colonial empires maintained through force.⁴² The Pact was not understood as limiting, for instance, violence by colonial powers “short of war” in their colonies.⁴³ Second, the Pact neither defined aggression nor explicitly provided for individual criminal liability.⁴⁴

Initial efforts to address the latter fell, in part, to jurists in the nascent Soviet Union. In 1933, Soviet Foreign Minister Maxim Litvinov submitted “the most detailed, objective codification of the definition of aggression to date” to the World Disarmament Conference.⁴⁵ But the most militarily powerful states refused to sign the Litvinov Treaty, including the United States and the United Kingdom.⁴⁶

It was the Second World War that ultimately provided the impetus for prosecuting aggression.⁴⁷ Established in 1945, the International Military Tribunal (“Nuremberg Tribunal”) had jurisdiction over “crimes against peace”⁴⁸—defined as “planning, preparation, initiative or waging of a war of aggression, or a war in violation of international treaties, agreements, or assurances”—in addition to war crimes and crimes against humanity.⁴⁹ In his opening arguments,

42. Benjamin B. Ferencz, *The United Nations Consensus Definition of Aggression: Sieve or Substance*, 10 J. INT'L L. & ECON. 701, 704, 714–15 (1975), <https://benferencz.org/articles/1970-1989/the-united-nations-consensus-definition-of-aggression-sieve-or-substance/> [https://perma.cc/A755-VLQF].

43. Jochen von Bernstorff, *The Use of Force in International Law Before World War I: On Imperial Ordering the Ontology of the Nation-State*, 29 EUR. J. INT'L L. 233, 258. Such an understanding was in line with past practice—at the 1919 Paris Peace Conference, for instance, colonial crimes were largely omitted, as it proved “far more convenient [for victorious states] to limit the scope of criminal responsibility to violations committed by enemy countries against Allied and Associated States and maintain shared silence regarding colonial atrocities.” Carsten Stahn, *Piercing the Colonial Veil? Colonial Crimes as Crimes Against Humanity*, J. INT'L. CRIM. JUST. 1, 6 (2025). Relatedly, W.E.B. Du Bois accused the European “peace movement” of excluding “wars waged to subjugate colonial peoples” from its purview, asserting that “what the peace movement really meant was peace in Europe and between Europeans.” W.E.B. DU BOIS, *THE WORLD AND AFRICA* 18 (1969).

44. A series of other treaties signed in the 1920s similarly did not define (or criminalize) aggression. See WEISBORD, *supra* note 34, at 35 (“Solemn international agreements—including the 1923 Draft Treaty of Mutual Assistance, the 1924 Locarno Treaties, and the 1928 General Treaty for the Renunciation of War (the Kellogg-Briand Pact)—were added to reassure skittish states that their allies would come to the rescue if enemies attacked. Each of these agreements . . . reinforced the emerging view that conquest was no longer the entitlement of statements acting on behalf of their states None included a substantive definition of the crime of aggression.”).

45. *Id.* at 36.

46. *Id.*

47. FRANCINE HIRSCH, *SOVIET JUDGEMENT AT NUREMBERG: A NEW HISTORY OF THE INTERNATIONAL MILITARY TRIBUNAL AFTER WORLD WAR II* 43 (2020).

48. Soviet lawyer Aron Trainin originally coined the term. *Id.*

49. Charter of the International Military Tribunal art. 6(a), Aug. 8, 1945, Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis, Annex, 59 Stat. 1544, 82 U.N.T.S. 279.

U.S. prosecutor (and Supreme Court Justice) Robert Jackson described the fundamental destructiveness of *war itself* and highlighted the importance of *individual* criminal sanctions.⁵⁰ “Any resort to war,” he asserted, “is a resort to means that are inherently criminal as means. War inevitably is a course of killings, assaults, deprivations of liberty, and destruction of property.”⁵¹ An international law that acted only on states could not “render real help to the maintenance of peace Only sanctions which reach individuals can peacefully and effectively be enforced.”⁵²

The Nuremberg judges opined further on aggressive wars in their verdict. “War,” the verdict reads, “is essentially an evil thing. Its consequences are not confined to the belligerent states alone, but affect the whole world.”⁵³ Given the consequences of armed conflict, initiating a war of aggression “is the supreme international crime differing only from other war crimes in that it contains within itself the accumulated evil of the whole.”⁵⁴ The tribunal found that ten of Germany’s “wars of aggression” amounted to “crimes against peace,” for which it convicted twelve of the defendants.⁵⁵ Several years later, the International Military Tribunal for the Far East (“Tokyo Tribunal”) would similarly convict a host of Japanese defendants for crimes against peace.⁵⁶

In 1946, following the convictions in Nuremberg, the U.N. General Assembly tasked the International Law Commission (“ILC”) to prepare a code of offenses against “the peace and security of mankind.”⁵⁷ But in a contentious

50. *Id.*; WEISBORD, *supra* note 34, at 48.

51. Justice Jackson, Chief U.S. Prosecutor, Opening Statement Before the International Military Tribunal ¶ 161 (Nov. 21, 1945), https://voicesofdemocracy.umd.edu/wp-content/uploads/2019/10/JACKSON_SPEECH-TEXT.pdf [<https://perma.cc/YG6L-XEQJ>].

52. *Id.*

53. Matter of U.S., Fr., the U.K., and U.S.S.R. v. Herman William Goering, Decision and Judgment, 16819 (Int’l Mil. Trib. Oct. 1, 1946) [hereinafter International Military Tribunal (Nuremberg)].

54. *Id.* Predictably, the Nuremberg judgment did not break from the tradition of excluding interstate force *outside of Europe* from legal accountability. While the judgment discusses, for instance, German “invasion[s],” “aggression[s],” and “war[s]” against European states as well as the United States, potential “crimes against peace” committed in, for instance, Africa are not discussed. *See generally id.*

55. *See* WEISBORD, *supra* note 34, at 51; *see also* Michael P. Scharf, *Universal Jurisdiction and the Crime of Aggression*, 53 HARV. INT’L L.J. 358, 370 (2012).

56. The Tokyo Tribunal proved to be far more controversial than its Nuremberg counterpart, including in its prosecution of crimes against peace. *See* YUMA TOTANI, *THE TOKYO WAR CRIMES TRIBUNAL: THE PURSUIT OF JUSTICE IN THE WAKE OF WORLD WAR II* 246–62 (2008); Ian Buruma, *What the Tokyo Trial Reveals About Empire, Memory and Judgement*, NEW YORKER (Oct. 16, 2023), <https://www.newyorker.com/magazine/2023/10/23/judgment-at-tokyo-world-war-ii-on-trial-and-the-making-of-modern-asia-gary-j-bass-book-review> [<https://perma.cc/N3EM-E88Q>]. *See generally* Latha Varadarajan, *The Trials of Imperialism: Radhabinod Pal’s Dissent at the Tokyo Tribunal*, 21 EUR. J. INT’L REL. 793 (2015).

57. ROBERT CRYER ET AL., *AN INTRODUCTION TO INTERNATIONAL CRIMINAL LAW AND PROCEDURE* 299 (4th ed. 2019). It should also be noted that, in the immediate aftermath of

Cold War environment, the possibility of defining—not to mention prosecuting—aggression was remote.⁵⁸ As Nuremberg prosecutor Benjamin Ferencz observed, “None of the Allied powers that joined to establish the new legal principles at Nuremberg was prepared to be bound [by] the rules which it purported to lay down.”⁵⁹

The end of the Cold War heralded new possibilities for international criminal justice.⁶⁰ Established in 1993 and 1994, respectively, the International Criminal Tribunal for Yugoslavia (“ICTY”) and the International Criminal Tribunal for Rwanda indicted over two hundred individuals for war crimes, crimes against humanity, and genocide.⁶¹ But neither tribunal had jurisdiction over aggression.⁶²

In parallel to the operations of these ad hoc tribunals, states renewed efforts to create a *permanent* international criminal body.⁶³ In 1998, diplomats gathered in Rome to negotiate the founding treaty of the ICC.

But debates over aggression almost led to the collapse of negotiations.⁶⁴ Though a majority of states supported the ICC’s jurisdiction over the crime, a handful of powerful states, including the United States, objected, fearing prosecutions of their own leaders.⁶⁵ Eventually, the delegates found a compromise. They included aggression in the statute but agreed to define it later.⁶⁶

In 2010, the ASP to the ICC reached a consensus on aggression in Kampala.⁶⁷ The so-called “Kampala Amendments” to the Rome Statute went into force

Nuremberg, domestic courts prosecuted thousands of other Nazi officials. Scharf, *supra* note 55, at 370.

58. WEISBORD, *supra* note 34, at 56. See generally Ferencz, *supra* note 42.

59. Ferencz, *supra* note 42, at 707.

60. It should be noted that the U.N. General Assembly adopted a resolution defining “aggression” in 1974—but a court with jurisdiction over aggression would have to wait. U.N. GAOR, 29th Sess., 2319th plen. mtg., U.N. Doc. A/9631 (Dec. 14, 1974); BETH VAN SCHAACK & RON SYLE, A CONCISE HISTORY OF INTERNATIONAL CRIMINAL LAW 41 (2007).

61. See CRYER ET AL., *supra* note 57, at 299; VAN SCHAACK & SYLE, *supra* note 60, at 42–43; WEISBORD, *supra* note 34, at 71–89.

62. S.C. Res. 827, Statute of the International Criminal Tribunal for the Former Yugoslavia (May 25, 1993); S.C. Res. 955, Statute of the International Criminal Tribunal for Rwanda (Nov. 8, 1994); *A New Court to Prosecute Russia’s Illegal War?*, INT’L CRISIS GRP. (Mar. 29, 2023), <https://www.crisisgroup.org/global-ukraine/new-court-prosecute-russias-illegal-war> [https://perma.cc/YRK7-C6BC]; Claus Kreß, Editorial Comment, *On the Activation of ICC Jurisdiction over the Crime of Aggression*, 16 J. INT’L CRIM. JUST. 1, 5 (2018).

63. CRYER ET AL., *supra* note 57, at 144; G.A. Res. 44/39, International Criminal Responsibility of Individuals and Entities Engaged in Illicit Trafficking in Narcotic Drugs Across National Frontiers and Other Transnational Criminal Activities: Establishment of an International Criminal Court with Jurisdiction over Such Crimes (Dec. 4, 1989).

64. WEISBORD, *supra* note 34, at 89, 91.

65. *Id.*

66. Kreß, *supra* note 62, at 1, 4; see also WEISBORD, *supra* note 34, at 89, 91.

67. WEISBORD, *supra* note 34, at 101–10.

in 2018.⁶⁸ With their passage, the ICC became the first international tribunal since the era immediately after the Second World War with jurisdiction over the crime of aggression.⁶⁹

Finally, leaders could *theoretically* be prosecuted for states' illegal uses of interstate force. But jurisdictional limitations in the Kampala Amendments—advocated for, once again, by a small group of states—sharply curtailed the possibility of prosecution in practice.⁷⁰ As of this writing, the ICC has yet to prosecute *anyone* for aggression. A longstanding pattern—in which powerful governments continue to stymie efforts to prosecute unlawful force—continues.

II. PROSECUTING AGGRESSION

In 2018, more than seventy years after the Tokyo and Nuremberg Tribunals convicted Japanese and German officials for crimes against peace, the ICC's jurisdiction over aggression finally went into force. This Part discusses the possibilities of criminally prosecuting aggression in the present day, both at the ICC and at the domestic level. Section II.A begins with an overview of the definition of “acts” and “crimes” of aggression under the Rome Statute. It then explores the ICC's limited jurisdiction over the crime and why the court is likely prevented from prosecuting Rwandan leaders for aggression in the DRC. Section II.B explores how immunity would likely prevent domestic courts from prosecuting Rwandan leaders for crimes of aggression.

A. Prosecuting Aggression at the ICC: Jurisdictional Limitations

Article 8 *bis* of the Rome Statute defines a “crime” of aggression as “the planning, preparation, initiation or execution, by a person in a position effectively to exercise control over or to direct the political or military action of a State, of an *act of aggression* which, by its character, gravity and scale, constitutes a manifest violation of the Charter of the United Nations.”⁷¹ An “act of aggression” refers to 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.”⁷² The article provides a non-exhaustive list of acts which “qualify as an act of aggression,” including “[t]he invasion or attack by the armed forces of a State of the territory of another State” and

68. PERMANENT MISSION OF THE PRINCIPALITY OF LIECHTENSTEIN TO THE UNITED NATIONS ET AL., RATIFICATION AND IMPLEMENTATION OF THE KAMPALA AMENDMENTS ON THE CRIME OF AGGRESSION TO THE ROME STATUTE OF THE ICC 1 (2019), <https://crimeofaggression.info/documents/1/handbook.pdf> [<https://perma.cc/7RW4-5V9A>].

69. CRYER ET AL., *supra* note 57, at 297, 301.

70. See discussion *infra* Parts II, IV.

71. Rome Statute, *supra* note 24, art. 8 *bis*(1) (emphasis added).

72. *Id.* art. 8 *bis*(2).

“[a]n attack by the armed forces of a State on the land, sea or air forces, or marine and air fleets of another State.”⁷³

Part IV of this Article analyzes both “crimes” and “acts” of aggression and their application to the contemporary Rwanda–DRC context. But it is worth noting a few key aspects of aggression here. First, unlike the three other “core” crimes over which the ICC has jurisdiction—war crimes, crimes against humanity, and genocide—aggression is “inextricably linked to an unlawful act of a State against another State.”⁷⁴ Second, and relatedly, aggression primarily concerns *jus ad bellum* (the law governing the use of interstate force) rather than *jus in bello* (international humanitarian law or “IHL”).⁷⁵ Third, aggression is exclusively a *leadership* crime.⁷⁶ Individuals not in a position to “exercise control over or to direct the political or military action of the State which committed the act of aggression” are excluded from potential ICC prosecution.⁷⁷ Last, the crime of aggression does not capture *all* illegal instances of interstate force. If an “act of aggression” does not, by virtue of “its character, gravity and scale,” constitute “a manifest violation of the Charter of the United Nations,” it may fall below the threshold necessary for a crime of aggression.⁷⁸

The inclusion of aggression in the Rome Statute represented a breakthrough in the history of international criminal law. But the crime’s *jurisdictional* regime is troubling.

For all other crimes except aggression, the ICC can establish jurisdiction on the basis of *either* territory *or* nationality.⁷⁹ Imagine, for instance, two hypothetical states, Oceania and Arcadia. Oceania has ratified the Rome Statute, while Arcadia has not.⁸⁰ On the basis of nationality, the ICC could theoretically prosecute an Oceanian national, for instance, for war crimes, *regardless of where the crimes were committed*. On the basis of territory, the ICC could also

73. *Id.* art. 8 *bis*(2)(a), (d).

74. CRYER ET AL., *supra* note 57, at 297.

75. Frédéric Mégret, *International Criminal Justice as a Peace Project*, 29 EUR. J. INT’L L. 835, 842 (2019); CRYER ET AL., *supra* note 57, at 302 (“Aggression differs markedly from genocide, crimes against humanity, and war crimes in that, unlike those crimes, it concerns the *jus ad bellum* (the law governing recourse to armed conflict) and therefore raises questions of international law regarding State responsibility for aggressive acts.”).

76. Rome Statute, *supra* note 24, art. 8 *bis*(1) (emphasis added).

77. INT’L CRIM. CT. [ICC], ELEMENTS OF CRIMES, ICC-PIOS-LT-03-002/15_Eng, art. 8 *bis*(Introduction)(2) (2013) [hereinafter ELEMENTS OF CRIMES]; *see also* CRYER ET AL., *supra* note 57, at 303.

78. ELEMENTS OF CRIMES, *supra* note 77, art. 8 *bis*(Elements)(5); Jennifer Trahan, Essay, *The Need for an International Tribunal on the Crime of Aggression Regarding the Situation in Ukraine*, 46 FORD. INT’L L.J. 671, 678 (2023).

79. Rome Statute, *supra* note 24, art. 12(2).

80. Assume, for the sake of the hypothetical, that Arcadia has also not accepted the International Criminal Court’s (“ICC”) jurisdiction through a declaration under Article 12(3) of the Rome Statute.

prosecute individuals for acts committed on the territory of Oceania, *regardless of the nationality of the alleged perpetrator*. Thus, the ICC could prosecute Arcadian nationals for crimes committed in Oceania, despite the fact that Arcadia never accepted the ICC's jurisdiction, while Oceanian nationals could be prosecuted without geographical restriction.

Jurisdiction for aggression is substantially more limited. Namely, the court exclusively has jurisdiction over acts of aggression when *both the aggressor state and the victim state have accepted the ICC's jurisdiction*. In other words, when it comes to a state that has not ratified the Rome Statute—or otherwise accepted the ICC's jurisdiction—the court is prohibited from exercising its jurisdiction “over the crime of aggression when committed by that state's nationals *or* on its territory.”⁸¹

Accepting this “jurisdictional loophole” was necessary to win the approval of more conservative states in Kampala.⁸² But the consequences are enormous. The ICC cannot exercise jurisdiction over a crime of aggression: (1) committed by the *nationals* of a non-state party; or (2) committed on the *territory* of a non-state party.⁸³ To return to the example, the court could not prosecute an act of aggression by Oceania against Arcadia *or* by Arcadia against Oceania.⁸⁴

There is only one exception to this limitation. Namely, the UNSC can refer an alleged crime of aggression to the ICC, thereby overriding the limitation discussed above.⁸⁵

The Rome Statute's “jurisdictional loophole” on aggression has garnered particular attention since Russia's 2022 invasion of Ukraine.⁸⁶ Because Russia

81. Rome Statute, *supra* note 24, art. 15 *bis*(5) (emphasis added).

82. See WEISBORD, *supra* note 34, at 105–10.

83. Carrie McDougall, Symposium, *Expanding the ICC's Jurisdiction over the Crime of Aggression*, 22 J. INT'L CRIM. JUST. 543, 544. (“[T]he Court is unable to investigate or prosecute crimes of aggression . . . of any crime of aggression committed by a non-State Party's nationals or on a non-State Party's territory.”).

84. Some states argue that the ICC's jurisdiction over aggression is limited even further—namely, that it is not sufficient for both victim and aggressor states to be states parties to the Rome Statute. Rather, they contend that for the ICC to have jurisdiction over an act of aggression, both the victim and the aggressor state must have ratified the Kampala Amendments. Under this view, only acts of aggression committed by and to the forty-five states which have ratified the amendments would fall under the court's jurisdiction. This view, however, is only held by a minority of states parties. For a detailed analysis of this, see *id.* at 545–53.

85. Rome Statute, *supra* note 24, art. 15(ter); *How the Court Works*, ICC, <https://www.icc-cpi.int/about/how-the-court-works> [<https://perma.cc/Z446-XY6W>].

86. See Oona Hathaway et al., *The Legal Authority to Create a Special Tribunal to Try the Crime of Aggression upon the Request of the UN General Assembly*, JUST SEC. (May 5, 2023), <https://www.justsecurity.org/86450/the-legal-authority-to-create-a-special-tribunal-to-try-the-crime-of-aggression-upon-the-request-of-the-un-general-assembly/> [<https://perma.cc/5HHD-VQSS>]; Jennifer Trahan, *The Case for Creating a Special Tribunal to Prosecute the Crime of Aggression Against Ukraine (Part III)*, JUST SEC. (Sept. 26, 2022), <https://www.justsecurity.org/83238/tribunal-crime-of-aggression-part-three/> [<https://perma.cc/F38M-9JWK>]; André de Hoogh, *Personal Immunities Redux Before a Special Tribunal for Prosecuting Russian Crimes of Aggression: Resistance is*

is not a state party to the Rome Statute, the ICC cannot prosecute Russian officials for aggression in Ukraine.⁸⁷ And because Russia is a permanent member of the UNSC with veto power, there is no possibility of a UNSC resolution referring the situation to the ICC.⁸⁸

The ICC would similarly lack jurisdiction over crimes of aggression committed by Rwandan nationals, given that Rwanda is not a state party to the Rome Statute.⁸⁹ And while Rwanda is not a permanent member of the UNSC, the likelihood of a UNSC resolution granting the ICC jurisdiction over alleged crimes of aggression committed by Rwandan leaders in the DRC is extremely slim. The UNSC has only twice referred cases to the ICC in its history, neither of which involved aggression.⁹⁰ And in a climate marked by vociferous opposition to the ICC among UNSC members, including Russia⁹¹ and the United States,⁹² a referral to the court related to Rwanda's aggression is scarcely imaginable.

B. Prosecuting Aggression at the Domestic Level: The Challenges of Immunity

Prosecutions of international crimes are not limited to the ICC. A court of *last resort* with "jurisdiction limited to the most serious crimes of concern to the international community as a whole,"⁹³ the ICC is, by design, "complementary to national jurisdictions."⁹⁴ At present, domestic courts represent

Futile!, EJIL: TALK! (Jan. 5, 2024), <https://www.ejiltalk.org/personal-immunities-redux-before-a-special-tribunal-for-prosecuting-russian-crimes-of-aggression-resistance-is-futile/> [https://perma.cc/Y7NX-FRTJ]; Tom Dannenbaum, *Mechanisms for Criminal Prosecution of Russia's Aggression Against Ukraine*, JUST SEC. (Mar. 10, 2022), <https://www.justsecurity.org/80626/mechanisms-for-criminal-prosecution-of-russias-aggression-against-ukraine/> [https://perma.cc/243L-M5D9].

87. *The States Parties to the Rome Statute*, ICC, <https://asp.icc-cpi.int/states-parties> [https://perma.cc/H43E-KXKD].

88. U.N. Charter arts. 23(1), 27(3).

89. ICC, *supra* note 87. Rwandan President Paul Kagame has notably been a vociferous critic of the court. See Faisal Edroos, *Rwanda's Paul Kagame Accuses ICC of Bias Against Africa*, AL JAZEERA (Apr. 29, 2018), <https://www.aljazeera.com/news/2018/4/29/rwandas-paul-kagame-accuses-icc-of-bias-against-africa> [https://perma.cc/4DSC-TBSQ].

90. See *In Hindsight: The Security Council and the International Criminal Court*, S.C. REP. (July 31, 2018), https://www.securitycouncilreport.org/monthly-forecast/2018-08/in_hindsight_the_security_council_and_the_international_criminal_court.php [https://perma.cc/97QP-8B5E]; S.C. Res. 1593 (Mar. 31, 2005); S.C. Res. 1970 (Feb. 26, 2011).

91. Leila Sackur, *Russia Issues Retaliatory Arrest Warrant for International Criminal Court Prosecutor*, NBC NEWS (May 20, 2023), <https://www.nbcnews.com/news/world/russia-ukraine-war-international-criminal-court-arrest-warrant-rcna85396> [https://perma.cc/XW7B-89BB].

92. Jennifer Hansler, *Trump Admin Imposes Sanctions on More International Criminal Court Officials*, CNN (Aug. 20, 2025), <https://www.cnn.com/2025/08/20/politics/trump-international-criminal-court-sanctions> [https://perma.cc/U2R8-KTL7].

93. Rome Statute, *supra* note 24, art. 5.

94. *Id.* art. 1.

critical fora for holding individuals accountable for grievous international crimes.⁹⁵

Domestic prosecutions for aggression, specifically, are possible.⁹⁶ According to Jennifer Trahan, approximately forty states had incorporated the crime of aggression into their domestic law as of 2022. Of these states, approximately twenty have “universal jurisdiction” over the offense.⁹⁷

A key challenge for domestic prosecutions, however, is immunity. At the most basic level, state officials are generally immune from the criminal jurisdiction of other states for certain acts in select circumstances.⁹⁸ In the context of domestic aggression prosecutions, two kinds of immunity are salient: personal immunity and functional immunity.⁹⁹

Personal immunity (or status-based immunity) “is a status-based type of immunity from foreign criminal jurisdiction which is enjoyed by a small number of high-level State officials” during their time in office.¹⁰⁰ It provides members of the “troika”—“heads of State, heads of government and ministers for foreign affairs”—with immunity for “all acts performed, whether in a private or official capacity . . . during or prior to their term of office.”¹⁰¹ Personal immunity is broad. Even in the case of alleged war crimes and crimes against humanity, for example, the International Court of Justice (“ICJ”) found no customary international law exception “to the rule according immunity from criminal

95. See generally *Universal Jurisdiction Annual Review-UJAR*, TRIAL INT’L, <https://trialinternational.org/resources/universal-jurisdiction-tools/universal-jurisdiction-annual-review-ujar/> [<https://perma.cc/7HFR-9GQR>]; *France: The Court of Cassation Confirms the Jurisdiction of French Courts in Two Syrian Cases*, INT’L FED’N FOR HUM. RTS. (May 12, 2023), <https://www.fidh.org/en/issues/international-justice/universal-jurisdiction/france-the-court-of-cassation-confirms-the-jurisdiction-of-french> [<https://perma.cc/XE26-6MXE>]. There is evidence that these efforts are increasing—according to a coalition of NGOs, “36 new investigations [of international crimes] were opened in 2023 compared to 2022—a remarkable 33% increase of the total number of cases.” TRIAL INT’L ET AL., *UNIVERSAL JURISDICTION ANNUAL REVIEW 2024*, at 11 (2024), https://trialinternational.org/wp-content/uploads/2024/04/UJAR-2024_digital.pdf [<https://perma.cc/5DP9-J7QG>].

96. See generally Scharf, *supra* note 55.

97. Jennifer Trahan, *A Reminder of the Importance of the Crime of Aggression: Considering the Situation of Russia and Ukraine*, OPINIOJURIS (Feb. 4, 2022), <https://opiniojuris.org/2022/02/04/a-reminder-of-the-importance-of-the-crime-of-aggression-considering-the-situation-of-russia-and-ukraine/> [<https://perma.cc/5U4K-88R8>].

98. ILC, *Draft Articles on Immunity of State Officials from Foreign Criminal Jurisdiction*, U.N. Doc. A/CN.4/L.701 (2007).

99. *Id.* arts. 3, 5.

100. OPEN SOC’Y JUST. INITIATIVE, *IMMUNITIES AND A SPECIAL TRIBUNAL FOR THE CRIME OF AGGRESSION AGAINST UKRAINE* 5 (2023).

101. ILC, *supra* note 98, art. 4(2). As observed by the International Court of Justice (“ICJ”), immunities for these high-level officials are intended to “ensure the effective performance of their functions on behalf of their respective States.” OPEN SOC’Y JUST. INITIATIVE, *supra* note 100, at 5 (citing *Arrest Warrant of 11 April 2000 (Dem. Rep. Congo v. Belg.)*, Judgment, 2002 I.C.J. 3, ¶ 53 (Feb. 14)).

jurisdiction and inviolability to incumbent Ministers for Foreign Affairs.”¹⁰² As observed by the Open Society Justice Initiative (“OSJI”), “[P]ersonal immunity applies to all civil and criminal proceedings, even for international crimes. . . . [A] *troika* member who has allegedly committed the crime of aggression will enjoy personal immunity for so long as they remain a *troika* member.”¹⁰³ To summarize, personal immunity would likely bar any domestic prosecutions in other states for any active head of state, head of government, or minister for foreign affairs for crimes of aggression.

Under the principle of functional immunity, state officials broadly—rather than exclusively *troika* members—are immune “from the exercise of foreign criminal jurisdiction.”¹⁰⁴ In contrast to personal immunity, functional immunity applies “only with respect to acts performed in an official capacity.”¹⁰⁵ But any non-*troika* defendant accused of aggression could likely assert that their actions were done in an “official capacity,” given that aggression is contingent on state action.

There is, however, a long-standing exception to functional immunity.¹⁰⁶ Courts have generally not allowed an individual’s official position to protect them from prosecution for *international crimes*.¹⁰⁷ But in the ILC’s Draft Articles on Immunity of State Officials from Foreign Criminal Jurisdiction, “aggression” was (controversially) *not* included in a list of international crimes for which functional immunity would not apply; all other Rome Statute crimes were included.¹⁰⁸ All told, it is unclear how a domestic court would handle functional immunity in the aggression context.

Taken together, personal and functional immunity present substantial barriers to domestic aggression prosecutions. The former protects *troika* members as long as they remain in office. This limitation is critical given that aggression is a leadership crime¹⁰⁹—presumably, *troika* members would be key targets for any prosecution of aggression.¹¹⁰ Functional immunity could provide an even greater hurdle. If a domestic court, following the ILC, did not interpret “aggression” as falling within the “international crime” exception, functional immunity could theoretically protect *all* other state officials from prosecution, presuming that their contributions took place in an “official capacity.”

102. *Dem. Rep. Congo v. Belg.*, 2002 I.C.J. ¶ 58.

103. OPEN SOC’Y JUST. INITIATIVE, *supra* note 100, at 7 (emphasis added). It should be noted that personal immunity is contingent on status and applies “*only* during their term of office.” ILC, *supra* note 98, art. 4(2) (emphasis added).

104. ILC, *supra* note 98, art. 5.

105. *Id.* art. 6(1).

106. OPEN SOC’Y JUST. INITIATIVE, *supra* note 100, at 22.

107. *Id.*

108. ILC, *supra* note 98, art. 7.

109. Rome Statute, *supra* note 24, art. 8 *bis*(1).

110. Trahan, *supra* note 78, at 688.

III. ARMED CONFLICT IN EASTERN DRC

Prior to determining how the jurisdictional and immunity regimes described above might limit prosecutions for Rwanda's aggression, it is necessary to understand the broader DRC–Rwanda context. To that end, this Part explores the ongoing armed conflict in eastern DRC that involves Rwanda, DRC, the M23, and a host of other states and non-state armed groups. Section III.A provides a historical overview of the Rwanda–DRC conflict beginning with the 1994 Rwandan Genocide (also referred to as the 1994 genocide against the Tutsi in Rwanda) and continuing through M23's emergence and initial defeat in 2012 and 2013. Section III.B discusses the current conflict. It begins with M23's 2021 resurgence—and Rwanda's parallel deployment into eastern DRC in support of M23—and continues until 2025 (the time at which this Article was drafted).

A. *From the Rwandan Genocide to M23: A Brief Historical Overview*

In the spring of 1994, the Rwandan Genocide shocked the conscience of the world.¹¹¹ Over the course of approximately one hundred days, the erstwhile Rwandan government and allied militias slaughtered over 800,000 Rwandan Tutsis and moderate Hutus.¹¹² Despite detailed reports, the United Nations—and the international community writ large—failed to prevent or stop the violence.¹¹³

By July 1994, the Rwandan Patriotic Forces (“RPF”)—a rebel group led predominantly by Rwandan Tutsis in exile in neighboring Uganda—had defeated the *génocidaires*, installing a new government and ending the genocide.¹¹⁴

111. This Part begins with the 1994 Rwandan Genocide. However, a deeper analysis of the current armed conflict involving DRC and Rwanda would begin many decades earlier and include an analysis of Belgium's colonization of both states. Notably, it would consider Belgium's role in the origins of the Hutu–Tutsi divide and in the forced movement of Kinyarwanda speakers from Rwanda to the DRC. See generally MAHMOUD MAMDANI, *WHEN VICTIMS BECOME KILLERS* (2020).

112. JASON STEARNS, *DANCING IN THE GLORY OF MONSTERS: THE COLLAPSE OF THE CONGO AND THE GREAT WAR OF AFRICA* 15 (2011). For a broad overview of the Rwandan Genocide and its aftermath, see generally MAMDANI, *supra* note 111; PHILIP GOUREVITCH, *WE WISH TO INFORM YOU THAT TOMORROW WE WILL BE KILLED WITH OUR FAMILIES: STORIES FROM RWANDA* (1998).

113. Rep. of the Independent Inquiry of the Actions of the United Nations During the 1994 Genocide in Rwanda (1999), transmitted by Letter dated 15 December 1999 to the Secretary-General, at 30, U.N. Doc. S/1999/1257 (Dec. 16, 1999) (“The overriding failure in the response of the United Nations before and during the genocide in Rwanda can be summarized as a lack of resources and a lack of will to take on the commitment which would have been necessary to prevent or stop the genocide.”).

114. *Id.* at 5; *Rwanda: A Historical Chronology*, PBS (2014), <https://www.pbs.org/wgbh/pages/frontline/shows/rwanda/etc/cron.html> [<https://perma.cc/B84B-PZUJ>]; GÉRARD PRUNIER, *AFRICA'S WORLD WAR* 7 (2011).

The RPF takeover provoked a mass exodus. The former Rwandan government, its military, and associated militias fled across the country's western border into Zaire (now known as the DRC), bringing over one million Rwandan Hutu refugees with them.¹¹⁵

Settled in Zaire, Rwanda's former *génocidaire* government began organizing, rapidly re-arming, and conducting cross-border raids against Rwanda. Their objective was unambiguous: a guerrilla war against the new Rwandan government dubbed—in *génocidaire* rhetoric, which referred to Tutsis as “cockroaches”—“Operation Insecticide.”¹¹⁶

By 1996, Rwanda, alongside Uganda, invaded Zaire, seeking to end “the military threat” by the former Rwandan government operating from Zairean refugee camps.¹¹⁷ But Rwandan leader Paul Kagame and his Ugandan counterpart, President Yoweri Museveni, had greater ambitions too—the overthrow of Mobutu Sese Seko, dictator of the Zairean state since the mid-1960s. To mask their involvement, they established *L'Alliance des Forces Démocratiques pour la Libération du Congo* (Alliance of Democratic Forces for the Liberation of the Congo or “AFDL”), a proxy force led by veteran Congolese rebel Laurent-Désiré Kabila. The new coalition quickly swept across the country, overthrowing Mobutu and installing Kabila as the president of the renamed Democratic Republic of the Congo in May 1997.¹¹⁸ These hostilities, known as the First Congo War, lasted less than one year.

But the alliance between Mzee Kabila and his backers was short-lived, as Kabila quickly sought to distance himself from Rwanda and Uganda.¹¹⁹ In 1998, Rwanda and Uganda once again invaded, sparking the Second Congo War (1998–2003). Rwandan forces quickly took control of much of eastern DRC. But this time, the Congolese government was not without allies—military deployments from Angola, Zimbabwe, and other regional states prevented a quick Rwandan–Ugandan victory.¹²⁰ Unlike the First Congo War, the Second Congo War led to a divided country, in which a host of actors controlled different regions. These included regional states operating through proxy groups. The Rwandan government backed the *Rassemblement Congolaise pour la Démocratie* (Congolese Rally for Democracy or “RCD”).¹²¹

115. PRUNIER, *supra* note 114, at 53.

116. *Id.*

117. FILIP REYNTJENS, *THE GREAT AFRICAN WAR: CONGO AND REGIONAL GEOPOLITICS, 1996–2006*, at 73 (2009).

118. PRUNIER, *supra* note 114, at 67; JASON STEARNS, *THE WAR THAT DOESN'T SAY ITS NAME: THE UNENDING CONFLICT IN THE CONGO* 33 (2022).

119. STEARNS, *supra* note 112, at 183.

120. *See* STEARNS, *supra* note 118, at 33.

121. *Id.*

Congolese dissidents theoretically led the RCD. But from the beginning, Rwanda exerted meaningful control. As the RCD conquered more than twenty-five percent of the DRC in 1998–1999, Rwanda approved all major expenditures, and Rwandan military commanders led all military operations.¹²²

The war ended, at least in theory, in 2002. Belligerents signed the *Accord Global et Inclusif de Pretoria* (Pretoria Comprehensive and Inclusive Agreement), which reunified the country, shared government positions among the signatories, and established the *Forces armées de la république démocratique du Congo* (Armed Forces of the Democratic Republic of the Congo or “FARDC”), a new national army composed largely of fighters from the various belligerents.¹²³

But for RCD and Rwanda, the deal raised concerns. Militarily powerful but unpopular, RCD could not maintain power democratically.¹²⁴ The organization had “gone from controlling almost a third of Congo, including some of the most lucrative trade and mining areas, to almost nothing.”¹²⁵ A resource extraction effort in eastern DRC, the proceeds of which financed Rwanda’s war effort, could come to an end.¹²⁶

Safety and security concerns existed as well. Kinyarwanda-speaking Congolese (known collectively as *Banyarwanda*)—both Hutu and Tutsi—had been the “backbone” of the RCD; the group was perceived as guaranteeing their safety, especially that of the Tutsi.¹²⁷ And for Rwanda’s government, the threat of cross-border *génocidaire* attacks had not disappeared. The *Forces Démocratiques pour la Libération du Rwanda* (Democratic Forces for the Liberation of Rwanda or “FDLR”), an armed group established by Rwandan *génocidaires* in 1994, remained one of the most substantial armed groups in eastern DRC.¹²⁸

In 2004, Laurent Nkunda, a Congolese Tutsi and former RCD officer, launched a new rebellion against the Congolese government.¹²⁹ Beginning in 2006, his *Congrès National pour la Défense du Peuple* (National Congress for the Defense of the People or “CNDP”) survived repeated FARDC efforts to defeat it.¹³⁰ The CNDP benefited from substantial Rwandan support.¹³¹

122. STEARNS, *supra* note 112, at 209–13.

123. STEARNS, *supra* note 118, at 38–39.

124. *Id.* at 41–42.

125. STEARNS, *supra* note 112, at 323.

126. REYNTJENS, *supra* note 117, at 294.

127. JASON STERNS, RIFT VALLEY INST., FROM CNDP TO M23: THE EVOLUTION OF AN ARMED MOVEMENT IN EASTERN CONGO 18 (2012), <https://riftvalley.net/wp-content/uploads/2018/06/RVI-USalama-Project-1-CNDP-M23.pdf> [<https://perma.cc/X3VP-XM9K>].

128. DRC AFFINITY GROUP & PATRYCJA STYS, SOC. SCI. RSCH. COUNCIL, FDLR: PAST, PRESENT, AND POLICIES 12–13 (2014), <https://www.ssrc.org/publications/fdlr-past-present-and-policies/> [<https://perma.cc/GRP4-AJ69>]. For a discussion of whether FDLR still presents a security threat to Rwanda, see *infra* Section IV.B.

129. STEARNS, *supra* note 112, at 322.

130. STEARNS, *supra* note 127, at 31.

131. *Id.* at 33.

The DRC and Rwanda eventually reached an agreement on March 23, 2009.¹³² As part of the deal, the CNDP would be dismantled and integrated into the FARDC.¹³³ But in the following years, as the Congolese government sought to degrade the ex-CNDP networks within the FARDC and establish effective command-and-control, former CNDP soldiers began to desert *en masse*.¹³⁴ In 2012, mutineers announced the formation of the March 23 Movement, with the stated goal of implementing the eponymous agreement between CNDP and the DRC. The new rebellion quickly took over substantial territory, notably capturing the provincial capital of Goma in November 2012.¹³⁵ Human rights groups accused M23 of horrific abuses, including extrajudicial killings and forced recruitment.¹³⁶ The FARDC, too, committed serious violations, including widespread sexual violence.¹³⁷

M23's capture of Goma alarmed the international community. The United States and other powerful donors, including the European Union ("EU") and Germany, restricted aid to Rwanda. In total, donors froze more than 200 million dollars in financial assistance.¹³⁸ U.S. President Barack Obama called Rwandan President Kagame personally, demanding that Rwanda cease support for M23.¹³⁹

The pressure worked. Soon, Rwanda ceased supporting its proxy. In parallel, the FARDC leadership was reorganized, and the Force Intervention Brigade ("FIB"),

132. STEARNS, *supra* note 118, at 140.

133. Peace Agreement Between the Government and le Congrès National pour la Défense du Peuple (CNDP) art. 1.1(a), Mar. 23, 2009 (Dem. Rep. Congo), <https://peacemaker.un.org/sites/default/files/document/files/2024/05/cd090323peace20agreement20between20the20government20and20the20cndp.pdf> [<https://perma.cc/8P6P-XLV7>] ("The CNDP confirms the irreversible nature of its decision to cease its existence as a politico-military movement. It undertakes to . . . integrate its police force and its armed units into the Congolese National Police and the Armed Forces of the Democratic Republic of the Congo, respectively.")

134. *La résurgence du M23: rivalités régionales, politique des donateurs et blocage du processus de paix* [*The Resurgence of the M23: Regional Rivalries, Donor Politics and the Blocking of the Peace Process*], EBUTELI (Aug. 6, 2024), <https://www.ebuteli.org/publications/rapports/rapport-la-resurgence-du-m23-rivalites-regionales-politique-des-donateurs-et-blocage-du-processus-de-paix> [<https://perma.cc/XS2S-DLF5>].

135. STEARNS, *supra* note 118, at 145.

136. *DR Congo: M23 Rebels Committing War Crimes*, HUM. RTS. WATCH (Sept. 11, 2012), <https://www.hrw.org/news/2012/09/11/dr-congo-m23-rebels-committing-war-crimes> [<https://perma.cc/2MRQ-QA9Z>].

137. *Report on Human Rights Violations Perpetrated Near Sake, Goma and Minova*, MONUSCO (Sept. 6, 2013), <https://monusco.unmissions.org/en/report-human-rights-violations-perpetrated-near-sake-goma-and-minova> [<https://perma.cc/JH9F-QEAN>].

138. Obi Anyadike, *Goma Capture Sparks Fears of Deeper Regional Conflict as Rwanda-Backed Rebels Push South*, NEW HUMANITARIAN (Jan. 31, 2025), <https://www.thenewhumanitarian.org/news-feature/2025/01/31/drc-goma-capture-sparks-fears-deeper-regional-conflict-rwanda-backed-rebels-m23> [<https://perma.cc/VG6Y-HANQ>].

139. Jason Stearns, *Rwanda's Troublemaking in DRC Would Be Easy to Stop*, FIN. TIMES (Jan. 26, 2025), <https://www.ft.com/content/8bae4ecd-9fd8-48c6-824c-41b929b640d7> [<https://perma.cc/P7S5-VRMU>].

a regional offensive military force composed of troops from South Africa, Tanzania, and Malawi, deployed into DRC, launching joint operations with the FARDC. Faced with a regional offensive and without support from Kigali, M23 collapsed.¹⁴⁰ In December 2013, M23 leadership committed to ending its armed rebellion, while the Congolese government committed to conditional amnesty and social reinsertion of M23 combatants.¹⁴¹ Since then, except for small skirmishes, the group largely faded from view for nearly a decade.¹⁴²

B. *M23's Resurgence: From 2021 to the Present*

1. *M23 Re-emerges*

After years of relative dormancy, M23 began attacking Congolese military posts in the fall of 2021.¹⁴³ The timing was curious. M23 representatives had just left Kinshasa after negotiations with the Congolese government reached an impasse.¹⁴⁴ But perhaps most significantly, the DRC had recently authorized Uganda—Rwanda's neighbor—to build an important set of roads between the two countries, roads which would facilitate the transportation of resources from eastern DRC through Uganda, bypassing Rwanda.¹⁴⁵ In late November, after a bombing attack in Uganda attributed to the Allied Democratic Forces, another armed group in the DRC, the Congolese government authorized Uganda to deploy soldiers into the DRC's North Kivu province.¹⁴⁶ For the Rwandan government, these developments were extremely concerning.¹⁴⁷ Rwanda's President Paul Kagame allegedly asked DRC President Felix Tshisekedi to cancel the DRC–Uganda road project directly—Tshisekedi refused.¹⁴⁸

At first, the M23–FARDC skirmishes did not dominate the news cycle. But in 2022, M23 began ratcheting up its operations on multiple fronts, notably

140. Daniel Levine-Spound & Ari Tolany, *A Decade Ago, the Obama Administration Acted when the M23 Terrorized Eastern DRC. Will Biden Do the Same?*, JUST SEC. (Apr. 13, 2023), <https://www.justsecurity.org/85966/a-decade-ago-the-obama-administration-acted-when-the-m23-terrorized-eastern-drc-will-biden-do-the-same/> [https://perma.cc/4BNQ-Y43T].

141. IPIS ET AL., *supra* note 3, at 10.

142. EBUTELI, *supra* note 134.

143. *Gunmen Seize Villages in DRC near Uganda, Rwanda Borders*, AL JAZEERA (Nov. 8, 2021), <https://www.aljazeera.com/news/2021/11/8/gunmen-seize-villages-in-drc-near-uganda-rwanda-borders> [https://perma.cc/XAU2-CB8L].

144. EBUTELI, *supra* note 134, at 22–23.

145. *Id.* at 15–16.

146. INT'L CRISIS GRP., CRISIS GRP. AFR. BRIEFING NO. 181, *EASING THE TURMOIL IN THE EASTERN DR CONGO AND GREAT LAKES 3–4* (May 25, 2022), <https://www.crisisgroup.org/africa/great-lakes/democratic-republic-congo-uganda-burundi-rwanda/easing-turmoil-eastern-dr-congo> [https://perma.cc/U5QQ-BLPK].

147. EBUTELI, *supra* note 134, at 16.

148. *Id.*

taking over key towns.¹⁴⁹ Thousands of Congolese civilians fled the violence, a sign of the mass displacement to come.¹⁵⁰

From the beginning, it was clear that M23 did not resemble other armed groups in the area. Highly structured and well-equipped, M23 had the proven capacity to resupply its troops, recruit new combatants, and hold territory.¹⁵¹ As Bintou Keita, the United Nations' highest representative in the DRC, explained, "M23 has conducted itself increasingly as a conventional army rather than an armed group."¹⁵²

As M23 advanced, the FARDC sought to retake lost territory.¹⁵³ But M23 won battle after battle, dramatically expanding the area under its control.¹⁵⁴ Looking for support, the Congolese government turned to a host of other actors. In 2022, the Congolese government began providing armed groups with weapons and ammunition.¹⁵⁵ Loosely referred to as *Wazalendo* ("Patriots" in Swahili), these armed groups also began participating alongside the FARDC in operations against M23.¹⁵⁶

The DRC has looked to other actors as well. In 2022, the Congolese government invited a regional force under the auspices of the East African Community into the DRC.¹⁵⁷ Frustrated by the force's unwillingness to seek to dislodge M23, the Congolese government then turned to the Southern African

149. U.N. Group of Experts (2022), *supra* note 1, ¶ 66; Djaffar Sabiti & Stanis Bujakera, *Congo Rebels Seize Eastern Border Town, Army Blames Rwanda*, REUTERS (June 13, 2022), <https://www.reuters.com/world/africa/congo-rebels-seize-key-eastern-border-town-local-activists-say-2022-06-13/> [<https://perma.cc/F5MT-7D3B>].

150. Sabiti & Bujakera, *supra* note 149.

151. U.N. Group of Experts on the Democratic Republic of the Congo, Confidential Update: July 2022, ¶ 14; *see also* Morgane Le Cam, *Confidential UN Report Provides 'Solid Evidence' of Rwanda's Involvement in the East DRC*, LE MONDE (Aug. 5, 2022), https://www.lemonde.fr/en/international/article/2022/08/05/confidential-un-report-provides-solid-evidence-of-rwanda-s-involvement-in-the-east-drc_5992599_4.html [<https://perma.cc/W9FN-UXGQ>]; Nellie Peyton & Hereward Holland, *U.N. Experts: Rwanda Has Intervened Militarily in Eastern Congo*, REUTERS (Aug. 4, 2022), <https://www.reuters.com/world/africa/un-experts-say-rwanda-has-intervened-militarily-eastern-congo-2022-08-04/> [<https://perma.cc/TR8R-MZGU>].

152. Edith M. Lederer, *UN Envoy Warns Congo's M23 Rebels Are Acting like an Army*, AP NEWS (June 29, 2022), <https://apnews.com/article/africa-rwanda-united-nations-peacekeeping-forces-angola-c995421228c480461af02cc68dc9b4aa> [<https://perma.cc/U3SW-LZ4S>].

153. Daniel Levine-Spound & Niku Jafarnia, *New Armed Conflict in DR Congo: A Renewed Call for Civilian Protection*, JUST SEC. (June 30, 2022), <https://www.justsecurity.org/82155/new-armed-conflict-in-dr-congo-a-renewed-call-for-civilian-protection/> [<https://perma.cc/3R6W-BUQX>]; U.N. Group of Experts (2022), *supra* note 1, ¶ 62.

154. U.N. Group of Experts on the Democratic Republic of the Congo, *supra* note 151, ¶ 14.

155. *DR Congo: Army Units Aided Abusive Armed Groups*, HUM. RTS. WATCH (Oct. 18, 2022), <https://www.hrw.org/news/2022/10/18/dr-congo-army-units-aided-abusive-armed-groups> [<https://perma.cc/TE97-CRJR>].

156. *Id.*

157. *M23 Rebels Pledge to Retreat from Key Position in Eastern DRC*, AL JAZEERA (Dec. 23, 2022), <https://www.aljazeera.com/news/2022/12/23/dr-congos-m23-rebels-pledge-to-retreat-from-key-position> [<https://perma.cc/CDK8-CKBV>].

Development Community, which deployed its own regional force at the end of 2023.¹⁵⁸ The Congolese government also hired European private military and security companies and continued to collaborate with the *Mission de l'Organisation des Nations Unies pour la stabilisation en République démocratique du Congo* (U.N. Organization Stabilization Mission in the DRC, or “MONUSCO”), the U.N. peacekeeping mission in the DRC.¹⁵⁹

But nothing has worked. Many of the DRC government’s rotating cast of allies have withdrawn, while the area under M23 control has progressively ballooned.¹⁶⁰

2. *Rwandan Intervention*

From the beginning, M23 has not fought alone. The U.N. Group of Experts for the DRC (“U.N. GOE”) reported on the presence of Rwandan military troops—the RDF—alongside M23 as early as November 2021.¹⁶¹ In July 2022, the U.N. GOE reported that it had “solid evidence of the presence of, and military operations conducted by, RDF members.”¹⁶² The U.N. GOE further specified that RDF, “either unilaterally or jointly with [M23] combatants, engaged in military operations against Congolese armed groups and FARDC positions.”¹⁶³ For instance, on May 24 and May 25, 2022, RDF troops attacked multiple FARDC posts near the town of Kibumba.¹⁶⁴ And throughout May and June 2022, RDF led multiple attacks against armed groups aligned with the FARDC.¹⁶⁵ Other organizations similarly concluded that RDF was operating alongside M23.¹⁶⁶

The evidence documented by the U.N. GOE in its July 2022 report is substantial. It includes photos, videos, and eyewitness accounts attesting to the

158. *East African Regional Force Starts Withdrawing from DRC*, FRANCE24 (Dec. 3, 2023), <https://www.france24.com/en/live-news/20231203-east-african-regional-force-begins-withdrawal-from-drc> [<https://perma.cc/5D69-F889>]; *Deployment of the SADC Mission in the Democratic Republic of Congo*, S. AFR. DEV. COMM. (Jan. 4, 2024), <https://www.sadc.int/latest-news/deployment-sadc-mission-democratic-republic-congo> [<https://perma.cc/JN72-SXG3>].

159. Simone Schlindwein, *Are White Mercenaries Fighting in the DRC Conflict?*, DEUTSCHE WELLE (Jan. 17, 2023), <https://www.dw.com/en/are-white-mercenaries-fighting-in-the-drc-conflict/a-64407711> [<https://perma.cc/7MNL-RF6X>]; Carine Tope, *North Kivu: MONUSCO and FARDC Launch Codenamed Operation Springbok to Protect the City of Goma*, MONUSCO (Nov. 8, 2023), <https://monusco.unmissions.org/en/north-kivu-monusco-and-fardc-launch-codenamed-operation-springbok-protect-city-goma> [<https://perma.cc/YA25-XVB7>].

160. Levine-Spound, *supra* note 1.

161. U.N. Group of Experts on the Democratic Republic of the Congo, *supra* note 151, ¶ 40.

162. *Id.* ¶ 37.

163. *Id.* ¶ 43.

164. *Id.* ¶¶ 37, 45–46.

165. *Id.* ¶ 44.

166. *DR Congo: Resurgent M23 Rebels Target Civilians*, HUM. RTS. WATCH (July 25, 2022), <https://www.hrw.org/news/2022/07/25/dr-congo-resurgent-m23-rebels-target-civilians> [<https://perma.cc/SFL2-NV6R>].

presence of RDF troops—or troops wearing RDF uniforms—crossing the DRC–Rwanda border or operating inside the DRC, recovered weapons and munitions, the arrest of RDF soldiers by Congolese troops and police, and testimony of M23 and RDF combatants.¹⁶⁷ In multiple instances, the U.N. GOE obtained evidence of what appear to be hundreds of RDF soldiers marching in areas under M23 control.¹⁶⁸

Evidence also suggests that Rwanda has provided substantial material to M23, including uniforms, weapons, artillery, and ammunition.¹⁶⁹ As the U.N. GOE notably warned, “it may become increasingly difficult to distinguish [M23] combatants from RDF soldiers.”¹⁷⁰ Evidence suggests that M23 received training from the RDF as well.¹⁷¹

3. *Things Get Worse*

Over time, M23 and RDF have massively expanded the areas under their control.¹⁷² Between April and December 2024, the RDF/M23-controlled territory increased by 30 percent.¹⁷³ One year later, by November 2025, the U.N. GOE reported that the areas under M23–RDF control were “the largest ever recorded, representing a 100 per cent increase compared with November 2024.”¹⁷⁴ As of January 2025, the International Peace Information Service (“IPIS”) estimated M23’s “area of influence” to be 7,800 kilometers squared, nearly one-third the size of Rwanda itself.¹⁷⁵

Rwanda and M23 have profoundly transformed areas under their control, including establishing parallel governance administrations, replacing displaced local authorities with supporters, and setting up revenue-generating schemes, including taxes, paid roadblocks, and forced labor.¹⁷⁶ Evidence suggests efforts to permanently alter these areas, including by occupying public buildings, destroying archives and property records, redistributing land, and

167. U.N. Group of Experts on the Democratic Republic of the Congo, *supra* note 151, ¶¶ 36, 37–62.

168. *Id.*

169. *Id.* ¶ 42.

170. *Id.* ¶ 54.

171. *Id.* ¶ 42.

172. Midterm Rep. of the Group of Experts on the Democratic Republic of the Congo (2024), transmitted by Letter dated 27 December 2024 from the Group of Experts on the Democratic Republic of the Congo Addressed to the President of the Security Council, ¶¶ 35–37, U.N. Doc. S/2024/969 (Dec. 27, 2024) [hereinafter U.N. Group of Experts (2024)].

173. *Id.* at 12.

174. U.N. Group of Experts (2025), *supra* note 1, ¶ 19.

175. IPIS, *supra* note 2; *Land Areas (Sq. Km)—Rwanda*, WORLD BANK DATA, <https://data.worldbank.org/indicator/AG.LND.TOTL.K2?end=2022&locations=RW&start=1961&view=chart> [https://perma.cc/35RN-6JKQ].

176. IPIS ET AL., *supra* note 3, at 23–25.

forcibly transferring civilians.¹⁷⁷ Notably, reports suggested that M23 has both deported thousands of Congolese civilians to Rwanda and, in parallel, encouraged thousands of Congolese refugees previously living in Rwanda to move *back* to the DRC, including to homes formerly occupied by displaced persons.¹⁷⁸

They also established military camps, recruiting and training thousands of new soldiers, often by force.¹⁷⁹ As of July 2025, the U.N. GOE reported that more than 7,000 recruits were undergoing training, including thousands of whom joined under duress.¹⁸⁰ Forced recruits include children and adolescents abducted in conquered areas.¹⁸¹

The town of Rubaya presents a useful example of M23 and RDF's management of occupied territory. An important mining town with substantial mineral deposits, Rubaya fell to M23 and RDF in April 2024.¹⁸² Since then, M23 and RDF "organized all aspects of mineral production," establishing a "state-like administration" that issued permits to miners and traders, set up security patrols, and required that all minerals go to M23-approved traders.¹⁸³ As areas under M23–RDF control include roads from Rubaya to the Rwandan border, minerals were transported directly to Rwanda, benefitting both M23 and the broader Rwandan economy.¹⁸⁴ The U.N. GOE estimated that M23 collects at least \$800,000 monthly through the taxation of Coltan trade and production from Rubaya alone.¹⁸⁵

The demands of M23 have varied over time. But in training centers, recruits have been informed that objectives include the defeat of the FDLR armed group, the return of Congolese refugees, and the overthrow of the government in Kinshasa.¹⁸⁶

In January 2025, M23 launched a surprise attack on Goma, the capital of North Kivu province. A barrage of terrifying rumors and gruesome images depicting heavy fighting, panicked civilians, and dead bodies began circulating in WhatsApp groups.¹⁸⁷ When the dust settled, M23 controlled the city—at least 2,900 people died in the fighting, while many thousands more were

177. U.N. Group of Experts (2025), *supra* note 1, ¶¶ 26–27.

178. *Id.* at Annex 17.

179. U.N. Group of Experts (2024), *supra* note 172, at 11.

180. U.N. Group of Experts (2025), *supra* note 1, at 10.

181. *Id.* at 69.

182. Christina Malkia & Mark Banchereau, *M23 Rebels Seize Key Smartphone Mineral Mining Town in Eastern Congo*, AP NEWS (May 2, 2024), <https://apnews.com/article/congo-rebels-mining-smartphones-efecc189dfa64a2a010fd3240fc3880> [<https://perma.cc/QJP9-LZQQ>].

183. U.N. Group of Experts (2024), *supra* note 172, at 14.

184. *Id.* at 14–15.

185. *Id.* at 15.

186. U.N. Group of Experts (2025), *supra* note 1, at 8.

187. The author is part of a number of these WhatsApp groups.

injured and displaced. After taking Goma, M23 moved south, taking over Bukavu, another Congolese city of over one million people, two weeks later.¹⁸⁸

RDF's presence once again proved critical to M23's advance. A "conservative estimate" of 6,000 RDF soldiers were in eastern DRC during the takeover of Goma and Bukavu.¹⁸⁹ As of this writing, RDF maintains "de facto" control over M23 operations, supervises all M23 units, and continues to use advanced weaponry against M23's adversaries.¹⁹⁰ Without Rwanda, there is no M23.

4. Consequences for Civilians

Since the beginning of the Rwanda–DRC–M23 conflict in 2021, the consequences for civilians have been disastrous. M23 has intentionally attacked or abused civilians, including through summary executions, sexual violence, forced recruitment, and torture.¹⁹¹ In November 2022, for example, Amnesty International reported that M23 fighters raped more than sixty women and girls in and around the town of Kishishe.¹⁹² Human Rights Watch reported on mass graves containing scores of bodies believed to be civilians and militia fighters during M23's occupation of the town.¹⁹³ Reporting suggests that M23 has also killed civilians through indiscriminate fire, including by shelling displacement camps.¹⁹⁴ And in areas under their control, M23 has subjected civilians to forced labor and abusive taxation, physically punishing those who refuse to comply.¹⁹⁵

Violations have not lessened over time. In July 2025, the U.N. Office of the High Commissioner for Human Rights reported that "at least 319 civilians were killed by M23 fighters" with the support of RDF in a period of two weeks.¹⁹⁶ The victims, who include children, were primarily farmers cultivating their fields.¹⁹⁷

188. Emery Makumeno, *Second DR Congo City Falls to Rwanda-Backed Rebels*, BBC NEWS (Feb. 16, 2025), <https://www.bbc.com/news/articles/c0qr8q5v52o> [<https://perma.cc/23YN-26D4>].

189. U.N. Group of Experts (2025), *supra* note 1, at 13–15.

190. U.N. Group of Experts (2024), *supra* note 172, at 12–13.

191. U.N. Group of Experts on the Democratic Republic of the Congo, *supra* note 151, ¶¶ 29–36. See generally AMNESTY INT'L, DRC: "THEY SAID WE WOULD DIE": M23 AND WAZALENDO ABUSES IN EASTERN CONGO (Aug. 20, 2025), <https://www.amnesty.org/en/documents/afr62/0145/2025/en/> [<https://perma.cc/36NU-5EST>].

192. *A Year of Anguish: Remembering the Killings and Sexual Violence in Kishishe*, AMNESTY INT'L (Dec. 1, 2023), <https://www.amnesty.org/en/latest/news/2023/12/a-year-of-anguish-remembering-the-killings-and-sexual-violence-in-kishishe/> [<https://perma.cc/U4AQ-KPQQ>].

193. *DR Congo: Mass Graves Tied to Rwanda-Backed M23*, HUM. RTS. WATCH (June 14, 2023), <https://www.hrw.org/news/2023/06/14/dr-congo-mass-graves-tied-rwanda-backed-m23> [<https://perma.cc/94RJ-7YLM>].

194. *Id.*

195. IPIS ET AL., *supra* note 3, at 26.

196. Vibhu Mishra, *Armed Militia Kill Hundreds in Eastern DR Congo*, U.N. NEWS (Aug. 6, 2025), <https://news.un.org/en/story/2025/08/1165586> [<https://perma.cc/V6BQ-LXKE>].

197. *Id.*

To be sure, M23's opponents have also committed egregious abuses against civilians. The FARDC has notably partnered with abusive non-state armed groups, including groups responsible for extrajudicial killing, rape, and illegal taxation.¹⁹⁸

Beyond direct violations by the parties to the conflict, the violence has led to the displacement of more than two million Congolese civilians.¹⁹⁹ More than 700,000 people were displaced in January and February 2025 alone.²⁰⁰ Many IDPs suffer from inadequate access to food, water, healthcare, or education.²⁰¹ Poor sanitation has led to the spread of diseases, including cholera and measles.²⁰²

The displacement crisis has led to a surge of sexual and gender-based violence.²⁰³ In 2023, the U.N. Population Fund found that “[s]exual violence has soared in Eastern DRC,” noting that “[w]omen and girls living in displacement sites have reported that they are at risk of rape and sexual assault, exacerbated by the need to travel outside of camps in search of supplies for their basic needs.”²⁰⁴ Doctors Without Borders similarly registered an “unprecedented” number of survivors of sexual violence.²⁰⁵

Given the range of actors involved, the current conflict can be difficult to grasp. But the complexities should not prevent us from recognizing Rwanda's full-scale invasion of the DRC as setting in motion a devastating pattern of abuses. Whatever the intricacies, this core violation of the international legal order is at the center of the devastating cycle of violence.

198. HUM. RTS. WATCH, *supra* note 155.

199. Uebersax, *supra* note 5; *Alarming Humanitarian Crisis in Eastern DRC Calls for Urgent Action to Protect Vulnerable Populations*, IOM (July 2, 2024), <https://www.iom.int/news/alarming-humanitarian-crisis-eastern-drc-calls-urgent-action-protect-vulnerable-populations> [<https://perma.cc/ER9V-ZBF3>]; Sengenya, *supra* note 5; U.N. NEWS, *supra* note 5.

200. Jason Stearns, *DRC: “This Is Our War, Not Some Distant, Irrational Outbreak of Violence in Africa,”* LE MONDE (Feb. 19, 2025), https://www.lemonde.fr/en/le-monde-africa/article/2025/02/19/drc-this-is-our-war-not-some-distant-irrational-outbreak-of-violence-in-africa_6738326_124.html [<https://perma.cc/A6SD-SFZ9>].

201. Devon Cone & Abdullahi Boru Halakhe, *Ensuring Women's Protection Amid Rising Conflict in Eastern DRC*, REFUGEES INT'L (Apr. 5, 2024), <https://www.refugeesinternational.org/reports-briefs/ensuring-womens-protection-amid-rising-conflict-in-eastern-drc/> [<https://perma.cc/77P3-UPTH>].

202. Alexis Hugué, *Massive Needs Everywhere as Displacement Reaches Unprecedented Levels in DRC*, MÉDECINS SANS FRONTIÈRES (Dec. 20, 2023), <https://www.msf.org/drc-massive-needs-everywhere-displacement-reaches-unprecedented-levels>.

203. Press Release, Médecins sans Frontières, *Alarming Numbers of Sexual Violence Victims in Camps Around Goma* (May 9, 2023), <https://www.msf.org/drc-alarming-numbers-sexual-violence-victims-camps-around-goma>.

204. U.N. POPULATION FUND, *supra* note 6.

205. MÉDECINS SANS FRONTIÈRES, *supra* note 6.

IV. RWANDAN AGGRESSION IN EASTERN DRC: ALLEGATIONS AND DEFENSES

Drawing on the historical overview outlined above, this Part analyzes whether Rwandan officials have committed crimes of aggression in eastern DRC. Section IV.A argues that the elements of the crime—as articulated in the ICC's Rome Statute and Elements of Crimes—have likely been met. Section IV.B analyzes two potential Rwandan defenses to charges of aggression, concluding that neither is convincing.

A. *Acts and Crimes of Aggression in Eastern DRC*

As noted previously, the Rome Statute defines the “crime” of aggression as:

[T]he planning, preparation, initiation or execution, by a person in a position effectively to exercise control over or to direct the political or military action of a State, of an act of aggression which, by its character, gravity and scale, constitutes a manifest violation of the Charter of the United Nations.²⁰⁶

It defines an “act” of aggression as “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.”²⁰⁷ The Rome Statute further includes a host of examples of actions which “qualify as an act of aggression.”²⁰⁸

The ICC's Elements of Crimes—a document intended to “assist the Court in the interpretation and application”²⁰⁹ of articles detailing the crimes—breaks the crime of aggression into six constitutive elements:

1. The perpetrator planned, prepared, initiated, or executed an act of aggression.
2. The perpetrator was a person in a position effectively to exercise control over or to direct the political or military action of the State which committed the act of aggression.
3. The act of aggression—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—was committed.
4. The perpetrator was aware of the factual circumstances that established that such a use of armed force was inconsistent with the U.N. Charter.

206. Rome Statute, *supra* note 24, art. 8 *bis*(1).

207. *Id.* art. 8 *bis*(2).

208. *Id.*; ELEMENTS OF CRIMES, *supra* note 77, art. 8 *bis*(Introduction)(1).

209. Rome Statute, *supra* note 24, art. 9(1).

5. The act of aggression, by its character, gravity, and scale, constituted a manifest violation of the U.N. Charter.
6. The perpetrator was aware of the factual circumstances that established such a manifest violation of the U.N. Charter.²¹⁰

Prosecuting an individual for the crime of aggression, at least at the ICC, would likely require satisfying all six of these elements. But the aim of this Article is more circumscribed. It does not, for example, call for the prosecution of *specific* Rwandan defendants, which would require substantial investigation. Instead, it focuses primarily on elements concerning Rwanda's *act* of aggression (the "state conduct" element), with some attention paid to the other elements.

More specifically, this Part briefly considers the first two elements and then provides more detailed analyses of the third and fifth elements. It does not analyze the fourth and sixth elements, given that they primarily concern the alleged perpetrator's *mens rea*. (While this Article discusses *mens rea* in the context of certain aforementioned elements, it does not offer a stand-alone, defendant-specific analysis of *mens rea*.)²¹¹

1. *Planning, Preparation, Initiation, or Execution*

The requisite individual conduct for aggression is as follows: "the perpetrator *planned, prepared, initiated or executed*" a specific state action—"violence by a State against another State."²¹² Planning may constitute "participating in high-level meetings during which plans for the acts of aggression are formulated, and enacting legislation, decrees and ordinances concerning the aggressive plans."²¹³ Preparation "refers to concrete steps taken to realize the plan and can include acts to create the necessary military or economic capacities to commit acts of aggression and political and diplomatic maneuvers."²¹⁴ Initiation "includes the decision taken immediately before the first use of force to commit the act of aggression, including by way of a declaration of hostilities, and the first actual use of force."²¹⁵ Finally, execution constitutes "all substantive

210. ELEMENTS OF CRIMES, *supra* note 77, art. 8 *bis*(Elements)(1–6).

211. Further scholarship could analyze the specific Rwandan leaders who could theoretically be prosecuted for aggression. Such analyses would, necessarily, include a thorough analysis of individual defendants' *mens rea*. As this Article is focused primarily on Rwanda's act of aggression—and does not call for the prosecution of specific defendants—its discussion of *mens rea* is limited.

212. ELEMENTS OF CRIMES, *supra* note 77, art. 8 *bis*(Elements)(1); Nikola R. Hajdin, *The Actus Reus of the Crime of Aggression*, 34 LEIDEN J. INT'L L. 489, 504 (2021).

213. James A. Goldston, *Model Indictment for the Crime of Aggression Committed Against Ukraine*, OPEN SOC'Y JUST. INITIATIVE, at 28, ¶ 70 (May 2022), <https://www.justsecurity.org/81411/osji-model-indictment-for-the-crime-of-aggression-committed-against-ukraine/> [https://perma.cc/E63B-QTLF].

214. *Id.* at 31.

215. *Id.* at 58.

strategic acts undertaken after the initiation of an act of aggression to secure the continuation and success of the aggressive act.”²¹⁶

All four conduct verbs are likely satisfied by various Rwandan officials. From 2021 to 2025, the RDF has launched extensive military operations across the DRC's North Kivu and South Kivu provinces. These operations involved thousands of troops, complex weaponry, and extensive coordination with M23, including the provision of weapons, training, logistical support, and information. M23 and RDF have conquered dozens of Congolese towns and villages, often replacing existing leadership and governance authorities with officials favorable to them. In areas under their control, M23 and RDF have set up administrative, taxation, and economic structures, including processes for exploiting and transporting minerals, training thousands of new combatants, and taxing individuals and families. Such extensive operations could not have taken place had Rwandan leaders not planned for, prepared, initiated, and executed them.²¹⁷

The U.N. GOE has cited multiple individuals whose actions may satisfy some of the conduct verbs. The U.N. GOE, for instance, cites Brigadier General Andrew Nyamvumba for “coordinating” RDF operations on the ground, General James Kabarebe for “design[ing] and coordinat[ing]” operations in North Kivu, and a host of high-level Rwandan military officials for providing “support for the implementation of the operations.”²¹⁸ An investigation would need to determine whether these actions fall within the conduct verbs. But several of these officials may be responsible for execution, defined by the OSJI as “strategic acts undertaken after the initiation of an act of aggression to secure the continuation and success of the aggressive act,”²¹⁹ which may include “commanding armed forces conducting the acts of aggression, and governing territory occupied as a result of the acts of aggression.”²²⁰

As noted, Rwanda has never acknowledged the RDF's operations in eastern DRC or its support to M23. But certain statements by Rwandan officials could be perceived as justifying actions taken by both M23 and RDF. These statements could fall within “preparation,” which includes “preparing official justification for acts of aggression.”²²¹ In 2022, for instance, Rwandan President Paul Kagame asserted that Rwanda's “current doctrine is to go and fight the fire at

216. *Id.* at 59 (citing CARRIE MCDUGALL, *THE CRIME OF AGGRESSION UNDER THE ROME STATUTE OF THE INTERNATIONAL CRIMINAL COURT* 239 (2d ed. 2021)).

217. See discussion *supra* Part III.

218. Final Rep. of the Group of Experts on the Democratic Republic of the Congo (2023), transmitted by Letter dated 13 June 2023 from the Group of Experts on the Democratic Republic of the Congo Addressed to the President of the Security Council, ¶¶ 59–62, Annex 35, U.N. Doc. S/2023/431 (June 13, 2023).

219. Goldston, *supra* note 213, at 59 (citing MCDUGALL, *supra* note 216, at 239).

220. *Id.* at 58.

221. *Id.* at 31–32.

its origin We do what we must do, with or without the consent of others,” likely in reference to eastern DRC.²²² In 2024, Kagame asserted that the M23’s fighters “exist because they have been denied their rights” and evoked “the injustice” done to the Tutsi community in the DRC.²²³ Such statements could be seen as potential justifications for RDF operations.

Lastly, satisfying the conduct requirement requires demonstrating the corresponding *mens rea*. Under the Rome Statute, generally, “[A] person shall be criminally responsible and liable for punishment for a crime . . . only if the material elements are committed with intent and knowledge.”²²⁴ For conduct specifically, intent requires that the perpetrator “means to engage in the conduct.”²²⁵ Stated differently, the defendant “must mean to (in other words, have the purpose to) plan, prepare, initiate or execute an act of aggression.”²²⁶

In the context of Rwanda–DRC, this *mens rea* requirement might rule out officials who did not specifically *intend* to contribute to Rwanda’s alleged act of aggression. But given Rwanda’s multi-year military campaign and attendant military occupation of large parts of eastern DRC—both of which undoubtedly required substantial coordination and planning—it is highly unlikely that *no* high-level Rwandan military and civilian leader intended to contribute to Rwanda’s act of aggression.

2. Leadership

The crime of aggression can only be committed by a small subset of individuals.²²⁷ The Elements of Crimes requires that the perpetrator “was a person in a position effectively to exercise control over or to direct the political or military action of the State which committed the act of aggression.”²²⁸ The title and exact nature of the position is left open. Moreover, in a footnote, the Elements of Crimes indicate that, “With respect to an act of aggression, more than one person may be in a position that meets these criteria.”²²⁹ For example, “[A]n entire cabinet . . . can be liable if each individual” is aware that they are exercising control, even jointly.²³⁰

222. INT’L CRISIS GRP., *supra* note 146, at 3.

223. Reuters, *M23 Rebels ‘Have Been Denied Their Rights,’ Says Rwanda’s Kagame*, at 00:30, YOUTUBE (Apr. 9, 2024), <https://www.youtube.com/watch?v=qpFar2ZqI74> [https://perma.cc/EH9V-23BK].

224. Rome Statute, *supra* note 24, art. 30(1).

225. *Id.* art. 30(2)(a).

226. Noah Weisbord, *The Mens Rea of the Crime of Aggression*, 12 WASH. U. GLOBAL STUD. L. REV. 487, 492 (2013).

227. Hajdin, *supra* note 212, at 490.

228. ELEMENTS OF CRIMES, *supra* note 77, art. 8 *bis*(Elements)(2) (citation omitted).

229. *Id.* art. 8 *bis*(Elements)(2), n.75.

230. Weisbord, *supra* note 226, at 493.

The leadership element also implicates mens rea. Namely, “[T]he defendant must *know* that he or she is a leader of a state, and is in a position to effectively exercise control (not merely formally, like a figurehead), or to direct the political or military action of a state.”²³¹ Effective control in the absence of knowledge of said control does not satisfy the mens rea requirement.

Here, multiple Rwandan officials would likely satisfy both requirements vis-à-vis Rwanda’s aggression in the DRC. Rwandan law may provide some evidence. Under Rwanda’s constitution, “The President of the Republic is the Commander-in-Chief of the Rwanda Defence Force.”²³² The president also “declares war” and has the power to sign “peace agreements.”²³³ Additionally, the “Chief of Defence Staff is responsible for the operations and general administration of the Rwanda Defence Force.”²³⁴ A 2012 Order stipulates that the leadership of the RDF includes, inter alia, “the Commander-in-Chief,” “the Minister of Defence,” and “the Chief of Defence Staff of Rwanda Defence Forces.”²³⁵

Investigation would be necessary to determine whether officials in the aforementioned positions exercised *effective* control and to determine their *awareness* of their control.²³⁶ (A title alone is presumably insufficient.)²³⁷ But given the temporal and geographic scope of Rwanda’s military operations in the DRC—and the highly centralized character of the Rwandan state—it seems probable that at least some high-level officials both *exercised* effective control *and* were aware of their control.

3. *An Act of Aggression Was Committed*

A key aspect of proving the *crime* of aggression is demonstrating an *act* of aggression. According to the Elements of Crimes, “[A]ny of the acts referred to in article 8 *bis*, paragraph 2, qualify as an act of aggression.”²³⁸ The list includes, inter alia, the following four actions:

231. *Id.*

232. Constitution of the Republic of Rwanda, May 26, 2003, art. 108(1).

233. *Id.* art. 108(2).

234. *Id.* art. 159(2).

235. Presidential Order No. 33/09 of 03/09/2012 Determining the Organisation and Responsibilities of Each of the Military Services of Rwanda Defence Forces, art. 3 (2012), *superseded by* Presidential Order No. 15/01 of 25/08/2025 Governing the Decision-Making Councils of the Rwanda Defence Force, art. 2 (2025) (Rwanda) (still including Commander-in-Chief, Minister of Defence, and Chief of Defence Staff in RDF leadership).

236. See Dayna Ziukelis, *Establishing the Mens Rea of the Crime of Aggression in the Rome Statute of the International Criminal Court*, 24 AUSTL. INT’L L.J. 135, 150 (2018).

237. *See id.*

238. This aligns with the text of Article 8 *bis*(2) of the Rome Statute itself, which reads: “Any of the following acts, regardless of a declaration of war, shall . . . qualify as an act of aggression.” Rome Statute, *supra* note 24, art. 8 *bis*(2).

- “The invasion or attack by the armed forces of a State of the territory of another State, or any military occupation, however temporary, resulting from such invasion or attack, or any annexation by the use of force of the territory of another State or part thereof;”
- “Bombardment by the armed forces of a State against the territory of another State or the use of any weapons by a State against the territory of another State;”
- “An attack by the armed forces of a State on the land, sea or air forces, or marine and air fleets of another State;” and
- “The sending by or on behalf of a State of armed bands, groups, irregulars or mercenaries, which carry out acts of armed force against another State of such gravity as to amount to the acts listed above, or its substantial involvement therein.”²³⁹

Rwanda’s armed operations in the DRC likely satisfy all four of these acts.

First, Rwanda’s actions constitute an invasion, an attack, *and* a military occupation of its eastern neighbor. Invasion requires that “the armed forces of one state cross the borders of another state with hostile intent, irrespective of whether or not shots are fired or actual combat occurs.”²⁴⁰ Here, Rwanda deployed thousands of RDF troops across the border into DRC. Insofar as they participated in the systematic conquering of Congolese towns and regularly attacked the FARDC, there is little doubt as to their “hostile intent.”

Rwanda’s actions also constitute an “attack,” understood as requiring “that weapons be in fact used beyond the presence of a threatening posture . . . the use of force must affect a piece of territory to which another state possesses sovereign title and the operation must be of a certain intensity.”²⁴¹ Here, thousands of RDF soldiers employed a range of weapons in battles against the Congolese military and its allies on the territory of the Congolese state. The “use of force” over the course of more than three years, which resulted in the takeover of both the provincial capitals of Goma and Bukavu and the displacement of close to two million civilians, is clearly of adequate intensity.

Rwanda’s presence in parts of eastern DRC likely constitutes a military occupation, at least in some areas. Article 42 of the Hague Regulations Respecting the Laws and Customs of War on Land stipulates that “[t]erritory is considered occupied when it is actually placed under the authority of the hostile army.”²⁴² The ICJ has provided further interpretation, noting—in the case of Uganda’s

239. *Id.* art. 8(2)(a)–(c), (g).

240. Claus Kreß, *The State Conduct Element*, in *THE CRIME OF AGGRESSION: A COMMENTARY*, *supra* note 32, at 412, 439.

241. *Id.*

242. Hague Convention (IV) Respecting the Laws and Customs of War on Land, with Annex of Regulations Annex, art. 42, Oct. 18, 1907, 36 Stat. 2227, 1 Bevans 631.

alleged occupation of parts of eastern DRC in the late 1990s and early 2000s—that, “[t]he Court will need to satisfy itself that the Ugandan armed forces in the DRC were not only stationed in particular locations but also that they substituted their own authority for that of the Congolese government.”²⁴³ Here, the RDF is not merely present. Instead, in areas under RDF–M23 control, Congolese authorities have largely been driven out and replaced by officials loyal to RDF–M23—the occupying powers have assumed governance responsibilities.²⁴⁴ After the takeover of Goma, for instance, M23 appointed new governing officials and explicitly revoked all previous appointments.²⁴⁵ In effect, M23 and RDF have displaced the Congolese state and “substituted their own authority” in areas under their control.

Second, RDF has bombarded areas of eastern DRC. Bombardment constitutes “any attack from land, sea or air bases with heavy weapons which, like artillery, missiles, or aircraft, are capable of destroying enemy targets at a greater distance beyond enemy lines.”²⁴⁶ Examples from Rwanda’s invasion are myriad. In 2024, for instance, RDF soldiers fired unguided area weapons—122 mm rockets—towards the road between Goma and Sake, killing and wounding “dozens of civilians in the overpopulated internally displaced person settlements” near Goma.²⁴⁷ The attacks were part of a larger pattern: “Between January and March 2024, M23 and RDF systematically fired on urban areas on the outskirts of Sake and Goma,” despite “awareness of the civilian population’s presence in or near the areas targeted” and “existence of . . . mass civilian casualties resulting from prior attacks.”²⁴⁸

Third, the RDF has consistently attacked Congolese military “forces,” including the “land” forces of the FARDC. From 2021 to 2025, RDF kinetically engaged FARDC troops in battles across North Kivu and South Kivu provinces.²⁴⁹

Fourth, Rwanda potentially committed acts of aggression vis-à-vis the actions of M23. Broadly, there are two plausible legal theories for this:

243. *Armed Activities on the Territory of the Congo (Dem. Rep. Congo v. Uganda)*, Judgment, 2005 I.C.J. 168, ¶ 173 (Dec. 19).

244. See discussion *supra* Part III.

245. Kim Aine, *M23 Rebels Install Gov't in Goma, Advance Toward Bukavu*, CHIMPREPORTS, (Feb. 6, 2025), <https://chimpreports.com/m23-rebels-install-govt-in-goma-advance-toward-bukavu/> [https://perma.cc/X59A-JCSC].

246. Krieb, *supra* note 240, at 442 (citing Avril McDonald & Thomas Bruha, *Bombardment*, in MAX PLANCK ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW 979–85 (R. Wolfrum ed., 2012)).

247. U.N. Group of Experts (2024), *supra* note 172, ¶ 52.

248. Final Rep. of the Group of Experts on the Democratic Republic of the Congo (2024), transmitted by Letter dated 31 May 2024 from the Group of Experts on the Democratic Republic of the Congo Addressed to the President of the Security Council, ¶¶ 94–95, U.N. Doc. S/2024/432 (June 4, 2024) [hereinafter U.N. Group of Experts (May 2024)].

249. See discussion *supra* Part III.

(1) Rwanda exercises “effective” or “overall” control over M23 such that its actions can be attributed to Rwanda; or (2) Rwanda “sent”—or was “substantially involved” in the sending—of M23 combatants into the DRC. Both theories are briefly discussed in turn.

a. Attribution: “Effective” or “Overall” Control

Assuming that M23 units are not “state organs . . . [i]n accordance with the internal law of the [Rwandan] State,” the question turns to the degree of control Rwanda exercises over the group.²⁵⁰ As a matter of state responsibility, the conduct of a non-state actor (like M23) “shall be considered an act of a State under international law if the person or group of persons is in fact acting on the instructions of, or under the direction or control of, that State in carrying out the conduct.”²⁵¹ The ICJ has interpreted the attribution standard as one of “effective control.”²⁵² This is a high bar. Arguably, it requires evidence that a state exercised control over the *specific* non-state armed group operations “in which the alleged violations occurred” to attribute said violations to the state.²⁵³

Determining whether, and in what instances, this test is satisfied would likely require further factual investigation. But evidence from the U.N. GOE suggests that Rwanda exercises “de facto control and direction over . . . [M23] military operations.”²⁵⁴ The U.N. GOE further asserted that RDF had “command and control” of M23’s military operations, including “strategic-level decision-making on whether to seize, hold or relinquish territory.”²⁵⁵ Ultimately, it is likely that over the course of the conflict, certain M23 operations—under the “effective control” of Rwanda—constituted enumerated acts of aggression

250. ILC, ARSIWA, *supra* note 25, art. 4. This Article does not consider whether M23 units might be “de facto” organs of the Rwandan state.

251. *Id.* art. 8.

252. Military and Paramilitary Activities in and Against Nicaragua (Nicar. v. U.S.), Judgment, 1986 I.C.J. 14, ¶ 115 (June 27); Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosn. & Herz. v. Serb. & Montenegro), 2007 I.C.J. 169, ¶¶ 400–01 (Feb. 26). For an analysis of the “effective control” standard, see generally Antonio Cassese, *The Nicaragua and Tadic Tests Revisited in Light of the ICJ Judgement of Genocide in Bosnia*, 18 EUR. J. INT’L L. 649 (2007).

253. Bosn. & Herz. v. Serb. & Montenegro, 2007 I.C.J. at 208 ¶ 400 (“It must however be shown that this ‘effective control’ was exercised, or that the State’s instructions were given, in respect of each operation in which the alleged violations occurred, not generally in respect of the overall actions taken by persons or groups of persons having committed this violation.”); see also Jennifer Maddocks, *The Conflict in Eastern DRC and the State Responsibility of Rwanda and Uganda*, ARTICLES OF WAR (Feb. 6, 2025), <https://lieber.westpoint.edu/conflict-eastern-drc-state-responsibility-rwanda-uganda/> [https://perma.cc/XV3D-Q295].

254. U.N. Group of Experts (2025), *supra* note 1, ¶¶ 18, 44.

255. *Id.* ¶ 18.

in the Rome Statute, such as “invasion[s]” as well as “attack[s].”²⁵⁶ As noted above, M23 has frequently engaged in kinetic operations against the FARDC and taken over dozens of Congolese cities and towns under RDF command.²⁵⁷

Alternatively, it is possible that a court could adopt an “overall control” standard to determine attribution. Initially developed by the ICTY and endorsed by the ICC,²⁵⁸ the overall control standard is less stringent than effective control.²⁵⁹ According to the ICTY, acts of a “paramilitary group” may be attributed to a state when “the State wields *overall control* over the group, not only by equipping and financing the group, but also by coordinating or helping in the general planning of its military activity.”²⁶⁰ Overall control attribution does not require, however, that “the State should also issue . . . instructions for the commission of specific acts contrary to international law.”²⁶¹

In this case, evidence suggests that the “overall control” standard is likely satisfied. As noted, Rwanda exercises “de facto control over M23 operations,” in addition to providing financial, logistical, and military support.²⁶² A court would need to conduct its own factual investigations. But assuming, *arguendo*, the validity of reports from the U.N. GOE and other credible organizations, it is difficult to argue that Rwanda has not exercised overall control over M23, at least at certain points between 2021 and 2025.

b. “Sending” or “Substantial Involvement”

Leaving aside Rwanda’s “effective” or “overall” control over M23, the Rome Statute provides another potential avenue through which a state can commit aggression vis-à-vis a proxy force. Namely, acts of aggression include “the sending by or on behalf of a State of armed bands, groups, irregulars or mercenaries, which carry out acts of armed force against another State of such gravity as to amount to the acts listed above, or its substantial involvement therein.”²⁶³ Thus, the question turns to whether Rwanda 1) “sent”—or was “substantially

256. This is not to argue that *all* potential violations of international law committed by M23 are ipso facto attributable to Rwanda. Rather, it is submitted here that M23 likely committed multiple acts—acts which likely fall within the enumerated acts of aggression in the Rome Statute—pursuant to Rwanda’s “instructions” and under its “effective control.” Bosn. & Herz. v. Serb. & Montenegro, 2007 I.C.J. at 208 ¶ 400.

257. See discussion *supra* Section IV.A.3.

258. See Marko Milanović, *Special Rules of Attribution of Conduct in International Law*, 96 INT’L L. STUD. 295, 317–24 (2020).

259. For a discussion of the advantages of “overall control,” see Cassese, *supra* note 252, at 655–61.

260. Prosecutor v. Tadić, IT-94-1-A, Judgment, ¶ 131 (Int’l Crim. Trib. for the Former Yugoslavia July 15, 1999).

261. *Id.*

262. U.N. Group of Experts (2024), *supra* note 172, ¶ 50.

263. Rome Statute, *supra* note 24, art. 8(2)(g).

involved” in the sending—of M23 combatants to 2) commit acts against the DRC that amounted to acts of aggression.

The second element is satisfied unambiguously, given M23’s systematic attacks against the FARDC and takeover of Congolese territory. But the precise meaning of the first element is far less clear. According to one commentary, the “*substantial involvement* of a state in *the sending*” of armed groups should be read alongside the “overall control” test, while “sending” should be read alongside the “effective control” test.²⁶⁴ Plausibly then, the sending and substantial involvement language could be read as simply recognizing the possibility of aggression vis-à-vis attribution, as discussed above.²⁶⁵ Alternatively, it is possible that “substantial involvement” represents another avenue, such that a state may commit aggression through substantial involvement in a proxy force, even if it does not exercise overall control over said force. José Manuel Aznar Puyalto, for instance, has argued that substantial involvement “should be understood by its ordinary meaning, which is wide enough to cover a broad range of acts that do not amount to the exercise of control.”²⁶⁶ Actions including “material and logistic support, financing, training, arming, equipping, aiding or organizing” could amount to “substantial involvement,” provided that such acts “allow[ed] or facilitate[ed] the armed group to commit the constitutive acts of aggression.”²⁶⁷

In any case, it is important to recall that the question of Rwanda’s relationship to M23 is *not* dispositive when it comes to acts of aggression. *Any* of the aforementioned acts would qualify as acts of aggression under the Rome Statute. Whether or not a potential court concluded, for instance, that Rwanda exercised “effective” or “overall” control over M23, it is beyond dispute that Rwanda’s military *unilaterally* attacked Congolese territory and its armed forces. Stated simply, an act—and likely, multiple acts—of aggression occurred.

4. *The Act of Aggression Was a Manifest Violation of the U.N. Charter Due to Its Character, Gravity, and Scale*

Not all acts of aggression give rise to criminal liability under the Rome Statute.²⁶⁸ If a state has committed an act of aggression, the analysis then turns

264. Kreß, *supra* note 240, at 449.

265. José Manuel Aznar Puyalto, *Proxy Wars and International Criminal Law*, VÖLKERRECHTSBLOG (Dec. 17, 2024), <https://voelkerrechtsblog.org/proxy-wars-and-international-criminal-law/> [<https://perma.cc/89TZ-2DYC>] (“This formulation has been traditionally understood to reflect the customary rules of attribution of acts of non-state actors to a State, rather than creating a particular act of aggression.”).

266. *Id.*

267. *Id.*

268. Nikola R. Hajdin, *How to Prosecute Ongoing Acts of Aggression Following the Initial Invasion*, LAWFARE (Oct. 27, 2023), <https://www.lawfaremedia.org/article/how-to-prosecute-ongoing-acts-of-aggression-following-the-initial-invasion> [<https://perma.cc/Y8DV-E2BN>].

to the following inquiry: Was the act of aggression a “manifest violation” of the U.N. Charter due to its “character, gravity, and scale?”

The Rome Statute and Elements of Crime provide little guidance as to the meaning of “manifest,” as well as the terms “character,” “gravity,” and “scale.” But several aspects should be highlighted. First, acts which fall within the U.N. Charter’s exceptions to the prohibition of interstate force—self-defense or with the authorization of the UNSC²⁶⁹—would not, generally, constitute violations of the U.N. Charter *at all*, not to mention “manifest” violations. Second, “the term ‘manifest’ is an objective qualification” not determined by the actors involved.²⁷⁰ Third, “manifest” must be read as implicating a certain level of “intensity.”²⁷¹ This is in line with the Sixth Understanding adopted by the ASP to the ICC in 2010, according to which “aggression is the most serious and dangerous form of the illegal use of force.”²⁷² Last, scholarship suggests that scale relates to the “spatial and temporal dimension of the use of force,” whereas gravity is determined based on “the number of human casualties on all sides” as well as “the scope of the disturbance of common life within the victim State.”²⁷³ In contrast, “character” is intended to exclude “uses of force that fall in the legal gray area surrounding” the prohibition of the use of interstate force.²⁷⁴

Despite the uncertainties regarding these terms, Rwanda’s use of force against the DRC likely satisfies the requirements. To begin with “scale,” Rwanda has deployed thousands of soldiers within eastern DRC since 2021.²⁷⁵ RDF continues to engage in military confrontations with the FARDC, a “collective act of use of violence” against the DRC.²⁷⁶ Regarding “gravity,” the ongoing armed conflict has resulted in the deaths of thousands of civilians and the displacement of many more.²⁷⁷

The remaining analysis, then, relates to the “character” of Rwanda’s intervention. To put it simply, an act of aggression is likely not a “manifest” violation of the Charter if its illegality is in question. In the case of Rwanda’s use

269. U.N. Charter arts. 2(4), 39, 51; *see also* Goldston, *supra* note 213, at 21 (“The acts of aggression, by their character, must constitute an evident violation of the [U.N.] Charter. The criterion of ‘manifest violation’ applies to uses of force which indisputably violate the prohibition on the threat or use of force in international law enshrined in Article 2(4) of the [U.N.] Charter.”).

270. CARRIE MCDUGALL, *THE CRIME OF AGGRESSION UNDER THE ROME STATUTE OF THE INTERNATIONAL CRIMINAL COURT* 127 (1st ed. 2013).

271. Kreß, *supra* note 240, at 510.

272. Assembly of State Parties to the Rome Statute, Resolution RC/Res.6, Understanding 6, Understandings Regarding the Amendments to the Rome Statute of the International Criminal Court on the Crime of Aggression (June 11, 2010).

273. Kreß, *supra* note 240, at 520.

274. *Id.* at 523–24.

275. U.N. Group of Experts (May 2024), *supra* note 248, ¶¶ 40–45.

276. Hajdin, *supra* note 212, at 504.

277. *See* discussion *supra* Part III.

of force in the DRC, there are two crucial questions: 1) Did Rwanda act in “self-defense”; or 2) did its use of force “fall in the legal gray area surrounding the prohibition of the use of force,” such as intervention to prevent a humanitarian catastrophe?²⁷⁸ As argued in Section IV.B, the answer to both questions is likely no.

B. Rwanda’s Justifications: Self-Defense and the Responsibility to Protect

There is substantial evidence to suggest that Rwanda’s actions constitute acts of aggression. But only acts of aggression which constitute “manifest violations” of the U.N. Charter give rise to criminal liability under the Rome Statute.²⁷⁹ If an instance of interstate force is plausibly justified as self-defense or implicates an unsettled area of jus ad bellum, it might not meet the requisite threshold for criminal prosecution.²⁸⁰

Rwanda has refused to officially acknowledge its troops in the DRC or its support to M23. But statements from Rwandan officials indicate two potential justifications for their state’s use of force in the DRC: 1) Rwanda is acting in self-defense in response to armed attacks from the FDLR armed group operating in the DRC;²⁸¹ and 2) Rwanda’s intervention was intended to protect the Congolese Tutsi community from violence, potentially a “gray area” of jus ad bellum.²⁸²

Neither argument is credible. First, while Rwanda may have security concerns, such concerns do not constitute a reasonable self-defense claim justifying

278. Krefß, *supra* note 240, at 510–11. The “legal gray area” includes questions related to self-defense which are discussed in Section IV.B.

279. Rome Statute, *supra* note 24, art. 8 *bis*(1).

280. It should be noted that this Section does *not* concern *individual defenses*, as articulated in Articles 31, 32, and 33 of the Rome Statute, such as mental disease, mistake of fact, or superior orders. *Id.* arts. 31–33. All these defenses—and others—could be implicated were prosecutions to take place. Instead, this Section considers justifications for *Rwanda’s* (the state’s) use of force. Given that this Article does not identify individual Rwanda leaders for prosecution, discussing the individual defenses laid out in the aforementioned articles would be of limited use.

281. On February 3, 2025, Rwandan President Paul Kagame replied, “I don’t know,” when asked about the presence of Rwandan troops in DRC; but he continued, “If you want to ask me, is there a problem in Congo that concerns Rwanda, and that Rwanda will do anything to protect itself, I’d say, 100%.” LARRY MADOWO, *EXCLUSIVE: President Paul Kagame Doesn’t Know if There Are Rwandan Troops in Congo*, at 00:24, YOUTUBE (Feb. 3, 2025), <https://www.youtube.com/watch?v=qW36WN7q7cc>; <https://www.youtube.com/watch?v=qW36WN7q7cc> [https://perma.cc/E9JU-VSSC]; see also François Soudan, *Paul Kagame: « Personne ne m’intimidera avec des menaces de sanctions »* [Paul Kagame: “No One Will Intimidate Me with Threats of Sanctions”], JEUNE AFRIQUE (Feb. 12, 2025), <https://www.jeuneafrique.com/1657080/politique/paul-kagame-personne-ne-mintimidera-avec-des-menaces-de-sanctions/> [https://perma.cc/PTQ8-TSRN].

282. Video posted by Jeune Afrique, FACEBOOK, *Est de la RDC : interview de Paul Kagame* [Eastern DRC: Interview with Paul Kagame] (Feb. 12, 2025), <https://www.facebook.com/jeuneafrique1/videos/est-de-la-rdc-interview-de-paul-kagame/1783201212479830/> [https://perma.cc/4JSL-QSPS].

its invasion of eastern DRC. Second, despite the real discrimination faced by Congolese Tutsis, there is little evidence that Rwanda's military intervention sought to protect that community.

1. *Self-Defense*

Self-defense is at the core of *jus ad bellum*. Article 51 of the U.N. Charter recognizes “the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations.”²⁸³ A state's right of *individual* self-defense is generally triggered by armed attacks against the state itself, including its territory and its armed forces.²⁸⁴ In contrast, *collective self-defense* “presupposes that an armed attack has occurred” against a *third* state, and that this third state has requested “another state to come to its help in the exercise of the right of collective self-defense.”²⁸⁵

To analyze whether Rwanda's actions amount to an act of aggression, it is useful to consider the contours of a potential self-defense argument. First, Rwanda would likely rely on individual—rather than collective—self-defense. Though Rwanda has denied its military intervention in eastern DRC, statements from Rwandan leadership indicate an apparent concern with threats to Rwanda's own security rather than that of other states. Second, Rwanda would likely claim it was responding to armed attacks committed by the FDLR armed group against Rwanda. There is some historical basis for this. FDLR was originally established by former Rwandan *génocidaires* in eastern DRC in the mid-1990s to overthrow the Rwandan government.²⁸⁶ Historically, FDLR has conducted

283. U.N. Charter art. 51. The language of “inherent right” (“droit naturel”) is likely in reference to customary international law rules that predate the U.N. Charter. *Nicar. v. U.S.*, 1986 I.C.J. at 84, ¶ 176. In simplest terms, the legal content of self-defense is found in both customary international law and the treaty law (including the Charter). DUSTIN LEWIS ET AL., *QUANTUM OF SILENCE: INACTION AND JUS AD BELLUM* 36 (2019), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3420959 (“Ultimately, it is in the interaction between treaty law and customary international law—and, where relevant, among other sources as well, such as unilateral acts—that existing *jus ad bellum* is to be found.”).

284. *Nicar. v. U.S.*, 1986 I.C.J. at 93–94, ¶ 195 (“In the case of individual self-defence, the exercise of this right is subject to the State concerned having been the victim of an armed attack.”); Kreß, *supra* note 240, at 456 (“The existence of a right of individual self-defence, as recognized by article 51 of the [U.N.] Charter, is uncontroversial in the case of an ongoing armed attack by a state against the territory of another state or against the armed forces of another state outside the latter's territory.”) This Article does not discuss “collective self defense” in detail, given that Rwanda would almost certainly make an “individual self-defense” claim.

285. *Nicar. v. U.S.*, 1986 I.C.J. at 106–07, ¶ 223. For a detailed analysis of both “individual” and “collective” self-defense—and doctrinal disagreements regarding both concepts—see CHRISTINE GRAY, *INTERNATIONAL LAW AND THE USE OF FORCE* 120–99 (4th ed. 2018).

286. DRC AFFINITY GROUP & PATRYCJA STYS, *supra* note 128, at 1–2.

cross-border attacks against Rwanda.²⁸⁷ Moreover, since the re-emergence of M23 in 2021, the Congolese government has partnered with FDLR in its operations against the RDF and M23.²⁸⁸

Theoretically, Rwanda could argue that it was responding to alleged armed attacks by the *Congolese state*, rather than FDLR. In 2022 and 2023, for instance, Congolese soldiers attacked several Rwandan border posts.²⁸⁹ More recently, during the RDF–M23’s advance on Goma in January 2025, the FARDC shelled Rwandan towns.²⁹⁰ At least some of these incidents could theoretically qualify as “armed attacks”—giving rise to an Article 51 self-defense claim—rather than “mere frontier incident[s].”²⁹¹ Rwanda might also try to argue that, given the collaboration between FDLR and the Congolese government, future FDLR attacks could be attributed to the DRC.

The problem for Rwanda, however, is temporal. Evidence suggests that Rwanda deployed troops into the DRC in 2021, *before* all the alleged attacks committed by the DRC against Rwanda. Similarly, collaboration between the FARDC and the FDLR was *triggered* by RDF–M23 offensives.²⁹² Because Rwanda’s military operations likely amounted to “armed attacks” against the DRC, Rwanda cannot plausibly argue it acted in “self-defense” in response to the DRC’s *subsequent* use of force against Rwanda. As Justice Robert Jackson argued at Nuremberg, “[T]he exercise of the right of legitimate self-defense, that is to say, resistance to an act of aggression . . . shall not, of course, constitute a war of aggression.”²⁹³

Rwanda’s self-defense claims pertaining to FDLR would face numerous hurdles in a judicial proceeding, including questions related to: 1) self-defense in response to “armed attacks” by non-state armed groups; 2) the “unable or

287. Judith Verweijen & Christoph Vogel, *Why Congo’s M23 Crisis Lingers on*, GLOB. OBSERVATORY (May 30, 2023), <https://theglobalobservatory.org/2023/05/why-congos-m23-crisis-lingers-on/> [<https://perma.cc/6LRB-P9BP>].

288. HUM. RTS. WATCH, *supra* note 155.

289. Levine-Spound, *supra* note 1.

290. Ladd Serwat, *Q&A: What is Happening in and Around Goma?*, ACLED (Jan. 29, 2025), <https://acleddata.com/2025/01/29/qa-what-is-happening-in-and-around-goma/> [<https://perma.cc/GAK4-2B4J>].

291. *Nicar. v. U.S.*, 1986, I.C.J. at 93–94, ¶ 195. For a longer discussion of the concept of an “armed attack”—and how it relates to the crime of aggression—see generally Dapo Akande & Antonios Tzanakopoulos, *The International Court of Justice and the Concept of Aggression*, in *THE CRIME OF AGGRESSION: A COMMENTARY*, *supra* note 32, at 214.

292. Stearns, *supra* note 139.

293. Justice Jackson, *supra* note 51, ¶ 167; *see also* ILC, ARSIWA, *supra* note 25, at 74, ¶ 1 (“Article 51 of the Charter of the United Nations preserves a State’s ‘inherent right’ of self-defence in the face of an armed attack and forms part of the definition of the obligation to refrain from the threat or use of force laid down in Article 2, paragraph 4. Thus, a State exercising its inherent right of self-defence as referred to in Article 51 of the Charter is not, even potentially, in breach of Article 2, paragraph 4.”).

unwilling” doctrine; 3) anticipatory or pre-emptive self-defense; and 4) necessity and proportionality. The following Sections address each issue in turn.

a. Self-Defense in Response to an Armed Group

First, the FDLR is a non-state armed group—rather than a state—operating outside of Rwanda (in eastern DRC). The Congolese government has not consented to recent Rwandan operations against the group on its territory. On the contrary, it has repeatedly demanded that Rwandan troops withdraw.²⁹⁴ Thus, were Rwanda’s defense to succeed, a court would first need to determine that the right of self-defense could encompass FDLR’s alleged armed attacks (or future armed attacks) against Rwanda.

But this position is not a given. There is widespread disagreement as to “whether the [U.N.] Charter permits the use of armed force by one state against non-state actors on the territory of another state without the latter’s consent.”²⁹⁵ The ICJ, for instance, has not offered a clear position as to whether the right to self-defense extends to armed attacks by non-state armed groups in the absence of state attribution,²⁹⁶ whereas the UNSC has invoked, in contrast, the inherent right of self-defense in the context of acts of “international terrorism” committed by non-state armed groups.²⁹⁷

Academics disagree as well. Adil Ahmad Haque, for instance, argues that the “[U.N.] Charter permits the use of force in self-defense against an armed attack *by another State*.”²⁹⁸ Terry Gill and Kinga Tibori-Szabó argue to the

294. The DRC has consented to Rwandan military operations against the FDLR on Congolese territory in the past, including to joint Rwanda–DRC operations against the group in 2009 and 2010. But there is, of course, no indication that the DRC consented to Rwanda’s recent military operations since M23’s re-emergence in 2021. *Congo PM Demands ‘Withdrawal of Rwandan Troops’ After M23 Reach Bukavu Suburbs*, REUTERS (Feb. 15, 2025), <https://www.reuters.com/world/africa/un-chief-says-dialogue-must-begin-between-warring-parties-eastern-congo-2025-02-15/> [<https://perma.cc/QLX3-K4M6>]; DRC AFFINITY GROUP & PATRYCJA STYS, *supra* note 128.

295. Adil Ahmad Haque, *Self-Defense Against Non-State Actors: All over the Map*, JUST SEC. (Mar. 24, 2021), <https://www.justsecurity.org/75487/self-defense-against-non-state-actors-all-over-the-map/> [<https://perma.cc/A8UC-BQM5>]; *see also* Terry Gill & Kinga Tibori-Szabó, *Twelve Key Questions on Self-Defense Against Non-State Actors*, 95 INT’L L. STUD. 467, 475 (2019) (“One body of opinion maintains that post-Charter State practice has unequivocally shown that self-defense can be exercised only in response to armed attacks carried out either by a State, or by NSAGs [non-state armed groups] sent, directed, or controlled by a State. The opposing view is that nothing in post-1945 State practice shows the emergence of a prohibition of using self-defense against NSAGs.”).

296. Christine Gray, *The International Court of Justice and the Use of Force*, in *THE DEVELOPMENT OF INTERNATIONAL LAW BY THE INTERNATIONAL COURT OF JUSTICE* 236, 259 (Christian J. Tams & James Sloan eds., 2013).

297. S.C. Res. 1368, ¶ 5 (Sept. 12, 2001).

298. Adil Ahmad Haque, “*Clearly of Latin American Origin*”: *Armed Attack by Non-State Actors and the UN Charter*, JUST SEC. (Nov. 5, 2019), <https://www.justsecurity.org/66956/>

contrary, stressing that “Article 51 is silent as to the *author* of the armed attack, referring only to the inherent nature of self-defense.”²⁹⁹

In any case, the question remains unsettled. Given that FDLR is not a state, a court might per se exclude self-defense as a justification for Rwanda’s use of force in the DRC.

b. “Unable or Unwilling”

Assuming, *arguendo*, that a court accepted that self-defense *could* extend to attacks by armed groups, Rwanda would still need to justify its armed intervention in the DRC. To do so, Rwanda might invoke the “unable or unwilling” doctrine, a highly controversial legal theory developed by the United States.³⁰⁰ The basic idea of the doctrine is that state A can attack armed group X on state B’s territory without state B’s consent *if* the following two conditions are met: 1) state A is acting in response to an “armed attack” by armed group X; and 2) state B is either unable *or* unwilling to neutralize the threat to state A by armed group X.³⁰¹

This theory is pertinent here. The Congolese government exercises limited governance over substantial areas of eastern DRC, including in areas where armed groups operate.³⁰² Several armed groups, including the FDLR, are accused of mounting cross-border attacks against the DRC’s neighbors.³⁰³

clearly-of-latin-american-origin-armed-attack-by-non-state-actors-and-the-un-charter/ [https://perma.cc/SQ32-A6R4].

299. Gill & Tibori-Szabó, *supra* note 295, at 473.

300. See, e.g., Kevin Jon Heller, *Ashley Deeks’ Problematic Defense of the “Unwilling or Unable” Test*, OPINIOJURIS (Dec. 15, 2011), <https://opiniojuris.org/2011/12/15/ashley-deeks-failure-to-defend-the-unwilling-or-unable-test/> [https://perma.cc/6LD8-MSPP]. See generally Ntina Tzouvala, *TWAIL and the “Unwilling or Unable” Doctrine: Continuities and Ruptures*, 109 AM. J. INT’L L. UNBOUND 266 (2015).

301. Ashley S. Deeks, “*Unwilling or Unable*”: *Towards a Normative Framework for Extraterritorial Self-Defense*, 57 VA. J. INT’L L. 483, 486 (2017); Brian Egan, *International Law, Legal Diplomacy, and the Counter-ISIL Campaign: Some Observations*, 92 INT’L L. STUD. 235, 241 (2016) (arguing that “applying the [unwilling or unable] standard ensures that force is used on foreign territory without consent only in those exceptional circumstances in which a State cannot or will not take effective measures to confront a non-State actor that is using its territory as a base for attacks and related operations against other States”).

302. See discussion *supra* Part III; see also Deeks, *supra* note 301, at 483, 525 (“A state that is well-known to lack control over a relevant part of its territory is quite unlikely to be ‘able’ to suppress threats emanating from that area.”).

303. *Rebel Attack in Western Burundi Kills at Least 20*, AL JAZEERA (Dec. 23, 2023), <https://www.aljazeera.com/news/2023/12/23/rebel-attack-in-western-burundi-kills-at-least-20> [https://perma.cc/4BUA-EG8R]; *Five People Feared Dead in Suspected ADF Attack in Uganda*, AL JAZEERA (Dec. 19, 2023), <https://www.aljazeera.com/news/2023/12/19/five-people-feared-dead-in-suspected-adf-attack-in-uganda> [https://perma.cc/VF86-TZ2K]; Susanne Maria Krauß, *Deadly Rebel Raid in Rwanda Awakens Painful Memories*, DEUTSCHE WELLE (Sept. 10, 2019), <https://www.dw.com/en/deadly-rebel-raid-in-rwanda-awakens-painful-memories/a-50758230> [https://perma.cc/S26K-NSJC].

President Kagame addressed this phenomenon in 2022, arguing that the “DRC is unable or unwilling to govern its territory.”³⁰⁴

These words may have legal significance. In 2014 and 2015, for instance, a small group of states invoked the “unable or unwilling” doctrine as legal justification for strikes against the Islamic State in Syria without the consent of the Syrian government.³⁰⁵

Kagame could be relying on the same logic. Namely, he may be implying that Rwanda has the right to use force against the FDLR in the DRC because the Congolese government is “unable or unwilling” to suppress the FDLR threat to Rwanda.

It is true that the Congolese government has not succeeded in fully eradicating the FDLR. But states heavily dispute the “unable or unwilling” theory. China, for instance, has asserted that, “The use of force against non-state actors in the territory of another State, which is for the purpose of self-defense, shall be subject to the *consent* of the State concerned.”³⁰⁶ Mexico has argued that “there is no general practice nor *opinio juris communis* to uphold the legal validity of the purported ‘unable or unwilling doctrine,’” emphasizing that “unable or unwilling” is a minority position among states.³⁰⁷ A court might simply reject “unable or unwilling” out of hand.

Even if a court accepted *some* version of the “unable or unwilling” standard, it is not certain that the conditions are satisfied here. According to Ashley Deeks, “unable” can potentially be demonstrated, for instance, “where a State has lost or abandoned effective control over the portion of its territory from which the [non-state armed group] is operating,”³⁰⁸ while “unwilling” is better understood as a territorial state’s refusal to suppress the threat emanating from the non-state armed group on its territory.³⁰⁹

Neither prong is clearly satisfied here. On the “unwilling” point, the Congolese government has repeatedly consented to past Rwandan armed

304. Paul Kagame, President, Republic of Rwanda, New Year 2023 Message (Dec. 31, 2022), <https://www.rwandainkenya.gov.rw/info/info-details/new-year-2023-message-by-president-kagame> [<https://perma.cc/XK6J-PQNZ>] (“The reason this situation prevails is because DRC is unwilling or unable to govern its territory. . . . Rwanda will not accept to bear the burden for the DRC’s responsibilities. We have enough burdens of our own to bear, and we shall do so as effectively as we can.”).

305. Elena Chachko & Ashley Deeks, *Which States Support the ‘Unwilling and Unable’ Test?*, *LAWFARE* (Oct. 10, 2016), <https://www.lawfaremedia.org/article/which-states-support-unwilling-and-unable-test> [<https://perma.cc/M9RD-CG8W>].

306. *Id.* (emphasis added).

307. SECRETARÍA DE RELACIONES EXTERIORES [SECRETARIAT OF FOREIGN AFFAIRS], MEXICO’S POSITION PAPER ON THE INTERPRETATION AND APPLICATION OF ARTICLE 51 OF THE CHARTER OF THE UNITED NATIONS ¶ 11 (2025), <https://nextcloud.sre.gob.mx/index.php/s/WoPiwTSj9L8btMn> [<https://perma.cc/HD9Z-YDKG>].

308. Egan, *supra* note 301, at 241.

309. Deeks, *supra* note 301 at 483, 487.

operations against FDLR on its territory, including joint DRC–Rwanda operations. At the very least, it appears that Rwanda should have formally requested Congolese consent before commencing unilateral operations. Even if consent was not granted, Rwanda should have considered what other options the Congolese government proposed prior to assuming the DRC government was “unwilling” to contend with FDLR. As recently as 2019, Rwandan Minister of Foreign Affairs Olivier Nduhugirehe praised “the *willingness* of President Tshisekedi to nullify genocidaires and rebel groups in Eastern DRC” after the FARDC killed FDLR leaders.”³¹⁰

The “unable” question is challenging for similar reasons—whether or not the Congolese government could have *unilaterally* eliminated FDLR, it had the ability to request outside support in doing so. Absent evidence of the DRC’s refusal to accept such support, it is difficult to argue that it was “unable” to respond to any threat FDLR posed to Rwanda.

But Rwanda faces an even more substantial hurdle. The “unable or unwilling” doctrine hinges on the commission of an armed attack by the non-state armed group in question. Here, it is unlikely that Rwanda was acting in response to a *past* FDLR armed attack or that there was any evidence of an *imminent future* attack by the group against Rwanda.

c. FDLR’s Past Armed Attacks Against Rwanda

Article 51 allows for self-defense “*if an armed attack occurs*.”³¹¹ According to the ICJ, instances of illegal interstate force must reach a certain level of “gravity” to trigger the right to self-defense.³¹² In other words, certain insubstantial illegal uses of force—so-called “mere frontier incident[s]”—will not qualify as “armed attack[s]” for the purposes of Article 51.

Even in these instances, a state’s right to use force in self-defense is not unlimited. First, force must be undertaken “in response” to the armed attack which triggered it—a victim state’s use of force that has no discernible relation to the “armed attack” is not permitted.³¹³ Second, and relatedly, victim states must comply with the principles of proportionality and necessity.

The last recorded FDLR attack on Rwandan territory took place in 2019, when FDLR militants killed eight civilians and wounded more than a dozen in

310. *The Doomsday of FDLR Through Eyes of Gen Kabarebe*, IGIHE (July 19, 2021), https://en.igihe.com/spip.php?page=mv2_article&id_article=43944 [https://perma.cc/26L3-MK4J] (emphasis added).

311. U.N. Charter art. 51 (emphasis added).

312. Levine-Spound, *supra* note 1.

313. For an overview of different views on the nature of self-defense, see generally Philipp Aust, *Article 51*, in *THE CHARTER OF THE UNITED NATIONS: A COMMENTARY* 1769 (Bruno Simma et al. eds., 4th ed. 2024).

the Rwandan border town of Kinigi.³¹⁴ But there are several reasons to question whether this can legally justify Rwanda's ongoing military operations in the DRC more than five years later.

Regarding the "in response" prong, it is unclear whether Rwanda's decision to deploy troops into Eastern DRC in 2021 and 2022 had a concrete relation to the 2019 Kinigi attack. In the summer of 2019, then-Senior Presidential Advisor (and RDF General) James Kabarebe asserted that the FDLR was "on the brink of defeat where it is no longer able to threaten Rwanda's security." Describing the group as "in [their] last days," General Kabarebe explained how soldiers from Rwanda, Burundi, and (notably) the DRC had attacked the group.³¹⁵ Analysts similarly described FDLR as a "spent force,"³¹⁶ and as having greatly diminished military capacity.³¹⁷

The timing of M23's re-emergence also casts doubt on a potential connection between Rwanda's intervention in DRC and the Kinigi attack. M23's initial attacks took place on November 7, 2021, several months after Uganda and DRC agreed on a road construction project allowing the exportation of Congolese resources through Uganda.³¹⁸ M23 heightened its attacks several weeks later, after it was reported that the DRC had authorized Ugandan troops to enter its territory.³¹⁹

Given Congo's immense natural resources—including cobalt, copper, gold, diamonds, and timber³²⁰—Rwanda, Uganda, and other regional states compete for the exportation of Congolese raw materials.³²¹ The Rwandan government viewed a massive road-building project between the DRC and Uganda, coupled with a deployment of Ugandan soldiers in Rwanda's "area of influence" in North Kivu, as a significant economic threat.³²² It is ultimately doubtful, then, that Rwanda's intervention in DRC was "in response" to any armed attack by

314. *Eight Killed, 18 Wounded in Attack near Rwanda's Tourist Hub*, AL JAZEERA (Oct. 5, 2019), <https://www.aljazeera.com/news/2019/10/5/eight-killed-18-wounded-in-attack-near-rwandas-tourist-hub> [<https://perma.cc/CNE3-AFDJ>].

315. IGIHE, *supra* note 310.

316. See, e.g., Jason Stearns, *The Forgotten War in Congo*, FOREIGN AFFS. (July 26, 2024), <https://www.foreignaffairs.com/democratic-republic-congo/forgotten-war-congo> [<https://perma.cc/Q58N-NXR6>].

317. Verweijen & Vogel, *supra* note 287.

318. See discussion *supra* Part III.

319. *Id.*

320. *Can the Democratic Republic of the Congo's Mineral Resources Provide a Pathway to Peace?*, U.N. ENV'T PROGRAMME (Sept. 20, 2022), <https://www.unep.org/news-and-stories/story/can-democratic-republic-congos-mineral-resources-provide-pathway-peace> [<https://perma.cc/33TJ-785M>]; *The World Bank in DRC*, WORLD BANK GROUP [WBG] (Oct. 01, 2025), <https://www.worldbank.org/en/country/drc/overview> [<https://perma.cc/7F22-6TXU>].

321. IPIS ET AL., *supra* note 3, at 12.

322. See discussion *supra* Part III for more details.

FDLR—other motivations, including economic interests and competition with neighboring Uganda, are more persuasive.³²³

Rwanda's actions in alleged self-defense are also limited by necessity and proportionality, two "requirements under customary international law" that limit when and how states can use force in self-defense.³²⁴ Roberto Ago, a former Special Rapporteur to the International Law Commission, described the requirements as "two sides of the same coin," explaining that a state using force in self-defense must prove that it was "unable to achieve the desired result by different conduct involving either no use of armed force at all or merely its use on a lesser scale."³²⁵ Chris O'Meara describes necessity as determining "*whether* defensive force may be used to respond to an actual or imminent armed attack, and *where* it must be directed," whereas proportionality "governs *how much* force is permissible."³²⁶ Compliance with both concepts ensures that a state's use of force remains *defensive* in nature—aimed at halting, repelling, or preventing an armed attack.³²⁷

However one conceptualizes necessity and proportionality, it is unlikely that Rwanda's armed operations in DRC are either necessary or proportionate to the 2019 Kinigi attack. For over three years, Rwanda and M23 have occupied increasingly large parts of eastern DRC, including in areas with no reported FDLR presence. They have displaced civilian authorities and set up a parallel administration, systematically exploiting natural resources. And while Rwanda has not acknowledged its presence in the DRC, M23 leaders have voiced their intent to "liberate" the DRC and overthrow the Congolese government in Kinshasa.³²⁸

In 2005, the ICJ noted that Uganda's "taking of airports and towns [in the DRC] many hundreds of kilometres from Uganda's border would not seem proportionate to the series of transborder attacks it claimed had given rise to the right of self-defence, nor to be necessary to that end."³²⁹ Rwanda—which has taken over the provincial capitals of both DRC's North and South Kivu

323. IPIS ET AL., *supra* note 3, at 12.

324. The ICJ, for example, has provided little detail as to the content of necessity and proportionality. Aust, *supra* note 313, at 1807; *see also* Gray, *supra* note 296, at 254 ("[T]he [U.N.] Charter does not deal with all aspects of self-defence. It does not define armed attack. Nor does it expressly require that self-defence must be necessary and proportionate, but the ICJ has repeatedly affirmed that these requirements are part of customary law; in state practice these criteria play a crucial role.").

325. Levine-Spound, *supra* note 1.

326. Christopher O'Meara, Necessity and Proportionality in the Right of Self-Defence in International Law 28 (July 27, 2018) (Ph.D. dissertation, Univ. Coll. Lond.), <https://discovery.ucl.ac.uk/id/eprint/10057299/1/PhD%20Thesis%20-%20FINAL%20VERSION%20.pdf> [<https://perma.cc/A5WB-V7D6>].

327. *Id.* at 35.

328. *See* discussion *supra* Part III.

329. Dem. Rep. Congo v. Uganda, 2005. I.C.J. at 223, ¶ 147.

province (and their airports)—has arguably gone beyond that. Leaving aside that FDLR's 2019 attack had already been “halted,” it is hardly conceivable that Rwanda's multi-year military operation in DRC complies with necessity and proportionality.

d. FDLR's Hypothetical Future Armed Attacks Against Rwanda

Given that a self-defense argument regarding *past* FDLR attacks is untenable, Rwanda might argue that its military operations in DRC were intended to *prevent* FDLR attacks. The doctrine of anticipatory (or pre-emptive) self-defense is controversial, and legal scholars continue to debate whether a state can use force in response to a *future* armed attack *under any circumstances*.³³⁰ For those who accept the possibility of lawful anticipatory self-defense, the question often turns to the *imminence* of a future armed attack.³³¹

“Imminence” is a high bar. The seminal *Caroline* incident stands for the proposition that states must demonstrate “a necessity of self-defense, instant, overwhelming, leaving no choice of means, and no moment for deliberation” to justify anticipatory self-defense.³³² Similarly, the 2004 U.N. High-Level Panel on Threats, Challenges, and Change found that a “threatened State, according to long established international law, can take military action as long as the threatened attack is imminent, no other means would deflect it and the action is proportionate.”³³³

Rwandan leadership may view FDLR as a security threat. Judith Verweijen and Christoph Vogel have argued, for instance, that despite FDLR's diminished military strength, the group “continues to recruit and remains a vehicle of genocide ideology. Rwanda, therefore, perceives the FDLR as a genuine security threat.”³³⁴ But a legitimate anticipatory self-defense claim requires more than perception. Here, there is an apparent lack of evidence for *any imminent* armed attack from FDLR against Rwanda.

330. U.N. Secretary-General's High-Level Panel on Threats, Challenges and Change, *A More Secure World: Our Shared Responsibility*, ¶¶ 188–92, U.N. Doc. A/59/565 (Dec. 2, 2004) [hereinafter *A More Secure World*]; T.D. Gill, *The Temporal Dimension of Self-Defence: Anticipation, Pre-emption, Prevention and Immediacy*, 11 J. CONFLICT & SEC. L. 361, 362–69 (2006).

331. Kreß, *supra* note 240, at 473–74 (“Under customary international law as it existed at the time of the entry into force of the [U.N.] Charter, a right of anticipatory self-defense was recognized in the event of an *imminent* armed attack Whether or not this customary right has survived the [U.N.] Charter forms the object of one of the most long-standing controversies in international law on the use of force.”).

332. Matthew Waxman, *The ‘Caroline’ Affair in the Evolving International Law of Self-Defence*, LAWFARE (Aug. 28, 2018), <https://www.lawfareblog.com/caroline-affair> [https://perma.cc/V4YJ-N6DZ].

333. *A More Secure World*, *supra* note 330, ¶ 188.

334. Verweijen & Vogel, *supra* note 287.

Necessity and proportionality pose an even greater challenge for the same reasons stated above. Namely, it is difficult to argue that conquering large areas of eastern DRC and installing a parallel administration is either necessary or proportionate to the objective of suppressing future armed attacks by FDLR, especially given RDF–M23’s advance into areas with no FDLR presence.

e. Self-Defense: A Losing Argument

Rwanda’s self-defense case appears to be extremely weak. Even if a court were to accept the controversial legal doctrines discussed—self-defense in response to a future armed attack by an armed group operating on the territory of another state based on an “unable or unwilling” theory—Rwanda can hardly prove that its actions were “in response” to an FDLR armed attack, whether past or future. Even if it could, Rwanda’s multi-year occupation of eastern DRC cannot comply with necessity and proportionality. Ultimately, a Rwandan self-defense claim could likely not rebut the charge that its full-scale invasion of DRC was an act of aggression in “manifest” violation of the U.N. Charter.

2. Responsibility to Protect

Beyond self-defense, Rwandan leadership might seek to argue that Rwanda deployed into the DRC to protect Congolese Tutsis from violence. Such an argument might be grounded in the doctrine of the Responsibility to Protect (“R2P”). R2P is not one of the exceptions to the prohibition of the use of force recognized in the Charter—whether it has any basis in international law is highly contested.³³⁵ Thus, a court might reject the argument out of hand. However, given that Rwanda might invoke R2P—and given that it arguably constitutes one of the “legal gray areas” of *jus ad bellum*—it is worth considering.³³⁶

At its core, R2P is grounded in the idea that “sovereign States have a responsibility to protect their own citizens from avoidable catastrophe . . . but that when they are unwilling or unable to do so, that responsibility must be borne by the broader community of states.”³³⁷ R2P’s initial drafters provide criteria to determine whether a state’s armed intervention complies with R2P. These include whether the intervention has a reasonable chance of success, whether force was a last resort given that “every diplomatic and non-military avenue . . .

335. Kevin Jon Heller, *Why Unilateral Humanitarian Intervention Is Illegal and Potentially Criminal*, OPINIOJURIS (Apr. 20, 2017), <https://opiniojuris.org/2017/04/20/against-unilateral-humanitarian-intervention-and-why-it-can-be-criminal/> [https://perma.cc/9AV2-LKUN].

336. Krieb, *supra* note 240, at 503 (“[T]he use of force to avert a humanitarian catastrophe falls within the grey area of the current international law on the use of force.”).

337. INT’L COMM’N ON INTERVENTION AND ST. SOVEREIGNTY, THE RESPONSIBILITY TO PROTECT VII (2001), <https://idrc-crdd.ca/en/book/responsibility-protect-report-international-commission-intervention-and-state-sovereignty> [https://perma.cc/A6WF-U9YX].

[has] been explored,” and whether the intervention was undertaken to “halt or avert human suffering,” including large-scale loss of life and ethnic cleansing.³³⁸

Rwanda's intervention likely fails to satisfy these R2P criteria. RDF–M23's occupation has arguably resulted in *greater* discrimination and violence against Congolese Tutsis, some of whom have suffered from reprisal attacks due to the perception that they support M23.³³⁹ Even if halting the suffering of the Tutsi community was *one* motivation behind Rwanda's intervention, Rwanda's actions likely have a host of other objectives, including economic motives. There is no evidence that Rwanda exhausted all other avenues to protect Tutsis, especially given the Congolese government's historical willingness to cooperate with Rwanda on issues related to the FDLR. And finally, while discrimination against Tutsis in eastern DRC remains a critical issue to address, there is no evidence of large-scale loss of life or ethnic cleansing of Congolese Tutsis prior to Rwanda's intervention.³⁴⁰

Even if a court accepted R2P as a gray area in the *jus ad bellum*, Rwanda's actions are unlikely to meet the threshold. As with self-defense, R2P does not provide a credible basis for arguing that Rwanda's use of force did not amount to an act of aggression in “manifest” violation of the U.N. Charter.

V. WHY PUNISH AGGRESSION?

Belligerents in the DRC–Rwanda–M23 armed conflict have likely committed numerous violations of international law in addition to the crime of aggression, including potential war crimes and crimes against humanity.³⁴¹ Against such a background, this Part explores the particular importance of responding to aggression. First, on a general level, it discusses the crime's specific harms and the importance of accountability. Second, this Part analyzes the value of holding Rwanda accountable, given its repeated military deployments into the DRC. Third, it considers Rwanda's aggression alongside other recent uses or threats of interstate force, arguing for the importance of upholding the prohibition of threats of force by one state against another across the world.

338. *Id.* at 36.

339. *DR Congo: Atrocities by Rwanda-Backed Rebels*, HUM. RTS. WATCH (Feb. 6, 2023), <https://www.hrw.org/news/2023/02/06/dr-congo-atrocities-rwanda-backed-m23-rebels> [<https://perma.cc/SVV6-L39E>] (“Hundreds of Tutsi civilians in Kitchanga and nearby villages, often perceived by members of other communities as supporters of the Tutsi-led M23, have fled for fear of reprisals from militias that are using increasingly hostile and threatening rhetoric against them.”).

340. See discussion *supra* Part III.

341. *Id.*

A. *The Unique Harms of Aggression*

The case for aggression in the case of Rwanda's invasion is strong.³⁴² But in a context of widespread violations³⁴³—and an ongoing ICC investigation in the DRC that could theoretically result in prosecutions for potential war crimes and crimes against humanity³⁴⁴—why is it important to focus on aggression, specifically? Though a full discussion of the legal and moral reasoning behind the criminalization of aggression is beyond the scope of this Article, it is worth briefly discussing the crime's distinctive harms.³⁴⁵

As discussed in Part I, aggression differs from other international crimes. Unlike war crimes, for instance, which can be committed by members of non-state armed groups, aggression generally requires *state* action. The paradigmatic act of aggression involves one state using force against another state with no legal justification.³⁴⁶ Thus, determining an act of aggression requires analysis of the *jus ad bellum*, the legal framework governing interstate force, rather than *jus in bello*, the law of armed conflict, otherwise referred to as IHL.³⁴⁷ Given this, scholars have often understood aggression as a crime against *sovereignty*. As Tom Dannenbaum observes, “aggression is widely understood to be rooted in a moral wrong ‘committed against a state’ rather than in wrongs ‘against individuals.’”³⁴⁸

But recent commentators have sought to reframe the *raison d'être* of aggression's criminalization. Rather than conceptualizing aggression as a violation of sovereignty, we should instead locate the fundamental “wrong” of aggression in its impact on human beings. As Dannenbaum argues, “What is unique about illegal war among violations of states' rights . . . is the fact that it entails the

342. See discussion *supra* Part IV.

343. See discussion *supra* Part III for more details.

344. Statement, Karim A.A. Khan, Prosecutor, ICC, Statement on the Situation in the Democratic Republic of the Congo and Renewed Investigations (Oct. 14, 2024), <https://www.icc-cpi.int/news/statement-icc-prosecutor-karim-aa-khan-kc-situation-democratic-republic-congo-and-renewed> [https://perma.cc/CXV5-PM3L].

345. See generally Frédéric Mégret, *What Is the Specific Evil of Aggression?*, in THE CRIME OF AGGRESSION: A COMMENTARY, *supra* note 32, at 1398; Andrew Clapham, *Liability for Killing in War and Why There Is No 'License to Kill'*, 43 NETH. Q. HUM. RTS. 139 (2025); Tom Dannenbaum, *Why Have We Criminalized Aggressive War*, 126 YALE L.J. 1242 (2017).

346. See discussion *supra* Part II. It should be noted that acts of aggression against other actors with an international legal personality, such as U.N. peacekeeping missions mandated by the UNSC, are also possible. Dannenbaum, *supra* note 345, at 1277–78 (explaining that acts of aggression against other actors with an international legal personality, such as U.N. peacekeeping missions mandated by the UNSC, are also possible).

347. See discussion *supra* Part I.

348. Dannenbaum, *supra* note 345, at 1245–46 (citing Letter from Aryeh Neier, President, Open Soc'y Inst. et al. to Foreign Ministers, Regarding Aggression and the International Criminal Court (May 10, 2010), <http://www.opensocietyfoundations.org/sites/default/files/icc-aggression-letter-20100511.pdf> [http://perma.cc/G9GX-2FSX]).

slaughter of *human* life, the infliction of *human* suffering, and the erosion of *human* security.”³⁴⁹ While aggression normally takes place *through* the illegal actions of one state which infringe on the rights of another, “it is the unjustified killing and infliction of human suffering . . . that are the wrongs at the heart of aggression.”³⁵⁰

Conceptualizing aggression primarily as a crime against *individuals* is in line with broader developments in international law.³⁵¹ In 2018, for example, the U.N. Human Rights Committee specifically tackled the question of aggression: “States Parties engaged in acts of aggression as defined in international law, resulting in deprivation of life, violate *ipso facto* article 6 of the [International Covenant on Civil and Political Rights].”³⁵² Article 6 of the International Covenant on Civil and Political Rights protects the right to life.³⁵³

The upshot of such a perspective is significant. Imagine that state A illegally invades its neighbor, state B. State A sends in ground troops and begins bombing raids. This marks the beginning of a multi-year international armed conflict, resulting in the deaths of hundreds of soldiers from both states as well as thousands of civilian casualties. It also results in mass displacement and the destruction of homes, schools, and hospitals.

Some of these harms may be the result of violations and may even constitute war crimes. But *others are likely the result of actions that are perfectly legal as a matter of jus in bello*. As Frédéric Mégret explains, *jus in bello* “makes two types of violence legal under certain conditions: the wounding and killing of combatants; and the killing of civilians and destruction of civilian property as forms of not manifestly excessive collateral damage.”³⁵⁴ Among its articulated war crimes, the Rome Statute proscribes attacks which intentionally target civilians as well as attacks which “will cause incidental loss of life or injury to civilians . . . which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated.”³⁵⁵ But in line with *jus in bello*, the Rome Statute does *not* proscribe proportionate attacks intentionally targeting combatants. As Mégret observes, “[F]or all the violence that [*jus in bello*] limits, it also fundamentally permits another type.”³⁵⁶

349. *Id.* at 1242, 1270.

350. *Id.*

351. *Id.* at 1278–81.

352. Hum. Rts. Comm., General Comment No. 36 (2018) on Article 6 of the International Covenant on Civil and Political Rights, on the Right to Life, ¶ 70, U.N. Doc. CCPR/C/GC/36 (Sept. 3, 2019).

353. Article 6 reads as follows: “Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.” International Convention on Civil and Political Rights art. 6, Mar. 23, 1973, 999 U.N.T.S. 171.

354. Mégret, *supra* note 345, at 1418.

355. Rome Statute, *supra* note 24, art. 8(2)(i), 8(2)(iv).

356. Mégret, *supra* note 345, at 1418.

The aforementioned hypothetical highlights the stakes. Without more information on a range of questions, including the targets and nature of the attacks, we cannot conclusively determine whether the actions of either state A or state B violate jus in bello.

What is clearer, however, is that all the harms were triggered as a result, at least in part, of state A's unlawful use of force against state B. As Andrew Clapham argues, “[A]ll civilian lives lost as a result of aggression (whether or not as a result of a violation of international humanitarian law) should also be covered as violations of right to life.”³⁵⁷ The same logic applies to combatant casualties, the other set of “hidden deaths” of war. As Mégret explains, “The massive killing of combatants, entirely legal as it may be under the jus in bello, is evidently one of the great tragedies of war.”³⁵⁸

To punish aggression, then, is not merely to respond to specific acts in an armed conflict. It is instead to *respond to the totality* of the harm brought about by an unlawful use of force. These include the killings of civilians and combatants—including those not proscribed by jus in bello—but are not limited to killings. Ukraine, as Clapham has observed,³⁵⁹ has set up a “Register of Damage for Ukraine,” with a mandate to “function as a record of all eligible claims seeking compensation for the damage, loss and injury inflicted” by Russia’s aggression.³⁶⁰ The Register is not limited to harms resulting from jus in bello violations. Instead, it processes claims for a huge range of harms, including “involuntary internal displacement” and “damage or destruction” of immovable property.³⁶¹ Stated simply, the “damages” recorded by the Register are harms resulting from *Russia’s unlawful invasion of Ukraine, regardless of whether they were caused by individual jus in bello violations.*

B. Rwanda’s Aggression in the DRC

This analysis is acutely relevant in the DRC context. Organizations have documented numerous potential violations of jus in bello, including extrajudicial killing and sexual violence.³⁶² But what about the *combatants* killed on the battlefield? Or civilians killed in *proportionate* attacks directed against combatants or military objectives?³⁶³ It is unlikely that all their deaths resulted from violations of IHL, a framework which does not, for instance, prescribe

357. Clapham, *supra* note 345, at 143.

358. Mégret, *supra* note 345, at 1416–19.

359. Clapham, *supra* note 345, at 143–45.

360. *Register of Damage for Ukraine*, COUNCIL OF EUR., <https://www.rd4u.coe.int/en/mandate-and-functions> [https://perma.cc/8LCY-YRM2].

361. *Id.*

362. See discussion *supra* Part III.

363. Clapham, *supra* note 345, at 143 (“Of course, civilians may also be killed without this constituting a violation of international humanitarian law. An example would be civilians

direct targeting of combatants. But all deprivations of life in the Rwanda–DRC conflict—including the deaths of RDF soldiers³⁶⁴—arguably flow from the “primary crime” of Rwanda’s invasion.³⁶⁵

These harms, of course, are not limited to deprivations of life. As detailed in Part III, the ongoing conflict between Rwanda and DRC has led to mass displacement, widespread lack of access to food, water, and medical care for displaced persons, surges in sexual and gender-based violence, and the interruption of schooling for thousands of children. None of this is to mention the harms that are not easily calculated, such as trauma associated with displacement. Only aggression—a crime that cognizes the root of the conflict—responds to all the above.

Accountability for Rwanda’s aggression is particularly important given the broader history. Since 1996, Rwanda has repeatedly either deployed its own troops into DRC or supported proxy armed groups, of which the M23 is the latest iteration.³⁶⁶ In an ongoing case between Rwanda and DRC in the African Court on Human and Peoples’ Rights (“ACHPR”), the DRC did not shy away from history. The ACHPR characterized the DRC’s historical argument, in part, as follows: “[T]he conflict is a consequence of the ‘wars of aggression,’ firstly waged by [Rwanda] from 1998 to 2022 and from 2008 to 2009, and secondly, by [Rwanda] together with [CNDP] and finally, by the Armed Coalition [which includes M23] from 2012 to 2013.”³⁶⁷

This is not to argue that an aggression prosecution is a panacea. But if the ultimate outcome of the latest episode of the Rwanda–DRC conflict includes *no accountability* for Rwanda’s aggression, what is stopping the Rwandan government from attacking again? In the words of Congolese doctor and Nobel Prize winner Denis Mukwege, Rwanda “must be held to account for [its] repeated acts of aggression and [its] leading role in the plundering of natural and mineral resources and the commission of the most serious crimes in the DRC

whose deaths were not considered excessive compared to the military advantage anticipated from an attack on a military objective.”).

364. Mark Townsend & Michela Wrong, *Rwandan Troops ‘Dying in Large Numbers in DRC,’ Despite Official Denials of Role*, GUARDIAN (Feb. 7, 2025), <https://www.theguardian.com/global-development/2025/feb/07/democratic-republic-congo-drc-paul-kagame-m23-rebels-goma-rwanda-troops-dying-denials> [<https://perma.cc/N8J3-QED2>].

365. Volodymyr Zelenskyy, President of Ukr., Speech to Representatives of the Public, Political and Expert Circles of the Kingdom of the Netherlands and International Institutions Based in The Hague (May 4, 2023), <https://www.president.gov.ua/en/news/vistup-volodimira-zelenskogo-pered-predstavnikami-gromadskos-82653> [<https://perma.cc/ASC2-JJAD>].

366. See discussion *supra* Part III.

367. The Matter of Dem. Rep. Congo v. Rwanda, App. No. 007/2023, Ruling (Jurisdiction and Admissibility), African Court on Human and Peoples’ Rights [Afr. Ct. H.P.R.], ¶ 5 (June 26, 2025).

Only then will the countries of the Great Lakes region be able to reconcile and coexist peacefully.”³⁶⁸

C. *A Global Context of Aggression?*

A forceful international response to Rwandan aggression is critical for the people of eastern DRC. But Rwanda’s actions should not be understood in isolation. At a time in which powerful states are manifestly threatening or resorting to interstate force with little or no *jus ad bellum* basis, accountability for Rwanda’s invasion would serve to reinforce the prohibition of the use of force at a perilous time.

The takeover of Goma, the provincial capital of DRC’s North Kivu province, is potentially instructive. From 2021 to 2024, Rwanda and M23 inexorably increased the Congolese territory under their control.³⁶⁹ But they noticeably avoided a direct attack on the city itself, a decision potentially motivated by history—in 2012, it was M23’s takeover of Goma that triggered the international backlash which would result in Rwanda’s cessation of support and the group’s initial collapse.³⁷⁰

Rwanda’s calculus appears to have changed in late 2024. In December of that year, Rwandan President Paul Kagame withdrew from a peace process mediated by Angola.³⁷¹ On January 25, 2025, less than one week after the swearing-in of U.S. President Donald Trump, Rwanda and M23 launched an attack on Goma.³⁷²

According to analysts Reagan Miviri, Joshua Walker, and Jason Stearns, the timing was not coincidental: “Many U.S. diplomats believe that the leadership transition in Washington prompted Kagame to launch his January offensive, to change the facts on the ground before Rwanda had to return to the negotiating table.”³⁷³ Michela Wrong echoed a similar view, noting that the “timing of the assault on Goma . . . is unlikely to have been a coincidence,” given that “Washington was distracted, and Kagame knew that Trump was unlikely to have the same human rights priorities as his Democratic predecessor.”³⁷⁴

368. Denis Mukwege, Speech at Strasbourg University (Oct. 19, 2024), <https://panzifoundation.org/strasbourg-university-speech-by-dr-mukwege/> [<https://perma.cc/973T-L2JM>].

369. See discussion *supra* Part III.

370. *Id.*

371. *Rwanda, DR Congo Peace Talks Hit Snag as Mediator Angola Calls off Meeting*, AL JAZEERA (Dec. 15, 2024), <https://www.aljazeera.com/news/2024/12/15/rwanda-dr-congo-peace-talks-hit-snag-as-mediator-angola-calls-off-meeting> [<https://perma.cc/69DR-N2CQ>].

372. See discussion *supra* Part III.

373. Joshua Z. Walker et al., *Could Africa’s Forever War Finally End*, FOREIGN AFFS. (June 17, 2025), <https://www.foreignaffairs.com/democratic-republic-congo/could-africas-forever-war-finally-end> [<https://perma.cc/U7V5-ZRGZ>].

374. Michela Wrong, *How Far Will Rwanda Go in Congo?*, FOREIGN AFFS. (Mar. 3, 2025), <https://www.foreignaffairs.com/democratic-republic-congo/how-far-will-rwanda-go-congo> [<https://perma.cc/EUS9-U9FU>].

A fuller analysis of why RDF and M23 took over Goma and Bukavu when they did—and precisely how Rwandan leaders viewed Trump's election—is beyond the scope of this Article. But it is worth considering how Rwanda's invasion of its eastern neighbor fits within a broader pattern of states using force against other states, or threatening to do so, with little discernible legal justification.

Before his swearing-in on January 20, 2025, then President-Elect Trump began threatening to use force against both Greenland and Panama. Regarding the former, Trump said, "People really don't even know if Denmark has any legal right to it. But if they do, they should give it up because we need it for national security."³⁷⁵ Regarding the latter, he said, "We gave the Panama Canal to Panama. We didn't give it to China. They've abused that gift."³⁷⁶ When pressed on his comments, Trump refused to rule out using military force in either context: "It might be that you'll have to do something. The Panama Canal is vital to our country . . . We need Greenland for national security purposes."³⁷⁷

At a minimum, such statements indicate little concern with the text of the U.N. Charter. Instead, Trump's rhetoric is potentially reminiscent of the "Old World Order" discussed in Part I—attacks against other states are tools by which a state can vindicate supposed rights.

In spring 2025, Trump's "transactional" foreign policy came into greater focus. Before his election, the United States had been part of efforts to create an ad hoc international criminal tribunal to prosecute Russia's aggression in Ukraine.³⁷⁸ Under Trump, the United States pulled out of those

375. Dragana Jovanovic & Megan Forrester, *Former Danish Minister for Greenland Discusses Trump's Push to Acquire Island*, ABC NEWS (Jan. 28, 2025), <https://abcnews.go.com/International/former-danish-minister-greenland-discusses-trumps-push-acquire/story?id=118140297> [https://perma.cc/8W2C-MPMZ].

376. Alexandra Marquez, *Secretary of State Marco Rubio Warns Panama's President About Chinese Influence over the Panama Canal*, NBC NEWS (Feb. 2, 2025), <https://www.nbcnews.com/politics/donald-trump/secretary-state-marco-rubio-warns-panama-president-chinese-influence-rcna190353> [https://perma.cc/Z95H-SDH4].

377. Will Weissert & Zeke Miller, *Trump Refuses to Rule out Use of Military Force to Take Control of Greenland and the Panama Canal*, AP NEWS (Jan. 7, 2025), <https://apnews.com/article/trump-biden-offshore-drilling-gulf-of-america-fa66f8d072eb39c00a8128a8941ede75> [https://perma.cc/7GJF-DG52].

378. Rebecca Hamilton, *An Assessment of the United States' New Position on an Aggression Tribunal for Ukraine*, JUST SEC. (Mar. 29, 2023), <https://www.justsecurity.org/85765/an-assessment-of-the-united-states-new-position-on-an-aggression-tribunal-for-ukraine/> [https://perma.cc/6C27-PYSB]. However, as scholars like Patryk Labuda have pointed out, the United States under President Joe Biden supported a "hybrid" tribunal rather than a fully international tribunal. Stated differently, while the United States supported *some* tribunal capable of prosecuting Russian aggression, it did not support the kind of tribunal for which Ukraine, and certain other states, advocated. Patryk Labuda, *Accountability for Russian Imperialism in the "Global East,"* JUST SEC. (Aug. 21, 2023), <https://www.justsecurity.org/>

initiatives.³⁷⁹ And though his rhetoric has been inconsistent, Trump has at times blamed Ukraine for Russia's invasion.³⁸⁰ The Trump Administration has also successfully pushed Ukraine to accept U.S. access to key minerals as a condition of continued support³⁸¹ and has recognized Russian demands that Ukraine cede territory to Russia as a condition for a peace deal.³⁸² Accountability for Russia's illegal use of force that began the conflict has played no apparent part in the Trump Administration's calculus.

During the same period, Israel—a close ally of the United States—launched a series of armed attacks against Syria. In December 2024, following the ouster of then-Syrian President Bashar al-Assad, the Israeli air force launched hundreds of strikes against its northern neighbor, annihilating the country's military capacity. Israeli Prime Minister Netanyahu asserted that he “approved the air force bombing of strategic military capabilities left by the Syrian military so that they will not fall into the hands of the jihadists.”³⁸³ Israel bombed Syria again in July 2025, allegedly to protect the Druze minority group in the context of an outbreak of hostilities between militias associated with the Druze and Bedouin communities, as well as Syrian armed forces.³⁸⁴ In June 2025, Israel launched a larger attack against Iran, an attack joined by the United States.³⁸⁵

In both the Syria and Iran contexts, international legal experts have raised alarm bells regarding alleged violations of the U.N. Charter. In the context

org/85765/an-assessment-of-the-united-states-new-position-on-an-aggression-tribunal-for-ukraine/ [https://perma.cc/D4WU-NRH7].

379. Glenn Thrush, *U.S. to Withdraw from Group Investigating Responsibility for Ukraine Invasion*, N.Y. TIMES (Mar. 17, 2025), https://www.nytimes.com/2025/03/17/us/politics/trump-ukraine-invasion-accountability.html [https://perma.cc/VY9E-WR8T].

380. Yang Tian & Ian Aikman, *Trump Blames Zelensky for Starting War After Massive Russian Attack*, BBC (Apr. 15, 2025), https://www.bbc.com/news/articles/cg5q0mev07lo [https://perma.cc/EM4V-KTJD].

381. Gracelin Baskaran & Meredith Schwartz, *What to Know About the Signed U.S.-Ukraine Minerals Deal*, CSIS (May 1, 2025), https://www.csis.org/analysis/what-know-about-signed-us-ukraine-minerals-deal [https://perma.cc/MP7V-TMT9].

382. Steven Erlanger, *After Meeting Putin, Trump Reverts to Land Swaps for Peace in Ukraine*, N.Y. TIMES (Aug. 16, 2025), https://www.nytimes.com/2025/08/16/world/europe/trump-putin-ukraine-land-swap.html [https://perma.cc/YY8H-YKYY].

383. Marko Milanović & Michael Schmitt, *Israel's Use of Force Against Syria and the Right of Self-Defense*, EJIL: TALK! (Dec. 12, 2024), https://www.ejiltalk.org/israels-use-of-force-against-syria-and-the-right-of-self-defense/ [https://perma.cc/VH94-BRAZ].

384. Simon Speakman Cordall, *Not Just About the Druze: Israel's Rationale for Its Attacks on Syria*, AL JAZEERA (July 17, 2025), https://www.aljazeera.com/news/2025/7/17/not-just-about-the-druze-israels-rationale-for-its-attacks-on-syria [https://perma.cc/NZ54-TE9B].

385. Adil Ahmad Haque, *Indefensible: Israel's Unlawful Attack on Iran*, JUST SEC. (June 19, 2025), https://www.justsecurity.org/115010/israel-unlawful-attack-iran-charter/ [https://perma.cc/SGZ8-B93K]; Elena Becatoros, *What to Know About the U.S. Military's Intervention in the Israel-Iran War*, PBS NEWS (June 22, 2025), https://www.pbs.org/newshour/world/what-to-know-about-the-u-s-militarys-intervention-in-the-israel-iran-war [https://perma.cc/8KMH-WK93].

of Israel's initial strikes against Syria, Marko Milanović and Michael Schmitt challenged the legal rationale, stressing that "while States have the right to defend themselves anticipatorily against armed attacks, they do not have the right to use force against other States simply because they perceive them to be security risks or threats."³⁸⁶ Israel's perceived security risks related to weapons falling into the hands of non-state actors could not, they argue, provide "a right to demilitarize their neighbors who have not attacked them, including by destroying their air defenses or navy."³⁸⁷ In the context of Israel's strike against Iran, Adil Ahmad Haque stressed that Israel had no self-defense right under Article 51 of the U.N. Charter to attack Iran, given that there was no *imminent* armed attack by the latter against the former.³⁸⁸

A detailed account of these attacks is beyond the scope of this Article. But in considering how the international community should respond to Rwanda's attack against the DRC, it is critical to observe a context characterized by recurrent threats to the prohibition of interstate force. For each leader not held accountable for aggression, what precedent is set?

Martin Kimani, then-Kenya's Ambassador to the United Nations, aptly explained the stakes several days before Russia's 2022 invasion of Ukraine. In a speech to the UNSC, Ambassador Kimani argued that the borders of African states were "drawn in the distant colonial metropolises of London, Paris, and Lisbon with no regard for the ancient nations that they cleaved apart." But rather than seek to redraw arbitrarily defined borders by force, Kimani asserted, African states "agreed that [they] would settle for the borders that [they] inherited." The lesson is global: The world must, he urged, "complete our recovery from the embers of dead empires in a way that does not plunge us back into new forms of domination and oppression."³⁸⁹

Rwanda's attack against, and subsequent occupation of, eastern DRC is the kind of "domination and oppression" that has no place in an international legal system meant to move *beyond* interstate conquest.³⁹⁰ Absent accountability for aggression—in the DRC, in Ukraine, and elsewhere—illegal uses of force will only proliferate.

386. Milanović & Schmitt, *supra* note 383.

387. *Id.*

388. Haque, *supra* note 385.

389. Martin Kimani, Ambassador, Permanent Mission of the Republic of Kenya to the U.N., Statement During the Security Council Urgent Meeting on the Situation in Ukraine (Feb. 21, 2022), https://www.un.int/kenya/sites/www.un.int/files/Kenya/kenya_statement_during_urgent_meeting_on_on_ukraine_21_february_2022_at_2100.pdf [<https://perma.cc/GM3T-8KCA>]. It should be noted that Kimani was responding, at least in part, to Russia's recognition of breakaway regions of Ukraine—Donetsk and Luhansk—as independent states.

390. *Id.*

VI. AVENUES FOR ACCOUNTABILITY

There is substantial evidence that Rwanda's ongoing armed intervention in DRC constitutes an act of aggression and that high-level Rwandan leaders have committed the "crime" of aggression. But as of this writing, Rwanda has faced limited consequences for its full-scale invasion.

A full analysis of the mechanisms through which Rwanda—and its leaders—could be held accountable for their actions in eastern DRC is beyond the scope of this Article. But at the most basic level, there are multiple accountability avenues, including criminal prosecutions of Rwandan officials, non-criminal judicial proceedings against the Rwandan state, and a range of diplomatic, political, and economic steps. Section VI.A discusses judicial processes, while Section VI.B considers non-judicial actions. All told, these represent concrete steps intended both to pressure Rwanda to cease its aggression *and* to deter future aggression, whether in the DRC or elsewhere.

A. *Judicial Processes*

There are multiple ways that international actors could hold Rwanda, and its leaders, accountable for aggression through judicial proceedings. Among them, the ASP of the ICC could expand the court's jurisdiction over aggression (such that it could prosecute crimes of aggression committed by Rwandan nationals), the international community could create another international tribunal capable of criminally prosecuting Rwandan leaders for aggression, and non-criminal international tribunals could rule against the Rwandan state in ongoing civil cases. This Section discusses all three options in turn.

First, Rwanda's actions in Congo offer more evidence for the importance of "closing the loophole" on the ICC's jurisdiction over the crime of aggression.³⁹¹ Absent a referral from the UNSC, the ICC cannot prosecute individuals from non-states parties to the Rome Statute for aggression *even* in instances where the victim states have accepted the ICC's jurisdiction. Thus, Rwandan leaders likely cannot be prosecuted at the ICC for the crime of aggression against the DRC even though the DRC has ratified the Rome Statute.³⁹²

Though many states have incorporated aggression into their domestic criminal codes, domestic prosecutions are unlikely.³⁹³ The crime of aggression is a leadership crime—under the Rome Statute, only individuals at the highest echelons of a state's political or military leadership can be prosecuted for the

391. See discussion *supra* Introduction.

392. *The Democratic Republic of the Congo*, ICC, <https://www.icc-cpi.int/drc> [<https://perma.cc/3TGS-GZYE>].

393. See discussion *supra* Part II.

crime.³⁹⁴ But it is precisely those leaders who are most likely to benefit from both personal and functional immunity in domestic courts.³⁹⁵ The confluence of these two factors—the ICC's limited jurisdiction over aggression and immunity at the domestic level—renders aggression prosecutions for nationals from non-states parties to the ICC unlikely.

The ASP can rectify this situation. The ICC has territorial jurisdiction over the other three core crimes enumerated in the Rome Statute—in other words, if any of these crimes are committed within the *territory* of a State Party, the ICC can generally exercise jurisdiction regardless of whether the perpetrator is a national of a State Party.³⁹⁶ Thus, the ICC has issued arrest warrants for high-level Russian officials for alleged war crimes and crimes against humanity in Ukraine, including President Vladimir Putin, even though Russia has not accepted the ICC's jurisdiction.³⁹⁷ In contrast, the ICC has not issued arrest warrants for crimes of aggression. Were the ASP to modify the Rome Statute such that the ICC's jurisdiction over aggression mirrored its jurisdiction over other crimes, the court could conceivably issue arrest warrants against leaders of both Rwanda and Russia for their devastating invasions.

At a Special Session of the ASP in July 2025, states parties sought to rectify the situation.³⁹⁸ Under a proposed “harmonization amendment,”³⁹⁹ the ICC would be able to prosecute crimes of aggression committed on the territory of a state party *or* by a national of a state party, just as it can with other crimes.⁴⁰⁰ The majority of states parties were supportive.⁴⁰¹

Civil society advocates expressed their enthusiasm as well. *La Ligue pour la Paix, les Droits de l'Homme et la Justice* (“League for Peace, Human Rights and Justice”), a Congolese civil society organization, specifically highlighted the importance of accountability for aggression in the DRC: “In the region of the African Great Lakes, where . . . acts of aggression are a tangible reality . . .

394. See discussion *supra* Part IV.

395. See discussion *supra* Part II.

396. *Id.*

397. See Ukraine, ICC, <https://www.icc-cpi.int/situations/ukraine> [https://perma.cc/DR3Z-LMDK]; see also *Russia: Law Targets International Criminal Court*, HUM. RTS. WATCH (May 5, 2023), <https://www.hrw.org/news/2023/05/05/russia-law-targets-international-criminal-court> [https://perma.cc/X893-H5LF].

398. See Jennifer Trahan, *Crime of Aggression Negotiations Blocked by France, the United Kingdom, and Canada*, OPINIOJURIS (July 31, 2025), <https://opiniojuris.org/2025/07/31/crime-of-aggression-negotiations-blocked-by-france-the-united-kingdom-and-canada> [https://perma.cc/6MW7-8PQH].

399. GLOB. INST. FOR THE PREVENTION OF AGGRESSION, QUESTIONS & ANSWERS: THE PROPOSED AMENDMENT TO HARMONIZE JURISDICTION OVER ALL FOUR ROME STATUTE CRIMES (June 18, 2025), <https://crimeofaggression.info/wp-content/uploads/GIPA-COA-basics-FINAL.pdf> [https://perma.cc/Y7QW-ZXMW].

400. See *id.*

401. See Trahan, *supra* note 398.

impunity isn't a legal abstraction: it is pain experienced, an instance of justice denied.⁴⁰²

But a small group of states, including the United Kingdom and France, blocked the amendment's passage. States parties ultimately managed only to agree to *another* Special Session in 2029 on the same subject.⁴⁰³ The resolution marks a disappointing conclusion to yet another opportunity to provide justice—and protection—to past and future victims of illegal wars.

Such a setback should not, however, lead states and civil society leaders to give up their harmonization efforts. From the end of World War I to negotiations on the definition of aggression in the Rome Statute in 1998, powerful states have resisted nearly every effort to ensure accountability for aggression.⁴⁰⁴ The eventual passage of the Kampala Amendments in 2010, and the broad support for the “Harmonization Amendment” in July 2025, represent real, if frustratingly incremental, progress. Especially during a period in which the prohibition of the use of interstate force seems acutely vulnerable, efforts to harmonize the ICC's jurisdiction must continue.

Second, the international community could consider a new international tribunal with jurisdiction over aggression, whether globally or in Rwanda–DRC specifically. Such a concept is not without precedent. Soon after Russia invaded Ukraine, Ukrainian President Volodymyr Zelenskyy addressed the UNSC, urging the international community to “immediately bring the Russian military and those who gave them orders to justice.”⁴⁰⁵ Though much of Zelenskyy's speech focused on Russia's alleged war crimes, he also stressed accountability for *the invasion itself*. The United Nations, he argued, must have the capacity to “[p]revent aggression” and “the determination and ability to punish if the principles of peace are violated.”⁴⁰⁶ Over time, states, legal scholars, and other actors progressively endorsed such a tribunal.⁴⁰⁷

402. Maurice Tekomi, Déclaration de la Ligue pour la Paix, les Droits de l'Homme et la Justice (LIPADHOJ) À La Session Extraordinaire Sur Les Amendements De Kampala [Statement by the League for Peace, Human Rights and Justice (LIPADHOJ) at the Extraordinary Session on the Kampala Amendments] (July 19, 2025), <https://www.lipadhoj.org/2025/07/19/declaration-de-la-ligue-pour-la-paix-les-droits-de-lhomme-et-la-justice-lipadhoj-a-la-session-extraordinaire-sur-les-amendements-de-kampala-7-juillet-2025-new-york-2/> [https://perma.cc/6WQQ-KVPJ] (translated by author).

403. See Trahan, *supra* note 398.

404. See discussion *supra* Part I.

405. Volodymyr Zelenskyy, President of Ukr., Speech at a Meeting of the UN Security Council (Apr. 5, 2022), <https://www.president.gov.ua/en/news/vistup-prezidenta-ukrayini-nazasidanni-radi-bezpeki-oon-74121> [https://perma.cc/4D9N-FQ44].

406. *Id.*

407. OPEN SOC'Y JUST. INIT., *supra* note 100, at 3; INT'L CRISIS GRP., *supra* note 62; *Resolution of 19 January 2023 on the establishment of a tribunal on the crime of aggression against Ukraine*, 2023 O.J. (C 214) 10, ¶¶ 2–3, https://www.europarl.europa.eu/doceo/document/TA-9-2023-0015_EN.html [https://perma.cc/S93B-WYYC]; Jennifer Trahan, *Why a “Hybrid” Ukrainian Tribunal*

The situation changed dramatically after the election of Donald Trump in 2024. As noted in Part V, President Trump has criticized Ukraine for *starting* the armed conflict with Russia.⁴⁰⁸ The Trump Administration's withdrawal from efforts to prosecute Russian officials for aggression and calls for "territorial swaps" are indicative of a lack of interest in any accountability for Russia's act of aggression.⁴⁰⁹

Despite the United States's recent opposition, states and civil society activists have not abandoned their efforts to hold Russian leaders criminally responsible for starting a war. The signing of an agreement between Ukraine and the Council of Europe on the establishment of a Special Tribunal for the Crime of Aggression against Ukraine in July 2025 marks a meaningful step forward.⁴¹⁰

The reasons advanced for a Ukraine–Russia aggression tribunal similarly apply to the DRC.⁴¹¹ As in Russia–Ukraine, aggression prosecutions against Rwandan officials could deter future Rwandan armed attacks against the DRC, provide accountability for the war itself, and uphold international law's core prohibition of the use of interstate force. Aggression is a global problem with consequences for millions of civilians across the world—it merits global accountability efforts.⁴¹²

on the Crime of Aggression Is Not the Answer, JUST SEC. (Feb. 6, 2023), <https://www.justsecurity.org/85019/why-hybrid-ukrainian-tribunal-on-crime-of-aggression-is-not-the-answer/> [<https://perma.cc/5AG6-LMCJ>]; Hamilton, *supra* note 378.

408. See Justin Spike, *Trump Says Ukraine Started the War That's Killing Its Citizens. What Are the Facts?*, AP NEWS (Feb. 21, 2025), <https://apnews.com/article/ukraine-russia-trump-war-zelenskyy-putin-7fe8c0c80b4e93e3bc079c621a44e8bb> [<https://perma.cc/6ZKL-MRVM>].

409. See discussion *supra* Part V.

410. *Ukraine and the Council of Europe Sign Agreement on Establishing a Special Tribunal for the Crime of Aggression Against Ukraine*, COUNCIL OF EUR. (June 25, 2025), <https://www.coe.int/en/web/portal/-/ukraine-and-the-council-of-europe-sign-agreement-on-establishing-a-special-tribunal-for-the-crime-of-aggression-against-ukraine> [<https://perma.cc/K5TZ-95KH>].

411. See, e.g., *Political Declaration of the Ministerial Conference on Restoring Justice for Ukraine*, GOV'T OF THE NETH. (Apr. 2, 2024), <https://www.government.nl/ministries/ministry-of-foreign-affairs/documents/diplomatic-statements/2024/04/02/political-declaration-of-the-ministerial-restoring-justice-for-ukraine-conference> [<https://perma.cc/9ZDY-76DR>]; Gaiane Nuridzhanian, *International Enough? A Council of Europe Special Tribunal for the Crime of Aggression*, JUST SEC. (June 3, 2024), <https://www.justsecurity.org/96320/council-of-europe-ukraine-tribunal/> [<https://perma.cc/9RVR-CSLD>]; Trahan, *supra* note 407; Patryk Labuda, *Making Counter-Hegemonic International Law: Should a Special Tribunal for Aggression Be International or Hybrid?*, JUST SEC. (Feb. 18, 2023), <https://www.justsecurity.org/88373/making-counter-hegemonic-international-law-should-a-special-tribunal-for-aggression-be-international-or-hybrid/> [<https://perma.cc/6R3Q-SQKY>].

412. See, e.g., Kevin Jon Heller, *Creating a Special Tribunal for Aggression Against Ukraine Is a Bad Idea*, OPINIOJURIS (Mar. 7, 2022), <http://opiniojuris.org/2022/03/07/creating-a-special-tribunal-for-aggression-against-ukraine-is-a-bad-idea/> [<https://perma.cc/JNU8-8WD2>] ("If . . . the international community is committed to creating a new tribunal that can prosecute Russian officials for the committing aggression against Ukraine, at the very least it should create one that is permanent and that [has] the widest jurisdiction possible.").

A hypothetical tribunal with jurisdiction over Rwanda's aggression is broadly speaking, in line with calls from Congolese civil society. Congolese activists have long sought accountability for grievous crimes committed in the DRC.⁴¹³ Activists have often specifically called for an international criminal tribunal to investigate crimes recorded in the United Nations' 2010 "Mapping Report," which highlighted more than 600 grave violations of international law committed in the DRC between 1993 and 2003.⁴¹⁴

Both aforementioned options—the ICC's expanded jurisdiction or the creation of another tribunal with jurisdiction over Rwanda's aggression—are unlikely in the short term. But beyond the criminal context, other international tribunals can hold the Rwandan *state* responsible for its aggression. Notably, the DRC initiated proceedings against Rwanda at the ACHPR in 2023.⁴¹⁵ In July 2025, the court dismissed Rwanda's preliminary objections regarding jurisdiction and admissibility.⁴¹⁶ The case—the first inter-state case submitted to the court—has now moved to the merits phase.⁴¹⁷

It is beyond the scope of this Article to discuss the *DRC v. Rwanda* case in detail. But the court has the opportunity to rule on a host of alleged violations of the African Charter—including violations of the right to life—and other instruments of international human rights law and to order corresponding

413. See, e.g., Denis Mukwege & Louise Arbour, *Statement from Dr. Denis Mukwege and Louise Arbour, Former United Nations High Commissioner for Human Rights, on the 10th Anniversary of the Publication of the Mapping Report*, PANZI FOUND. (Oct. 1, 2020), <https://panzifoundation.org/statement-from-dr-denis-mukwege-and-louise-arbour-former-united-nations-high-commissioner-for-human-rights-on-the-10th-anniversary-of-the-publication-of-the-mapping-report/> [https://perma.cc/4PDG-UDFE]; *10 ans du rapport mapping—Des manifestations pour réclamer justice en RDC [10 Years of the Mapping Report—Demonstrations to Demand Justice in the DRC]*, ALL AFR. (Oct. 1, 2020), <https://fr.allafrica.com/view/group/main/main/id/00075107.html> [https://perma.cc/G4FY-PAMD]; *RDC : Les ONGs des droits humains exigent l'application globale du rapport Mapping, 10 ans après sa publication [DRC: Human Rights NGOs Demand Comprehensive Implementation of the Mapping Report, 10 Years After Its Publication]*, LA RÉPUBLIQUE (Oct. 1, 2020), <https://larepublique.net/rdc-les-ong-des-droits-humains-exigent-lapplication-globale-du-rapport-mapping-10-ans-apres-sa-publication/> [https://perma.cc/9DTG-MFZN]; Jean-Mobert Senga, *DRC: To Restore Security, Address Impunity for Rights Violations in the East*, MAIL & GUARDIAN (Aug. 10, 2022), <https://mg.co.za/thought-leader/opinion/2022-08-10-drc-to-restore-security-address-impunity-for-rights-violations-in-the-east/> [https://perma.cc/S8PC-ZK4N] (arguing that "widespread impunity enjoyed by perpetrators of human rights abuses" is a "root cause" of the M23–DRC–Rwanda conflict).

414. See Levine-Spound & Tolany, *supra* note 140.

415. Frans Viljoen, *DRC vs Rwanda at the African Court: Why It Could Be a Decisive Moment for Human Rights and Justice on the Continent*, CONVERSATION (Feb. 23, 2025), <https://theconversation.com/drc-vs-rwanda-at-the-african-court-why-it-could-be-a-decisive-moment-for-human-rights-and-justice-on-the-continent-250074> [https://perma.cc/T8KY-EXG6].

416. James Tasamba, *African Court Rejects Objections Raised by Rwanda in DR Congo Case*, AA (June 27, 2025), <https://www.aa.com.tr/en/africa/african-court-rejects-objections-raised-by-rwanda-in-dr-congo-case/3614818> [https://perma.cc/2LDZ-BLD9].

417. Viljoen, *supra* note 415.

remedies.⁴¹⁸ As an international human rights court with jurisdiction over states, the ACPHR cannot criminally convict a Rwandan official. But it could find that Rwanda's military intervention in the DRC, both unilaterally and through its M23 proxy, constitutes violations of Rwanda's international human rights obligations. Such a ruling could have significant implications for accountability for illegal uses of interstate force.

B. Political, Economic, and Diplomatic Tools

Beyond judicial bodies, states and other international actors have tools to hold Rwanda politically and diplomatically accountable for its actions in the DRC. Such actions will likely prove critical in pressuring Rwanda to withdraw from the DRC and cease providing support to M23.

History provides the evidence. In 2012, after the first iteration of M23 took over Goma, international actors mobilized.⁴¹⁹ In the United States, for instance, the U.S. Congress passed a requirement wherein foreign military financing ("FMF") for Uganda and Rwanda would be suspended if the U.S. Secretary of State had "credible information" that either country was providing support to armed groups in the DRC who have violated human rights. In a break from previous policy, the Obama Administration publicly criticized Rwandan support for M23 and suspended FMF. The Administration suspended more military aid to Rwanda under the Child Soldiers Prevention Act, citing Rwandan support for M23.⁴²⁰ And notably, President Obama called President Kagame himself, urging him to cease supporting the group.⁴²¹ Though the amount of military aid cut was relatively small, U.S. actions likely encouraged other donors to similarly halt aid to Rwanda.⁴²² All told, key donors announced the freezing of over two hundred million dollars to Rwanda as a result of its support to M23.⁴²³

Regional states reacted as well. South Africa and other regional states sent soldiers to the DRC to establish the FIB, a part of the U.N. peacekeeping

418. Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights art. 27, June 9, 1998, O.A.U. Doc. OAU/LEG/EXP/AFCHPR/PROT (III).

419. See discussion *supra* Part III.

420. See Levine-Spound & Tolany, *supra* note 140.

421. David Smith, *Obama Urges Rwandan President to Stop Support for M23 Rebels in Congo*, GUARDIAN (Dec. 19, 2012), <https://www.theguardian.com/world/2012/dec/19/obama-rwanda-support-congo-rebels> [<https://perma.cc/BQ5Q-5JLH>]; Levine-Spound & Tolany, *supra* note 140.

422. Levine-Spound & Tolany, *supra* note 140.

423. EBUTELI, *supra* note 134; see also Daniel Levine-Spound, *Fall of Goma: Why Rwandan Aggression in DR Congo Must Be Stopped*, NEW HUMANITARIAN (Feb. 3, 2025), <https://www.thenewhumanitarian.org/opinion/2025/02/03/fall-drc-goma-why-rwanda-aggression-dr-congo-must-be-stopped> [<https://perma.cc/5D4K-GXCL>].

mission with an explicitly offensive mandate.⁴²⁴ The FIB ultimately played a meaningful role in supporting the Congolese military's counter-offensive against M23.⁴²⁵

Under growing international pressure, Rwanda ceased supporting M23. The group soon collapsed in the face of a military offensive led by the Congolese army and its partners.⁴²⁶

Ten years later, responses to M23's 2021 resurgence—and Rwanda's armed attack against the DRC—have been far more tepid. Since 2022, states have progressively called on Rwanda to change course. In 2024, for example, U.S. Ambassador to the United Nations Linda Thomas-Greenfield stated, "Rwanda must immediately withdraw its more than 4,000 troops from DRC territory and cease its support for M23."⁴²⁷ The European Union,⁴²⁸ Belgium,⁴²⁹ and France⁴³⁰ have similarly demanded Rwanda's withdrawal from eastern DRC and the cessation of support to M23. But condemnations have not translated into adequate consequences.

France is a good example. In January 2025, after an emergency UNSC briefing, the French Foreign Minister stressed his "solidarity" with DRC and "condemned the M23's offensive, supported by the Rwandan army."⁴³¹ Yet several months prior, the European Peace Facility (an EU agency) awarded twenty million euros to the Rwandan army. The objective? Supporting Rwanda's military action in Mozambique, where Total, the largest company in France, has critical gas investments.⁴³² Indeed, reports suggest that a high-ranking army

424. Levine-Spound, *supra* note 423.

425. *Id.*

426. *Id.*

427. Linda Thomas-Greenfield, Ambassador, U.S. Permanent Mission to the U.N., Remarks at a U.N. Security Council Briefing on the Democratic Republic of the Congo (Sept. 30, 2024), <https://usun.usmission.gov/remarks-by-ambassador-linda-thomas-greenfield-at-a-un-security-council-briefing-on-the-democratic-republic-of-the-congo/> [<https://perma.cc/L8KH-UV3HJ>].

428. Press Release, Eur. External Action Serv., Eastern DRC: Statement by the Spokesperson on the Latest Developments (Jan. 6, 2025), https://www.eeas.europa.eu/eeas/eastern-drc-statement-spokesperson-latest-developments_en [<https://perma.cc/6ZBM-QZKB>].

429. *Belgium Calls on Rwanda to Withdraw Troops and Stop Supporting M23*, BELGA NEWS AGENCY (Mar. 7, 2024), <https://www.belganewsagency.eu/belgium-calls-on-rwanda-to-withdraw-troops-and-stop-supporting-m23> [<https://perma.cc/86DV-URQD>].

430. *Paris demande au Rwanda de "cesser tout soutien au M23 et de se retirer du territoire congolais"* [Paris Calls on Rwanda to "Cease All Support for the M23 and Withdraw from Congolese Territory"], FRANCE24 (Feb. 20, 2024), <https://www.france24.com/fr/afrique/20240220-rdc-paris-demande-au-rwanda-de-cesser-tout-soutien-au-m23-et-se-retirer-du-territoire-congolais> [<https://perma.cc/WN85-C9QX>].

431. Levine-Spound, *supra* note 423.

432. Kristof Titeca, *The (Bad) Politics Behind the EU's New €20 Million for the Rwandan Army*, DEMOCRACY IN AFR. (Nov. 18, 2024), <https://democracyinafrica.org/the-bad-politics-behind-the-new-eu-e20-million-for-rwanda/> [<https://perma.cc/F7AF-TGQM>].

officer in the EU-backed Rwandan mission in Mozambique has also directed military operations in eastern DRC.⁴³³

The United Kingdom (“U.K.”) has similarly maintained close relationships with Kigali. In 2022, the former U.K. government helped to organize the Commonwealth summit in Rwanda. A four-hour drive from the event, M23 combatants were accused of intentionally killing dozens of civilians.⁴³⁴ The former U.K. government also sought to strike a migration deal with Kigali, under which asylum seekers from the United Kingdom would be deported to Rwanda. Though the plan never came to fruition, it similarly helped Rwanda maintain political capital.⁴³⁵

The European Union has also been unwilling to impose meaningful consequences. In 2023, the European Commission announced that the European Union and its member states were investing €900 million in investments in different sectors of the Rwandan economy, including “critical raw minerals.”⁴³⁶ The next year, the European Union signed a Memorandum of Understanding (“MoU”) with Rwanda related to “mineral value chains,” despite widespread reports of pillaged minerals from the DRC exported through Rwanda.⁴³⁷ Calls to suspend the agreement, including from EU member states and members of the EU Parliament, have gone unheeded.⁴³⁸

The United Nations has been similarly reticent. In January 2025, U.N. Secretary-General Antonio Guterres called on Rwanda to “cease support to the M23 and withdraw from DRC territory.”⁴³⁹ But Rwanda remains one of the most important contributors to U.N. peacekeeping missions around the world, a major source of financial support for the Rwandan government. The fact that more than a dozen U.N. peacekeepers have died because of the latest Rwanda

433. Levine-Spound, *supra* note 423.

434. Michela Wrong, *Rwanda Is a Brutal, Repressive Regime. Holding the Commonwealth Summit There Is a Sham*, GUARDIAN (June 22, 2022), <https://www.theguardian.com/commentisfree/2022/jun/22/rwanda-hosting-commonwealth-summit-exposes-gaping-hole-values> [https://perma.cc/3PGT-ZUA4].

435. *Id.*

436. *Rwanda and the European Union Strengthen Partnership*, DELEGATION OF THE EUROPEAN UNION TO RWANDA (Dec. 19, 2023), https://www.eeas.europa.eu/delegations/rwanda/rwanda-and-european-union-strengthen-partnership_en [https://perma.cc/5WNA-3Y9D].

437. European Commission Press Release IP/24/822, EU and Rwanda Sign a Memorandum of Understanding on Sustainable Raw Materials Value Chains (Feb. 18, 2024), https://ec.europa.eu/commission/presscorner/detail/pl/ip_24_822 [https://perma.cc/69KZ-PY3L].

438. Jennifer Rankin, *Pressure Grows on EU to Freeze Minerals Deal with Rwanda over DRC Fighting*, GUARDIAN (Feb. 2, 2025), <https://www.theguardian.com/world/2025/feb/02/pressure-grows-on-eu-to-freeze-minerals-deal-with-rwanda-over-drc-fighting> [https://perma.cc/3M9C-X6AH].

439. Levine-Spound, *supra* note 423.

offensive has not, as of yet, affected Rwanda's status as one of U.N. peacekeeping's major contributors.⁴⁴⁰

Beyond condemnations and accountability efforts, African states and regional organizations led multiple negotiating processes intended to end the violence. Namely, Angola and Kenya led negotiations in Luanda and Nairobi, respectively. But despite some signs of progress, neither process succeeded in permanently halting the fighting.⁴⁴¹

Diplomatic responses hardened after Rwanda's takeover of Goma and Bukavu in early 2025. The United States announced sanctions against James Kabarebe, Rwanda's Minister of State for Regional Integration, given his role in RDF–M23's armed operations in eastern DRC.⁴⁴² Germany canceled talks with Rwanda on "future development cooperation."⁴⁴³ U.K. Foreign Minister David Lammy warned that one billion dollars in aid was "under threat."⁴⁴⁴ The European Union sanctioned five high-level M23 officials, several RDF officials, and a Rwandan gold refinery.⁴⁴⁵ And the UNSC unanimously adopted a resolution demanding that Rwanda immediately withdraw from the DRC "without preconditions."⁴⁴⁶

The situation changed again in summer 2025. In June 2025, foreign ministers from the DRC and Rwanda signed a peace deal in Washington, D.C.⁴⁴⁷ The following month, the DRC and M23 signed a Declaration of Principles in Doha.⁴⁴⁸ In the former, the Congolese and Rwandan governments agreed to "respect" both states' territorial integrity and to the "prohibition of hostile acts," which includes "engag[ing] in, support[ing], or condon[ing] any military incursions or other acts, whether direct or indirect, that threaten the peace and security, or that undermine the territorial integrity of the other Party."⁴⁴⁹

440. *Id.*

441. U.N. Group of Experts (2024), *supra* note 172, Annex 13; Remadji Hoinathy, *Eastern DRC Peace Processes Miss the Mark*, INST. FOR SEC. STUD. (Feb. 8, 2023), <https://issafrica.org/iss-today/eastern-drc-peace-processes-miss-the-mark> [<https://perma.cc/GPN3-RQ35>].

442. Press Release, U.S. Dep't of the Treasury, Treasury Sanctions Rwandan Minister and Senior Militant for Conflict in the Democratic Republic of the Congo (Feb. 20, 2025), <https://home.treasury.gov/news/press-releases/sb0022> [<https://perma.cc/VWD2-6VM2>].

443. Levine-Spound, *supra* note 423.

444. *Id.*

445. Council of the European Union Press Release 186/25, Democratic Republic of the Congo: EU Lists Further Nine Individuals and One Entity (Mar. 17, 2025), <https://www.consilium.europa.eu/en/press/press-releases/2025/03/17/democratic-republic-of-the-congo-eu-lists-further-nine-individuals-and-one-entity/> [<https://perma.cc/W3ZW-NWY9>].

446. *Security Council Urges Rwanda to Stop Supporting M23 in Eastern DR Congo*, U.N. NEWS (Feb. 21, 2025), <https://news.un.org/en/story/2025/02/1160406> [<https://perma.cc/5JU8-BFDT>].

447. Moncrieff, *supra* note 14.

448. U.N. NEWS, *supra* note 13.

449. DRC–Rwanda Peace Agreement, *supra* note 13, art. 1(i).

But ambiguities and lacunae in the wording of both agreements, as well as challenges in implementation, are causes for concern. The Washington Agreement, for instance, commits the two states to the implementation of a 2024 Concept of Operations (“CONOPS”) signed in Luanda, under the auspices of the Angolan government. The CONOPS stipulates that Rwanda should lift its “defensive measures”—a troubling euphemism for Rwanda’s multi-year invasion of its neighbor—while the DRC should “neutralize” the FDLR armed group.

But the CONOPS does not specify *the order* in which these two steps should take place.⁴⁵⁰ After the Washington, D.C. signing, Rwandan Foreign Minister Olivier Nduhugirehe exploited this ambiguity, asserting that Rwanda would only lift its “defensive measures” once the Congolese government “neutralized” the FDLR.⁴⁵¹ Given that FDLR is present, in large part, in areas controlled by M23, it is unclear how DRC can “neutralize” them.⁴⁵²

Following the Doha signing, M23 rejected the notion of territorial withdrawal altogether.⁴⁵³ The head of M23’s delegation went as far as to claim that M23 would not withdraw “even a single meter. We will stay where we are.”⁴⁵⁴ The M23 has argued for a form of federalism or co-governance of territories unacceptable to the Congolese government.⁴⁵⁵ In August 2025, heavy fighting between the two sides resumed.⁴⁵⁶

As of this writing, the ultimate success of the Washington, D.C. and Doha deals is highly questionable. And without far more substantial economic or

450. DRC–Rwanda Peace Agreement, *supra* note 13, Appendix A, Concept of Operations for the Harmonized Plan for Neutralization of the FDLR and Disengagement of Forces/Lifting of Defensive Measures of Rwanda.

451. Minister Nduhugirehe Reacts to DRC Counterpart’s Understatement of FDLR Threat, IGIHE (July 4, 2025), <https://en.igihe.com/news/article/minister-nduhugirehe-reacts-to-drc-counterpart-s-understatement-of-fdlr-threat> [<https://perma.cc/N6ZG-4RKZ>].

452. Filip Reyntjens, *A Strange Deal with Many Loose Ends: Washington’s Peace in Central Africa*, AFR. ARGUMENTS (Aug. 4, 2025), <https://africanarguments.org/2025/08/a-strange-deal-with-many-loose-ends-washingtons-peace-in-central-africa/> [<https://perma.cc/5DA9-G4MP>].

453. Saleh Mwanamilongo, *Experts Skeptical About DR Congo Peace Deal*, DEUTSCHE WELLE (July 20, 2025), <https://www.dw.com/en/experts-skeptical-about-dr-congo-afc-m23-peace-deal/a-73343464> [<https://perma.cc/LW3F-T68R>].

454. *RDC: après Doha, le retrait du M23 en question* [DRC: After Doha, the Withdrawal of the M23 in Question], AFRIKARABIA (July 20, 2025), <https://afrikarabia.com/wordpress/rdc-apres-doha-le-retrait-du-m23-en-question/> [<https://perma.cc/42GZ-KYZM>] (translated by author).

455. *See id.*

456. Mathilde Bousson, *La paix s’éloigne dans l’est de la RDC, malgré la médiation des Etats-Unis et du Qatar* [Peace Eludes Eastern DRC Despite Mediation Efforts by the United States and Qatar], LE MONDE (Aug. 18, 2025), https://www.lemonde.fr/afrique/article/2025/08/18/la-paix-s-eloigne-dans-l-est-de-la-rdc-malgre-la-mediation-des-etats-unis-et-du-qatar_6631655_3212.html [<https://perma.cc/RHW9-X5P3>].

political consequences, there is no reason to believe that Rwanda and M23 will abandon the vast territories under their control.⁴⁵⁷

But more pressure is possible. As Reagan Miviri, Joshua Walker, and Jason Stearns argue, the World Bank continues to spend more than four billion dollars annually on projects in Rwanda—it could suspend these projects until the Rwandan government changes course in the DRC, as it did in 2012.⁴⁵⁸ Similarly, Rwanda continues to receive more than one hundred million dollars annually through its troop contributions to U.N. peacekeeping missions. Such support could be reduced.⁴⁵⁹ The African Union could suspend Rwanda's membership and impose sanctions.⁴⁶⁰ The European Union could cancel its MoU regarding minerals with Rwanda and cease supporting Rwanda's military deployment in Mozambique. And states across the world could suspend economic cooperation with Rwanda or take steps to isolate it diplomatically.

These options are just a few examples of how the different actors could meaningfully pressure the Rwanda government to cease its occupation of eastern DRC. The international community has stood in the way of Rwanda's territorial ambitions before—it can do so again.

CONCLUSION

In 2021, Rwanda invaded neighboring DRC, triggering an international armed conflict that has killed thousands of Congolese civilians and displaced millions of others. Rwanda's actions constitute an act of aggression in violation of the U.N. Charter. But so far, there has been little accountability. As in the context of Russia's invasion of Ukraine, the ICC has no jurisdiction over Rwandan leaders' alleged crimes of aggression, and prosecutions in domestic courts are unlikely. The international community has proven largely unwilling to impose diplomatic or economic sanctions. Seemingly immune from consequences, Rwanda appears poised to maintain a long-term occupation over much of eastern DRC.

Rwanda's actions have had devastating consequences for Congolese civilians. But its aggression is just one example of a broader trend in which states across the world threaten or use interstate force with few consequences.

457. Walker et al., *supra* note 373.

458. *Id.*

459. *Id.*

460. See, e.g., Andrews Atta-Asamoah, *The AU Prepares to Wield the Stick with More Rigorous Sanctions*, INST. FOR SEC. STUD. (Sept. 14, 2022), <https://issafrica.org/iss-today/the-au-prepares-to-wield-the-stick-with-more-rigorous-sanctions> [https://perma.cc/B4ME-Y9H5]; Namira Negm, *The Sanctions Regime of the African Union in Response to Unconstitutional Changes of Government*, in TALKING INTERNATIONAL LAW: LEGAL ARGUMENTATION OUTSIDE THE COURTROOM 218, 219–24 (Ian Johnstone & Steven Ratner eds., 2021).

Accountability—or lack thereof—for Rwanda's aggression is of global significance.

But it is not too late to act. The ASP to the ICC could “close the loop-hole,” expanding the court's jurisdiction over crimes of aggression. States could support the formation of a new international tribunal with jurisdiction over aggression, wherever it may take place. And in the more immediate term, Rwanda remains sensitive to international opinion and largely dependent on foreign assistance. The only question is whether states will ultimately take the hard steps needed to hold it accountable, including imposing sanctions and freezing foreign aid. In doing so, they could uphold the prohibition of the use of force at the core of the international legal system—and most importantly, end an armed conflict that has destroyed millions of Congolese lives.

