book. It may not respond fully even to those. Prudence suggests that we frame our ambitions for the exercise in positive terms that reinforce the legitimacy, utility, and promise of the UNCLOS regime and the work of the valuable institutions that implement it.

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The Crime of Aggression: The Quest for Justice in an Age of Drones, Cyberattacks, Insurgents, and Autocrats. By Noah Weisbord. Princeton, NJ: Princeton University Press, 2019. Pp ix, 257. Index.
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At the same time that Justice Robert H. Jackson helped to construct the Nuremberg tribunal at the end of World War II, he also sought to end aggressive war altogether. As he noted in his famous opening statement at the tribunal, the prosecution aimed "to utilize international law to meet the greatest menace of our times—aggressive war."[1] Nevertheless, although the Nuremberg court tried twenty-two Nazi leaders—and subsequent war crimes trials in Germany and Tokyo prosecuted other military figures—the crime of aggression Jackson had championed became something of an afterthought. Subsequent to these proceedings, scholars and commentators largely viewed the aggression charges as problematic, and many have described the prosecution of war crimes and crimes against humanity as the tribunal's more enduring legacy.[2] Indeed, even during the heady post-Cold War period that produced the ad hoc international tribunals for Yugoslavia and Rwanda and the remarkable agreement to establish the International Criminal Court (ICC), the crime of aggression was excluded from the purview of these bodies. Yet a small band of international lawyers, of whom Nuremberg prosecutor Benjamin Ferencz was one, never let go of the ideal of defining the international crime of aggression and including it within the jurisdiction of an international criminal court (pp. 58–59). That ideal became a reality in 2010 in Kampala, Uganda, when the Assembly of States Parties to the International Criminal Court agreed to a definition of the crime and a path forward for including it within the ICC's jurisdiction.[3]

[1] *Second Day, Wednesday, 11/21/1945, Part 04, in* TRIAL OF THE MAJOR WAR CRIMINALS BEFORE THE INTERNATIONAL MILITARY TRIBUNAL, VOL. II, Proceedings: 11/14/1945–11/30/1945, 1947 IMT 98 (official text in the English language), *available at* https://perma.cc/9KEM-8UBF.

[2] *See, e.g.*, DAVID LUBAN, LEGAL MODERNISM 336–62 (1994).

[3] The ICC defines the "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." Rome Statute of the International Criminal Court, Art. 8*bis*(1), July 18, 1998, UN Doc. A/CONF.183/9*. The "act of aggression" is defined 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. Any of the following acts, regardless of a declaration of war, shall, in accordance with United Nations General Assembly resolution 3314 (XXIX) of 14 December 1974, qualify as an act of aggression: (a) The invasion or attack by the armed forces of a State of the territory of another State, or any military occupation, however temporary, resulting from such invasion or attack, or any annexation by the use of force of the territory of another State or part thereof; (b) Bombardment by the armed forces of a State against the territory of another State or the use of any weapons by a State against the territory of another State; (c) The blockade of the ports or coasts of a State by the armed forces of another State; (d) An attack by the armed forces of a State on the land, sea or air forces, or marine and air fleets of another State; (e) The use of armed forces of one State which are within the territory of another State with the agreement of the receiving State, in contravention of the conditions provided for in the agreement or any extension of their presence in such territory beyond the termination of the agreement; (f) The action of a State in allowing its territory, which it has placed at the disposal of another State, to be used by that other State for perpetrating an act of aggression against a third State; (g) The sending by or on behalf of a State of armed bands, groups, irregulars or mercenaries, which carry out acts of armed force

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Noah Weisbord's book, *The Crime of Aggression: The Quest for Justice in an Age of Drones, Cyberattacks, Insurgents, and Autocrats*, provides a riveting account of this seemingly lost legacy of Nuremberg. Weisbord takes the reader back to the League of Nations, charting the history of efforts to criminalize aggression, and then walks through World War II, the Cold War, the early post-Cold War years of unusual international consensus, into the current post-September 11, 2001 era. It is a gripping read. Weisbord, an associate professor of law at Queen's University in Canada, weaves together highly accessible accounts of the many competing perspectives and the actors who debated the crime of aggression over the years, from the international relations realists who were deeply skeptical of international criminal law, to the liberal internationalists who championed it, to the pragmatists who walked in between. His richly textured, eminently readable history of international institutions fits into an emerging body of recent books on this subject, most notably *The Internationalists: How a Radical Plan to Outlaw War Remade the World*, by Oona A. Hathaway and Scott J. Shapiro.[4]

The heart of Weisbord's book provides an engaging blow-by-blow account of the negotiations in Kampala to define both the crime of aggression and the scope of the ICC's jurisdiction to try the crime (pp. 89–112). As someone who served on the ICC working group that drafted the crime of aggression, Weisbord knows what he is talking about. He masterfully blends storytelling with doctrinal analysis, mapping the efforts of competing groups of states to advance their views and describing the compromises reached in the final text (pp. 105–10).[5]

These compromises are significant. For example, to the dismay of some human rights proponents, the Kampala agreement does not explicitly allow the prosecution of nonstate actors who commit acts of aggression across territorial borders. In addition, the ICC's jurisdiction over the crime of aggression is quite different from its jurisdiction regarding the existing crimes of genocide, war crimes, and crimes against humanity. Unlike for those crimes, individuals from nonparty states cannot be subject to ICC jurisdiction for the crime of aggression, absent UN Security Council resolution, even if the individual commits an offense in the territory of a party state. Further, even states parties to the ICC can explicitly opt out of jurisdiction for the crime of aggression, again unlike crimes against humanity, war crimes, or genocide.

Having described these provisions, Weisbord then moves on to examine how the crime of aggression could be applied in our era of terrorists, drones, and new military technologies (pp. 113–50). Here, we see the many emerging contexts where the crime might be applied and the complications that are likely to arise in shaping the contours of the crime in complex, real-world situations.

Overall, the book's engaging style and readability make it an ideal companion to a broad variety of courses in international law and international relations. It should also, in my view, be on the recommended reading list for governmental and intergovernmental lawyers, including military lawyers, who must address legal issues related to the use of force and international criminal law. The book provides an especially useful starting point for those lawyers as they begin to wrestle with the complex applications of the crime of aggression in actual practice.

One could quibble with some aspects of the author's account. To begin with, his tale is overly optimistic about the potential of international criminal law to end war. He does not quite make the claim that prosecuting aggression will

against another State of such gravity as to amount to the acts listed above, or its substantial involvement therein." *Id.* Art. 8*bis*(2). For the jurisdictional provisions regarding its application, see *id.*, Arts. 15*bis*, 15*ter*.

[4] Oona A. Hathaway & Scott J. Shapiro, The Internationalists: How a Radical Plan to Outlaw War Remade the World (2017); *see also* Anna Sprain Bradley, Book Review, *The Internationalists: How a Radical Plan to Outlaw War Remade the World*, 112 AJIL 330 (2018).

[5] For another excellent account of the Kampala negotiations, see Beth Van Schaack, *Negotiating at the Interface of Power and Law: The Crime of Aggression*, 49 Colum. J. Transnat'l L. 505 (2011).

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stop states from illegally deploying force outside their borders, but in the spirit of Jackson, he does signal in that direction. For example, he presents the history of international institutions from the League of Nations to the United Nations to the ICC somewhat as if the crime of aggression is the missing piece that will make everything hang together. He gives short shrift to critical international legal theory, devoting a scant few paragraphs to scholars who identify the ways in which international law and institutions can entrench power and discrimination without delivering on their liberal ideals. And although he nods to the rising nationalist forces emerging around the world, he does not really tackle the depth of the threat they pose to longstanding international institutions and international law. In the age of Donald Trump, Vladimir Putin, Jair Bolsonaro, and Xi Jinping, the expansion of ICC jurisdiction to include the crime of aggression, even for those who think it is a good idea, might seem like pretty weak tea.

One could also object to his doctrinal interpretations of the new definition of criminal aggression. In Chapter 7 ("Judging War," 113–31), he helpfully analyzes a number of potentially vexing scenarios that could involve aggression allegations. The chapter is particularly useful because, as Weisbord acknowledges, critics of the crime of aggression have sometimes expressed concern about the potential vagueness of the term. Yet, Weisbord's relatively brusque dismissal of these critics is, in my view, a bit unfair. For example, Weisbord walks through a series of hypotheticals that might implicate the crime of aggression, including one involving a military action touted as humanitarian intervention and another an act of self-defense. In each case, he oversimplifies, transforming what are actually very hard cases into seemingly easy ones.

With respect to humanitarian intervention, some critics of the crime of aggression as defined at Kampala worry that it could stifle the legitimate use of force to thwart mass atrocities. The problem is that the Kampala definition includes as aggression any act that is in "manifest violation of the Charter of the United Nations" (pp. 110, 122). However, the United Nations Charter does not permit a state to deploy force on the territory of another state for humanitarian reasons, unless the Security Council has approved the use of force or the territorial state has consented. Therefore, using such force, even to prevent a mass atrocity, could potentially be deemed a crime of aggression. Weisbord acknowledges the concerns of these critics, but he is confident that the ICC judges will craft a principled, narrow humanitarian intervention defense to address this issue. Yet, his assertion that the ICC could work this out seems overly confident, given the lack of international consensus about whether the doctrine of humanitarian intervention even exists, let alone what its contours might be.

As to self-defense, Weisbord does not really acknowledge the evolution of the doctrine through emerging state practice. First, he takes a very narrow view regarding just how "imminent" an armed attack must be before a state may lawfully respond. Second, he suggests that it is unclear whether states may ever rely on a theory of collective self-defense of a third-party state to use force against a nonstate actor when the territorial state is "unwilling or unable" to respond. This was one of the legal bases for the use of force by the United States and many other states in Syria to combat ISIS. In each instance, Weisbord's interpretation of the scope of the self-defense doctrine is not necessarily wrong. But he fails to give enough weight to competing interpretations or to alternative approaches being embraced by various states. Indeed, he paints the United States as a bit more of an outlier than it is and somewhat unjustifiably lumps it together with Russia. In addition, as in the case of humanitarian intervention, Weisbord has perhaps more faith than is warranted in the ability of ICC judges to forge international consensus on these difficult issues through case-by-case adjudication.

Moving beyond these specific concerns, it might be useful to interrogate some of the fundamental assumptions about international law that underlie Weisbord's approach. Such an interrogation is not really a part of Weisbord's project, but his discussion of the law of aggression raises

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important and long-debated questions about how international law actually operates and how to conceptualize the ways in which international law does or does not change the behavior of states and actors. The remainder of this Review, therefore, briefly points to a useful approach to the study of international law and its efficacy drawn from recent scholarship on global legal pluralism and suggests how that scholarship might help scholars and practitioners think about the Kampala amendment.

Unfortunately, our understanding of international law has often been dominated by two polarized positions. On the one hand, international law triumphalists tend to believe that simply getting a new principle enshrined in a treaty will solve problems by deterring bad behavior.[6] They have faith that if we can just get the law right, compliance will follow. On the other hand, so-called international relations realists use game theoretic and rational choice models in an attempt to show that international law is only an epiphenomenon of state interests.[7] In this account, states obey international law only when it is in their interest to do so and therefore creating a new rule of international law has little independent compliance pull.

Global legal pluralism offers a potential path out of this fruitless dichotomy.[8] Legal pluralists have long recognized that law is not only found in the formal instruments of treaties, legislation, or judicial pronouncements.[9] In addition, pluralists look to the wide variety of legalities that course through daily life and that end up actually affecting behavior. For example, scholars studying colonialism noticed that even when the imperial power purported to impose an entirely new legal system, the preexisting legal system was never banished entirely, leading to strategic maneuvering and jurisdictional contestation.[10] Likewise, both religious law and indigenous systems of order can persist in opposition to formal law and in many cases have far more impact on daily life.[11] Finally, nonstate actors such as corporations, industry standard-setting bodies, norm-generating communities, ethnic and religious group leaders, local warlords, and so on can all articulate and impose norms that govern behavior as much as, or more than, formal law.[12] Accordingly, so pluralists argue, if one wants to understand what actually regulates behavior in any given social field, one needs to look beyond the formal pronouncements of official governmental actors.

Global legal pluralism takes these insights and applies them to the global arena. In doing so, scholars of global legal pluralism ask us to turn our gaze away from abstract debates about whether international law is truly law or not and instead examine on-the-ground questions of efficacy.[13] From this perspective, law is not law just because some authority says it is. Thus, for example, it would be folly, from a pluralist point of view, to expect that articulating a new international crime of aggression would magically stop states from committing crimes of aggression. But at the same time, a formal legal articulation is not necessarily without impact. The key is that in order to chart its impact, one needs to study more than just the formal rule. Instead, the relevant question becomes how other legal and quasi-legal entities come to interpret, resist, apply, and transform that rule, as well as the degree to which the rule either does or does

[6] *See, e.g.*, LOUIS HENKIN, HOW NATIONS BEHAVE 47 (2d ed. 1979).

[7] *See, e.g.*, JACK L. GOLDSMITH & ERIC A. POSNER, THE LIMITS OF INTERNATIONAL LAW 23–43 (2005).

[8] *See, e.g.*, PAUL SCHIFF BERMAN, GLOBAL LEGAL PLURALISM: A JURISPRUDENCE OF LAW BEYOND BORDERS (2012). For a comprehensive collection of essays, see THE OXFORD HANDBOOK OF GLOBAL LEGAL PLURALISM (Paul Schiff Berman ed., 2020) (hereinafter OXFORD HANDBOOK).

[9] *See, e.g.*, Sally Engle Merry, *Legal Pluralism*, 22 L. & SOC'Y REV. 869, 869–75 (1988).

[10] *See generally, e.g.*, LEGAL PLURALISM AND EMPIRES 1500–1850 (Lauren A. Benton & Richard J. Ross eds., 2013).

[11] *See, e.g.*, OXFORD HANDBOOK, *supra* note 8 (collecting essays).

[12] *See, e.g.*, *id.*; *see also* Laura A. Dickinson, *Regulating the Privatized Security Industry: The Promise of Public/Private Governance*, 63 EMORY L.J. 417 (2013).

[13] *See, e.g.*, Paul Schiff Berman, *Seeing Beyond the Limits of International Law*, 84 TEX. L. REV. 1265 (2006) (reviewing GOLDSMITH & POSNER, *supra* note 7).

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not seep into legal consciousness—the taken-for-granted sense of the way things simply are or should be.[14] The idea here is that law does not simply operate to stop us from doing something we want to do; it changes what we conceive of as a legitimate or even conceivable thing to do in the first place.[15]

In the international arena, this means that, as constructivists have long argued,[16] international law works not so much by forcing states to ignore their self-interests, but by slowly changing what they conceive their interests to be. Moreover, states are not monolithic. Many actors both within and without a state bureaucracy may articulate norms that impact decision making, and the existence of a formal rule of international law may give these actors leverage to make arguments that otherwise would not be made.[17]

Thus, global legal pluralists would not say that international law is somehow not law or that it necessarily lacks impact. But they would say that it operates along with many other competing legalities and therefore in order to analyze international law it is not good enough to focus only on the formal language of, or adoption of, a norm. Instead, we need to look at all the multiple actors within a system and how those actors interpret or deploy international law, as well as the degree to which the norm is absorbed into day-to-day understandings of the way things are or should be. Accordingly, rather than viewing a particular definition in a treaty as the only relevant inquiry, pluralists would consider interpretations by courts and tribunals at various levels, both international and domestic, and they would look at the degree to which the competing definitions are used strategically by actors within their own legal and governmental systems. Moreover, pluralists would treat the interpretations of nonstate communities—nongovernmental organizations (NGOs), religious organizations, and corporate groups—as part of the analysis. In the end, to understand the rule of law in the international realm from a pluralist point of view one would need to examine all of the various modes of interpretation, and further one would expect—and accept—that these different modes might point in different directions as to the content of the relevant norms. From this perspective, it is not necessarily a problem that the ICC might interpret aggression differently from the U.S. executive branch, which in turn might be different from Amnesty International. Instead, those contestations are simply an inevitable part of what law is and how it operates. The multiple interpretations and strategic deployments never end, and so if we want to truly understand the efficacy of international law we need to broaden our gaze and study the deployments of formal legal norms rather than simply the content of the norms themselves.

In addition, some pluralists go beyond this descriptive approach and argue that legal procedures, institutions, and practices that foster multiplicity and dialogue can also be normatively desirable.[18] For example, some pluralists argue in favor of federalism in domestic legal systems.[19]

[14] For further discussion of the concept of legal consciousness, see PATRICIA EWICK & SUSAN S. SILBEY, THE COMMON PLACE OF LAW: STORIES FROM EVERYDAY LIFE 45–47 (1998).

[15] *See, e.g.*, Robert W. Gordon, *Critical Legal Histories*, 36 STAN. L. REV. 57, 109 (1984) ("[T]he power exerted by a legal regime consists less in the force that it can bring to bear against violators of its rules than in its capacity to persuade people that the world described in its images and categories is the only attainable world in which a sane person would want to live.").

[16] *See, e.g.*, MARTHA FINNEMORE, NATIONAL INTERESTS IN INTERNATIONAL SOCIETY (1996).

[17] *See generally* Laura A. Dickinson, *The Dance of Complementarity: Relationships Among Domestic, International, and Transnational Accountability Mechanisms in East Timor and Indonesia*, *in* ACCOUNTABILITY FOR ATROCITIES: NATIONAL AND INTERNATIONAL RESPONSES 319, 358–61 (Jane Stromseth ed., 2003) (discussing ways in which international pressure on Indonesia in the period just after East Timor gained its independence strengthened the hand of reformers within the Indonesian government to push for robust domestic accountability mechanisms for atrocities committed during the period leading up to the independence vote).

[18] *See* Paul Schiff Berman, *Global Legal Pluralism as a Normative Project*, 8 U.C. IRVINE L. REV. 149 (2018); Monica Hakimi, *The Integrative Effects of Global Legal Pluralism*, *in* OXFORD HANDBOOK, *supra* note 8, at 557.

[19] *See, e.g.*, Robert Cover, *The Uses of Jurisdictional Redundancy: Interest, Ideology, and Innovation*, 22 WM. & MARY L. REV. 639, 682 (1981) (arguing that,

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Others celebrate doctrines at the international level, such as the margin of appreciation of the European Court of Human Rights, that give scope for multiple interpretive actors to take different approaches to legal norms and require dialogue among the actors.[20] Pluralist scholars of international criminal law have argued that the doctrine of complementarity at the ICC serves a similar function.[21] Under the complementarity doctrine, the ICC may not consider a case unless a domestic legal system is unwilling or unable to prosecute. In the pluralist view, by incentivizing prosecutors and courts at the domestic level to prosecute ICC jurisdiction crimes, complementarity fosters opportunities for multiple actors to forward their own interpretations of those crimes. Complementarity can also serve a catalyzing role when local actors try to fend off international prosecutions or commissions of inquiry by undertaking local investigations.[22]

From this perspective, designing legal institutions with room for multiple interpretations of norms provides both a built-in opportunity for dialogue among multiple actors, as well as a kind of safety valve that reduces conflict and can build support for legal institutions and indeed enhance their legitimacy. Institutional design that incorporates normative diversity is, in this view, especially valuable to address situations of intense normative conflict—when different communities have strongly held, competing interpretations.[23] For example, one might think that, in addressing post-conflict justice situations, the use of hybrid courts—rather than purely international or purely domestic ones—potentially provides greater space for multiple voices, thereby enhancing their legitimacy among multiple communities.[24] The legitimacy that these institutional safety valves can foster is understood not based simply on the abstract "justness" of the norms or based solely on a formalist understanding of the procedures by which they were adopted. Instead, the relevant question is what sorts of procedures, institutional arrangements, and practices tend to result in different actors and communities coming to regard them as legitimate over time. This kind of legitimacy is important in any system, and pluralists would be the first to point out that, in this regard, international law is not fundamentally different from domestic law. After all, even in a state with a police force to maintain law and order, the legitimacy of the system depends more on public acceptance and norm internalization than on brute force and sanction. And in the international system, which has no such law enforcement muscle behind it, this process of acceptance and norm internalization is even more important.

So, how does global legal pluralism help us think about the decision of the ICC Assembly of States Parties to include the crime of aggression within ICC jurisdiction according to the terms agreed upon at Kampala? First, from a legal pluralist perspective, the formal adoption of the crime of aggression is not the end of the legal battle, but one move in a never-ending debate. Thus, it is essential to focus on what comes after the official formal pronouncement. This is particularly important with regard to international law and especially international criminal law. After all, even under the best-case scenario for criminal enforcement, only a very small number of perpetrators will ever actually be prosecuted for the crime of aggression in the ICC.

although it might seem perverse "to seek out a messy and indeterminate end to conflicts which may be tied neatly together by a single authoritative verdict," we should "embrace" a system "that permits the tensions and conflicts of the social order" to be played out in the jurisdictional structure of the system); *see also* Erin Ryan, *Federalism as Legal Pluralism*, *in* Oxford Handbook, *supra* note 8, at 491.

[20] *See, e.g.*, Berman, *supra* note 18, at 170–71; Frédéric Mégret, *International Law as a System of Legal Pluralism*, *in* Oxford Handbook, *supra* note 8, at 533, 544–46.

[21] *See, e.g.*, Elies van Sliedregt & Sergey Vasiliev, *Pluralism: A New Framework for International Criminal Justice*, *in* Pluralism in International Criminal Law 3 (Elies van Sliedregt & Sergey Vasiliev eds., 2014); Elies van Sliedregt, *International Criminal Law and Legal Pluralism*, *in* Oxford Handbook, *supra* note 8, at 575, 577–86.

[22] *See, e.g.*, Dickinson, *supra* note 17, at 358–61.

[23] *See, e.g.*, Hakimi, *supra* note 18, at 562–67.

[24] *See, e.g.*, Laura Dickinson, *The Promise of Hybrid Courts,* 97 AJIL 295, 306 (2003); *see also* Elena Baylis, *Cosmopolitan Pluralist Hybrid Tribunals*, *in* Oxford Handbook, *supra* note 8, at 595.

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Accordingly, the real question from a pluralist perspective is whether the idea behind criminalizing aggressive warfare actually takes hold in the legal consciousness of a broad cross-section of societies. That, in turn, will depend on many factors. First, on the level of formal state-based action, we might ask how many ICC member states will choose to opt out of the court's jurisdiction over the crime of aggression? How fierce will resistance be from nonmember states? What will happen in the UN Security Council if the ICC attempts a prosecution of a national of a nonmember state? Then, beyond these state-level actions, the analysis needs to be more granular still. To what degree will various local legislatures, prosecutors, and judges around the world adopt, redefine, and actually deploy the idea of a crime of aggression to empower local criminal enforcement? To what degree are NGOs and social justice or antiwar movements able to mobilize popular opinion in order to see aggressive war as wrongful or to mount people's tribunals to prosecute aggressive war in the court of public opinion?[25] What types of uses of force will come to be seen as permissible and what sorts will be proscribed as "acts of aggression" within the statute's definition? Will concerns about committing acts of aggression be heightened within state and military bureaucracies as a result of the ICC's act of defining the crime? Will reformers within those bureaucracies gain more power in debates about military action because of the ICC, whether or not those bureaucracies exist in states that have actually signed on to ICC jurisdiction? Under what circumstances will acts of aggression come to be seen as anathema and therefore possibly destabilizing to the power base of political and military leaders who commit them?

To a legal pluralist, these and other questions are the real determinants of what the law is and becomes. Law is an ongoing process with many actors and many sites of contestation, and so we should see the formal act of defining a crime of aggression as simply an opening gambit, not the solution to the problem. Of course, defining the crime is not inconsequential. It is an important move and obviously a significant step in a long process of trying to inculcate a norm against aggression. But legal pluralists would insist that we see this as a step, not the end-product, and draw our focus to the arguably more significant process of norm-inculcation and contestation over time.

In addition, a pluralist perspective would recognize that, as part of this ongoing process of norm inculcation and contestation, the definition of aggression adopted by the ICC is just one of many iterations that will be articulated. Indeed, in the coming decades we are likely to see various international and domestic actors respond to, resist, reinterpret, and transform the scope of the crime of aggression adopted at Kampala. All of these interpretations will ultimately impact the emerging definition and understanding of the crime. And, informed by normative principles of global legal pluralism, one might argue that these opportunities for states and other actors to assert multiple interpretations regarding the crime of aggression should actually be celebrated and encouraged, especially because there are such starkly different views about the crime.

Thus, we might see the decision to narrow the ICC's jurisdictional reach with regard to the crime of aggression in a more positive light. As discussed previously, the ICC's jurisdiction over the crime of aggression is much more limited than its jurisdiction over genocide, war crimes, and crimes against humanity. According to Weisbord, some of the reformers behind the move to criminalize the crime of aggression were disillusioned with the Kampala result because they felt it would not hold more powerful states subject to the ICC's authority and would therefore potentially undermine the rule of law (p. 109). Weisbord is more pragmatic, implying that he too would have favored broader jurisdiction, but arguing that the narrower scope is still a positive step because it at least articulates the norm and provides a venue for prosecuting aggression, albeit in limited circumstances. Taking a longer—and perhaps more pluralist—

[25] Berman, *supra* note 8, at 230–35 (describing various people's tribunals).

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view, Weisbord sees the possibility for progressive development over time, both formally with regard to the ICC, and in many local settings where the content of the norm can be defined and applied.

Indeed, from a pluralist perspective the limited reach of ICC jurisdiction may actually be beneficial, both because it renders the jurisdictional assertion less subject to immediate backlash and because it provides more room for courts, tribunals, and other actors at other levels in the international system to offer alternative approaches to defining the crime itself. Pluralists argue that institutional frameworks that allow for multiple interpretations can help build legitimacy and foster norm development and inculcation over time. Especially in an environment of intense conflict over the contours of the norm, asserting broad ICC jurisdiction to prosecute aggression could backfire: indeed, such assertions of jurisdiction could generate further resistance to the entire court as illegitimate, particularly given preexisting hostility to the ICC from powerful countries such as the United States. Thus, although some might be concerned that limiting the ICC's jurisdictional reach will undermine accountability, we must remember that the ICC will never prosecute large numbers of people anyway, so the important question is the long-term seepage of the norm into local settings. And that process of norm inculcation, paradoxically, might be better fostered by a restrained jurisdictional reach because it reduces resistance to the court and provides more space for localized development of the contours of the crime of aggression over time. For example, the proposed African Court of Justice and Human Rights will use an interpretation of the crime of aggression that builds on the Kampala definition, but expands it in significant ways.[26]

[26] *See* Sergey Sayapi, *The Crime of Aggression in the African Court of Justice and Human and Peoples' Rights*, *in* THE AFRICAN COURT OF JUSTICE AND HUMAN AND PEOPLES' RIGHTS IN CONTEXT: DEVELOPMENT AND CHALLENGES 314–35 (Charles C. Jalloh, Kamari M. Clarke & Vincent O. Nmehielle eds., 2019).

Pluralism is, of course, just one lens through which to view the crime of aggression. Yet, it is a particularly helpful one in the current era. The ICC, like so many other supranational institutions—from the North Atlantic Treaty Organization to the European Union, from the World Health Organization to the World Bank, and the United Nations itself—face unprecedented levels of resistance and attack. Indeed, as recently as June 2020 the Trump administration announced new, draconian sanctions against the ICC.[27] Muscular assertions of international authority and the rigid imposition of new norms risk provoking even more intense nationalist backlash. In this context, pluralist safety valves, which embrace competing interpretations and approaches, may be the best hope for the international system. As Weisbord's book so ably demonstrates, Jackson's efforts at Nuremberg to establish a crime of aggression, while seemingly "unsuccessful" at the time, helped pave the way for Kampala, and in turn Kampala opens space for new arguments in new contexts. The process of norm development never ends, and it is not a bad thing for those designing international institutions to acknowledge—and perhaps sometimes even facilitate—the ongoing process of legal pluralism that inevitably follows the establishment of any formal legal rule.

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While an issue that extends way before the events of September 11, 2001 and their aftermath,

[27] Reuters, *Trump Authorizes Sanctions Over ICC Afghanistan War Crimes Case*, N.Y. TIMES (June 11, 2020), *at* https://perma.cc/Q4RD-PME9.

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