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## **British Foreign Policy and the Crime of Aggression**

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### **Abstract**

In this paper, Britain's approach to the prosecution of high-ranking individuals for aggression is examined. It is argued that while Britain's perspective on this issue has remained more or less constant over a long period, changed international political conditions now mean that the British view of the crime of aggression holds the most hope of success for those who wish to bring this crime within the operational remit of the International Criminal Court as quickly as possible. Thus, Britain has reluctantly been thrust into the supporters' camp in relation to making the ICC's jurisdiction over the crime of aggression a reality – an uncomfortable position for Britain, in light of its traditional legal conservatism.

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## **British Foreign Policy and the Crime of Aggression**

Over the course of the twentieth century, much controversy has surrounded the emergence of the crime of aggression in international criminal law. Originally, this development was very much an American-led innovation, with other major powers playing only a minor role. However, a recent lack of US support for the inclusion of this crime in the 1998 Rome Statute Establishing an International Criminal Court now makes it timely to reconsider how these other states have approached this issue to date, and what their approaches can tell us about ongoing efforts to operationalise the crime of aggression in the context of the ICC. It is argued here that Britain's long-term preference prioritizing the use of political measures over legal mechanisms for addressing the responsibility of high-ranking, individual war-mongers is the approach which currently provides the best basis upon which to bring the crime of aggression within the ICC's exercisable jurisdiction.

### **(1) Britain and Previous International Attempts to Prosecute Aggression**

#### **(a) Kaiser Wilhelm**

The bitter experience of WW1 ensured both Britain and France were eager to 'make Germany pay' for that conflict, not just in terms of harsh economic penalties, but also through the trial of Kaiser Wilhelm<sup>1</sup>. US opposition to this latter idea in particular prompted President Wilson, in an initial draft of article 227 of the Treaty of Versailles, to explicitly state that the offence with which the Kaiser would be charged was *not* criminal, but this provision was later excluded, probably at the suggestion of Lloyd George<sup>2</sup>. Instead, the German head of state was charged simply with "*a supreme offence against international morality and the sanctity of treaties*"<sup>3</sup> - namely, the instigation of WW1 - and no mention of the criminality or otherwise of this conduct was made. However, in its series of correspondence to the Dutch government attempting to secure extradition of the Kaiser for trial, the Allied powers emphasized the 'criminal' nature of the acts committed, and the consequent, international 'duty' of the Netherlands to hand over the Kaiser to the Allies for punishment. The Dutch government refused to acknowledge any such duty, denied the extradition request and permitted the Kaiser to remain peacefully in the Netherlands up until his death in 1941.

#### **(b) Nazi Leaders at Nuremberg**

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<sup>1</sup> In 1918, David Lloyd George was re-elected as prime minister after a campaign featuring 'Make Germany Pay' and 'Hang the Kaiser' as key slogans: see AJ Morse. 1949. "The Effect of Popular Opinion on Campaign Slogans – an Illustration". *The Public Opinion Quarterly*, 13(3): 507-510 at 507-508.

<sup>2</sup> JB Scott. 1921. "The Trial of the Kaiser", in EM House and CS Seymour (eds), *What Really Happened at Paris*. London: Hodder and Stoughton, 231-258.

<sup>3</sup> *The Treaties of Peace, 1919-1923*. 1924. New York: Carnegie Endowment for International Peace, vol 1, 121.

The fiasco of the proposed trial of the Kaiser for the alleged 'crime' of war-mongering undoubtedly contributed to strong British reluctance to pursue this avenue in the aftermath of WW2. Although Churchill and Roosevelt had agreed in September 1944 to a plan that included the summary execution of German leaders as Allied military units captured more and more territory, this plan was later superseded in US policy-making circles by a more conciliatory proposal which advocated a trial of the top-ranking Nazis<sup>4</sup>. The view began to emerge and gain popularity within the US government that a trial would not only provide a mechanism by which convicted Nazi elites could be punished, but would also create an important educational record from which future generations could learn.

However, British opposition to a trial remained steadfast. Lord Simon, the Lord Chancellor, had been promoting for more than two years his view in favour of a 'political' execution of the top Nazis as per the Napoleon precedent of 1815<sup>5</sup>, and this idea had attracted Churchill's support in cabinet for more than a year. An American attempt to reach compromise with the anti-trial British failed; the suggestion of a perfunctory 'arraignment' procedure which would indict the leading Nazis before an Allied tribunal, make a quick ruling on the charges, and decide an appropriate punishment was viewed with disdain by Britain. British critics argued that such a pseudo-trial would please no-one, and through the blurring of "*political and judicial jurisdiction*", Britain would be on the receiving end of "*the worst of both worlds*"<sup>6</sup>. Britain formally communicated to the US on 12 April 1945 that it would not accept a trial or hearing for Hitler and his colleagues, resolutely advocating a "*political disposition*" instead<sup>7</sup>. Despite this strong resistance, Britain was forced to accept a trial procedure once it became evident that this option also enjoyed Soviet and French backing, and general agreement to this effect was secured among the Big Four in May 1945.

Although a trial procedure for Nazi leaders had been agreed in theory, the format and substance of the trial still required extensive negotiation among the Allied powers, as substantial differences of view arose. At the London Conference of June 1945, the American proposal to prosecute the leading Nazis for aggression by reference to criminal law principles encountered significant disapproval from Britain and the other Allies. In particular, Britain referred to the lack of pre-established sanction for the 'crime' of aggression as a major setback to this idea<sup>8</sup>.

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<sup>4</sup> So strong was Churchill's support for summary execution for the leading Nazis, that he has been reported to have commented in October 1944 that "*I'd like sixty or seventy of the people around Hitler shot without any trial, but I am against shooting all the German General Staff...*": see DA Sprecher, *Inside the Nuremberg Tribunal*. 1999. Lanham: University Press of America Inc, vol 1, 28.

<sup>5</sup> After his defeat at Waterloo in 1815, Napoleon was imprisoned by Britain and then exiled to the island of St Helena, where he died six years later.

<sup>6</sup> BF Smith. 1981. *The Road to Nuremberg*. London: Andre Deutsch, 186.

<sup>7</sup> Smith, 188.

<sup>8</sup> see the comments of Sir David Maxwell-Fyfe in "Minutes of Conference Session of July 19, 1945", in *Report of Robert H. Jackson, United States Representative to the International Conference on Military Trials : London, 1945*. 1949. Department of State Publication 3080. Washington: Government Printing Office.

The following month, in an attempt to overcome the objections of its Allies, the US tabled a suggestion to include a definition of aggression in what was to become the Nuremberg Charter. The US did not wish to “*litigate the cause of the war*”<sup>9</sup> and in its view the incorporation of a definition of aggression into the Nuremberg Charter would help to avoid this outcome and allay the misgivings of the other Allied powers about prosecuting aggression as a crime. Britain supported the American suggestion; by proceeding without a Charter definition of aggression, Britain indicated “*we are rather opening the door for trouble*”<sup>10</sup>. The British representative explained that the Conference only had three options where the Nuremberg Charter was concerned: (1) to omit aggression altogether from the charges, which was unappealing “*because it is the essence of our complaint against the Germans*”<sup>11</sup>; (2) to include aggression undefined, which would mean enduring political debate at the trial about what constitutes aggression; or (3) to define aggression. In the end, a lack of Franco-Soviet support for the inclusion of a definition of aggression meant that option (2) was the least bad political choice, with aggression being incorporated into the Nuremberg Charter as follows:

“*Article 6. (a) Crimes Against Peace: namely, planning, preparation, initiation or waging of a war of aggression, or a war in violation of international treaties, agreements or assurances, or participation in a Common Plan or Conspiracy for the accomplishment of any of the foregoing;...*”<sup>12</sup>

Efforts by US prosecutors to expand the notion of ‘conspiracy’ under this article to also encompass war crimes and crimes against humanity resulted in a division of duties among the Allied powers which left Britain largely with the unenviable task of establishing that the German defendants had committed the crime of aggression<sup>13</sup>. Thus, paradoxically, British prosecutors were made predominantly responsible for proving the charge against the Germans which, at the London Conference, British representatives had been most nervous about prosecuting in a criminal context. Interestingly, however, the decision by the International Military Tribunal to consider the US’s conspiracy case against the top Nazis in conjunction with the charge of aggression only – as per the wording of the Nuremberg Charter – elevated the importance of the submissions of British prosecutors in the resulting judgment. In the end, twelve men out of the sixteen charged with the crime of aggression were found guilty.

After the Nuremberg Trial finished in October 1946, the US charged other top-ranking Germans with aggression, war crimes and crimes against humanity in its subsequent trials

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<sup>9</sup> see the comments of Mr Justice Jackson in "Minutes of Conference Session of July 19, 1945".

<sup>10</sup> Maxwell-Fyfe, "Minutes of Conference Session of July 19, 1945".

<sup>11</sup> Maxwell-Fyfe, "Minutes of Conference Session of July 19, 1945".

<sup>12</sup> article 6 of the "Charter of the International Military Tribunal". 1947. *Trial of The Major War Criminals before the International Military Tribunal*. Nuremberg: International Military Tribunal, vol 1, 11.

<sup>13</sup> While US prosecutors handled the conspiracy charge and their UK counterparts the aggression charge, France dealt with German war crimes and crimes against humanity in Western Europe, and the Soviet Union prosecuted the same in Eastern Europe: see Q Wright. 1946. "The Nuremberg Trial". *Annals of the American Academy of Political and Social Science*, vol 246, 72-80, 77.

held under Control Council Law #10<sup>14</sup>. Although each of the others powers occupying Germany at the time were also entitled to proceed with further prosecutions, Britain declined to follow suit. Factors including the advent of the Cold War, as well as financial and personnel constraints took on greater importance in British foreign policy calculations, and from mid-1946 onwards, the priority was to wrap up British trials of German leaders as quickly as possible<sup>15</sup>.

### (c) Japanese Leaders at Tokyo

Thus, by the time the Tokyo Trial commenced in May 1946, British disinterest in holding Axis leaders criminally responsible for aggression – an idea which had never attracted much British support in any case – was very low. Although the formal title of the Tokyo entity hearing the case against leading Japanese remained the *International Military Tribunal for the Far East*, the establishment and operation of the IMTFE was much more explicitly an American-led and -controlled affair than its Nuremberg counterpart<sup>16</sup>. Hence, non-American involvement in the IMTFE was quite circumscribed; while each Allied nation was represented on the bench, Allied prosecutors enjoyed the status of ‘associates’ only, subordinate to American ‘chief’ prosecutor Joseph Keenan<sup>17</sup>.

In light of the highly questionable nature of the proceedings, jurisprudence and outcome of the IMTFE – which has attracted much less academic attention than its Nuremberg forbear – it is perhaps fortunate that Britain chose not to play a major role in the Tokyo Trial. Despite – or indeed, because of – these shortcomings, twenty-two out of twenty-five Japanese defendants were convicted of the crime of aggression<sup>18</sup>. Moreover, of the eighteen defendants sentenced to imprisonment, not one served the full term of his sentence, and one of these, Shigemitsu, re-assumed his position as Foreign Minister of Japan in 1954<sup>19</sup>. British reluctance to participate beyond a token contribution in the prosecution of top-ranking Japanese for the crime of aggression can be contrasted with

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<sup>14</sup> Control Council Law #10 established a common legal basis for the prosecution of lesser alleged war criminals throughout the various occupation zones of Germany: see "Control Council Law No. 10" in T Taylor, *Final Report to the Secretary of the Army on the Nuernberg War Crimes Trials under Control Council law No. 10*. 1949. Washington: GPO.

<sup>15</sup> See D Bloxham, “ ‘The Trial That Never Was’: Why There Was No Second International Trial of Major War Criminals at Nuremberg”. 2002. *History*, 41-60, especially at 57.

<sup>16</sup>As an initiative of the Supreme Commander of the Allied Powers (SCAP), the IMTFE was created by General Douglas MacArthur on January 19, 1946, and its functions, jurisdiction and constitution were approved the same day. While at Nuremberg, decisions concerning judicial appointments were made at the highest tiers of government by the US, UK, Soviet Union and France, with the judges themselves electing a president from among their number, at Tokyo, it was MacArthur who exercised both these powers. MacArthur also retained the right to review the sentences imposed by the IMTFE and reduce them if necessary, a power without parallel at Nuremberg.

<sup>17</sup> Thus, ‘associate’ prosecutors included those Allied states who were signatory to the surrender document – namely the US, UK, China, Soviet Union, Australia, Canada, France, the Netherlands and New Zealand - plus the Philippines and India: JA Appleman, *Military Tribunals and International Crimes*. 1954. Indianapolis: The Bobbs-Merrill Company, 239.

<sup>18</sup> Though there was originally twenty-eight Tokyo defendants, Matsuoka and Nagano died at trial and Okawa was committed.

<sup>19</sup> In relation to the imprisoned defendants, four died while in prison and the rest were paroled in the 1950s.

the active part Britain took in prosecuting Japanese defendants for traditional war crimes via military tribunals held throughout South East Asia between 1946-1948<sup>20</sup>.

## **(2) Britain, the Crime of Aggression and the 1998 Rome Conference**

British preferences for political responses to aggression at first instance over legal responses have changed little in the intervening period, as demonstrated by Britain's position with respect to the crime of aggression at the 1998 Rome Conference on the Establishment of an International Criminal Court. Here, Britain indicated from the outset that it would only support the inclusion of aggression within the jurisdiction of the ICC as long as it did not "*detract from the role of the Security Council in maintaining international peace and security*"<sup>21</sup>. In effect, this meant that Britain favoured a system whereby ICC jurisdiction over a particular, alleged instance of aggression would be contingent upon some sort of prior authorization by the Security Council. As in 1945, Britain was once again asserting the importance of political measures for dealing with individual aggressors. Throughout the Rome Conference, Britain maintained that unless the Rome Statute's provision on the crime of aggression expressly included a "*proper link with the Security Council*", excluding aggression from the Statute was the "*only realistic alternative*"<sup>22</sup>. In this view, Britain enjoyed the support of key powers including Japan, Germany, Russia and France<sup>23</sup>.

However, the view of Britain and these supporters on this issue was opposed at Rome on two sides. On the one hand, the US made it very clear that its enthusiasm for prosecuting the international crime of aggression had not just ebbed since the immediate post-WW2 period, but in fact had turned into robust resistance to the very idea. Almost sixty years after Nuremberg, in its first address to the plenary meeting of the Conference on 17 June 1998, the American representative announced that it was "*premature to attempt to define a crime of aggression in terms of individual criminal responsibility*", and that "*vague formulas that left the Court to decide on the fundamental parameters of crimes should be avoided*"<sup>24</sup>. In their public statements, India, Morocco, Turkey and Israel joined the US in refusing to accept an ICC with jurisdiction over the crime of aggression.

On the other hand, the British view was also opposed by another faction, comprised mainly of non-aligned states, which did not want the ICC's jurisdiction over the crime of aggression to be reliant exclusively on a prior exercise of political decision-making power by the Security Council. States such as Angola, North Korea, Ukraine, and Cuba entirely rejected Britain's preference that the Security Council control the ICC's

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<sup>20</sup> Pritchard claims that twelve British military tribunals held 305 war crimes trials during this time: see RJ Pritchard, "British Postwar War Crimes Courts: The Gift of Clemency Following British War Crimes Trials in the Far East, 1946-1948". 1996. *Criminal Law Forum*, 7(15): 15-50.

<sup>21</sup> *United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, Rome 15 June-17 July 1998, Official Records*. 2002. New York: United Nations, vol 2, 65.

<sup>22</sup> *United Nations Diplomatic Conference*, vol 2, 177 and 272 respectively.

<sup>23</sup> See *United Nations Diplomatic Conference*, vol 2, 174, 171 and 177 respectively for these supportive views.

<sup>24</sup> *United Nations Diplomatic Conference*, vol 2, 94.

jurisdiction with respect to aggression, while another bloc of predominantly Middle Eastern states advocated a provision that more closely reflected GA Resolution 3314<sup>25</sup>. At no stage of the Conference was this significant three-way split of perspectives successfully resolved, and the result was article 5 of the Rome Statute, which formally includes the crime of aggression within the ICC's jurisdiction, yet makes the exercise of this jurisdiction subject to the outcome of future negotiations.

Since the entry into force of the Rome Statute in 2002, and in the lead-up to the first review conference, currently scheduled for 2009, efforts to build consensus around a mechanism for operationalising the ICC's jurisdiction over aggression have continued. However, as late as June 2005, strong disagreement as to the Security Council's role with respect to the ICC's jurisdiction over aggression remained<sup>26</sup>.

### **(3) Britain: Reluctant Campaigner for the Crime of Aggression?**

While since the failure of the Allies to try Kaiser Wilhelm, Britain's politics-first approach to the crime of aggression has remained constant, the changed international political context revealed at Rome has unwittingly transformed the British position into the most promising and pragmatic way forward for those desirous of bringing promptly into effect the ICC's jurisdiction over this crime. By requiring as a precondition of any such criminal prosecution the political agreement of the major powers – as per Nuremberg – Britain offers a compromise alternative to those states which would prefer the crime of aggression to disappear altogether, and those which favour jurisdiction over this crime to be subject to fewer, or less strict, political controls. Although both at Rome and subsequently, some have relied on past contributions to international peace and security by bodies including the General Assembly<sup>27</sup> to support the view that such organs might also be usefully empowered to trigger the ICC's jurisdiction over aggression, these arguments are likely to fall on deaf ears indefinitely where all P5 members of the Security Council are concerned. Whilever the Security Council remains the primary body with international peace and security obligations and enforcement powers under the UN Charter<sup>28</sup> – and in its sixty year history, the Charter has never been amended – the P5 group is likely to insist on exclusive Security Council competence to authorize ICC prosecutions of the crime of aggression. Thus, in practice, for the crime of aggression to be included in the ICC's operating jurisdiction, proposals must reflect this situation in order to have any realistic chance of success. As a consequence, Britain's consistent advocacy of a Security Council-regulated crime of aggression under ICC auspices – if embraced by a significant number of other states, including P5 members –paradoxically paves the way for the crime of aggression to fall within the operational scope of the ICC sooner than the more radical proposals of less conservative states.

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<sup>25</sup> Of 14 December 1974, named Definition of Aggression.

<sup>26</sup> See *Informal inter-sessional meeting of the Special Working Group on the Crime of Aggression, held at the Liechtenstein Institute on Self-Determination, Woodrow Wilson School, Princeton University, New Jersey, United States, from 13 to 15 June 2005* (ICC-ASP/4/SWGCA/INF.1).

<sup>27</sup> For example, the action made possible via reference to the Uniting for Peace Resolution (GA Res 377 of 3 November 1950) during the Suez crisis.

<sup>28</sup> See article 24(1) of the UN Charter.

Further, other international developments since 1998 suggest that, in the short- to medium-term at least, a Security Council-controlled crime of aggression is the most that can be achieved. During this time, American anti-ICC sentiment has continued unabated, as demonstrated by the US ‘unsigned’ of the Rome Statute in 2002, and efforts to protect American servicemembers overseas from the reach of the ICC via domestic legislation<sup>29</sup> and bilateral treaties<sup>30</sup>. Also, a key opportunity to contribute to the legal evolution of the crime of aggression was missed in 2003, when the Iraqi Special Tribunal (IST) was empowered to try, *inter alia*, “*The abuse of position and the pursuit of policies that may lead to the threat of war or the use of the armed forces of Iraq against an Arab country...*”<sup>31</sup> – an offence which clearly falls within the Nuremberg parameters of the crime of aggression, though no express reference to that crime was made. Perhaps even more disappointing for those favouring the criminal prosecution of aggression is the fact that, despite the IST’s jurisdiction over this aggression-type offence and the capture of Saddam Hussein, no attempt has been made to indict him or his colleagues under this head as regards the 1990 Iraqi invasion of Kuwait. With the recent announcement that Hussein has been sentenced to death for his role in the killing of 148 people in Dujail<sup>32</sup>, it seems highly improbable that further charges on aggression-like grounds will be laid. It is possible that only after a change of government and/or many years of well-regarded ICC prosecutions with respect to genocide, war crimes and crimes against humanity that the official US position vis-à-vis the ICC softens – a desirable, and perhaps essential, shift of position before the US can even entertain the notion of an ICC with jurisdiction over aggression, whether or not regulated by the Security Council.

Similarly, since 1998, other P5 states have indicated they will not support any triggering mechanism for the ICC’s jurisdiction over the crime of aggression that does not rest exclusively with the Security Council. China, which along with the US and five other states, voted against the Rome Statute<sup>33</sup>, reiterated its view in 2003 that where aggression was concerned, “*the activities of the Court...should be in keeping with the provisions of the Charter of the United Nations*”<sup>34</sup> – meaning they should reflect the primacy of the Security Council in international peace and security matters. In a related vein, at the

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<sup>29</sup> See the [2002 Supplemental Appropriations Act for Further Recovery From and Response to Terrorist Attacks on the United States \(American Servicemembers’ Protection Act\)](#), Pub. L. No. 107-206, 116 Stat. 820 (2002), which explicitly reserves the right of the US to invade the Netherlands in order to release any American citizen that might be held by the ICC: at s 2008.

<sup>30</sup> For example, the series of bilateral agreements the US has signed with at least 100 states to ensure that American citizens will not be surrendered to the ICC – so-called “article 98” agreements, after a provision of the Rome Statute which prevents the ICC from requesting a state to surrender or assist “*which would require the requested State to act inconsistently with its obligations under international agreements...*”.

<sup>31</sup> See article 14(c) of the Statute of the Iraqi Special Tribunal.

<sup>32</sup> “Saddam Hussein Sentenced to Death”. 5 November 2006. [news.bbc.co.uk/2/hi/middle\\_east/6117910.stm](http://news.bbc.co.uk/2/hi/middle_east/6117910.stm)

<sup>33</sup> Yemen, Qatar, Iraq, Israel and Libya also voted in opposition to the Rome Statute.

<sup>34</sup> See “VI. China and the International Criminal Court”. 2003. *Statement by the Ministry of Foreign Affairs*. [chinese-embassy.org.uk/eng/wjb/zzjg/tyfls/tyfl/2626/2627/t15473.htm](http://chinese-embassy.org.uk/eng/wjb/zzjg/tyfls/tyfl/2626/2627/t15473.htm). For a further explanation of China’s perspective concerning the relationship between the crime of aggression, the ICC and the Security Council, see “VI. China and the International Criminal Court”. 2004. *Statement by the Permanent Mission of the People’s Republic of China to the United Nations, Geneva*. [www.china-un.ch/eng/gjhyfy/hflygz/t85684.htm](http://www.china-un.ch/eng/gjhyfy/hflygz/t85684.htm).

2004 meeting of the Assembly of State Parties, Russia repeated its support for a Security Council determination of aggression prior to the exercise of ICC jurisdiction over the crime, reminding delegates that the Court was no substitute for the Security Council, and highlighting the risk of eroding the established international order for the maintenance of peace and security<sup>35</sup>. It is unlikely that France would break with P5 ranks on this point.

Apart from these important political factors suggesting the British view with respect to the ICC's jurisdiction over the crime of aggression is the sole, practicable foundation upon which this jurisdiction will be made operational anytime soon, there are also strong legal reasons to support this approach. It must be remembered that historically, the crime of aggression has only been prosecuted on a grand total of two occasions, and both of these were first authorized by the agreement or acquiescence of the great powers. While at Nuremberg, jurisprudence about the crime of aggression was developed on the basis of solid proof and pre-WW2 international efforts to prohibit aggression, at Tokyo, the combination of flimsy evidence, the decision not to prosecute Emperor Hirohito and radically different factual circumstances undermined significantly the value of any contribution made to the legal development of this crime by the IMTFE. Both the small number of occasions upon which the crime of aggression has been prosecuted, and the track record of these prosecutions, provide a powerful rationale for prolonging strict political control of the ICC's jurisdiction over the crime of aggression for the foreseeable future.

### **Conclusion**

From the above, it is evident that British foreign policy has had an important, tempering influence on the evolution of the crime of aggression. Early eagerness to bring Kaiser Wilhelm to trial, and the failure of efforts to achieve this, resulted in a distinct aversion to trial mechanisms in the post-WW2 era. Although initially outnumbered on the decision to proceed with a trial of the leading Nazis, and faced with responsibility for the toughest part of the prosecution's case, Britain's consistent and conservative approach to the crime of aggression has proven a durable and successful strategy, contributing significantly both to the Nuremberg jurisprudence and now to ongoing efforts to make possible the prosecution of the crime of aggression by the ICC. In light of prevailing international political conditions, it is likely that draft proposals based on the British approach to the crime of aggression will have the best prospect of success at the 2009 review conference, thus reviving the crime of aggression from its present limbo-like status under the Rome Statute.

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<sup>35</sup> See J Bertram-Nothnagel. 2004. *Report of the CICC Team on Aggression*. Assembly of States Parties to the Rome Statute of the International Criminal Court, Third Session, The Hague, 6-10 September 2004, 6. [www.iccnw.org/documents/ASP3\\_AggressionTeamReport\\_Dec14.pdf](http://www.iccnw.org/documents/ASP3_AggressionTeamReport_Dec14.pdf).