

ICC Jurisdiction Over the Crime of Aggression

Prof. Noah Weisbord

B.Sc., B.S.W., LL.B., B.C.L., M.S.W. (McGill), LL.M. Program, S.J.D. (Harvard)

Associate Professor of Law, Queen's University Faculty of Law

E-Mail: noah.weisbord@queensu.ca

10th Consultative Assembly of Parliamentarians on the
International Criminal Court and the Rule of Law (CAP-ICC)
40th Annual Forum of Parliamentarians for Global Action (PGA)

16 – 17 November 2018

Verkhovna Rada, Ukraine

What is the Crime of Aggression?

Criminal accountability for the illegal use of armed force

1. Applies to political and military leaders of states
2. Who plan, prepare, initiate or execute acts of aggression
3. Acts of aggression are manifest violations of the UN Charter, including
 - Invasion
 - Bombardment
 - Blockade
 - Attacking armed forces of another state
 - Breaking an agreement to station forces
 - Allowing your state to be used as a staging ground for an attack by another state
 - Sending armed bands or groups to attack another state

Emergence of the Modern Crime of Aggression



1998
Rome
Conference



2003-2009
Special
Working
Group on
the Crime of
Aggression



2010
Kampala
Agreement



2017
Activation
of ICC
Jurisdiction

Rome Statute (2010)

Crime of Aggression



Art. 8 *bis* (1)

For the purpose of this Statute, “crime of aggression” means 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 (2010)

Crime of Aggression



Art. 8 *bis* (2)

For the purpose of paragraph 1, “act of aggression” means 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

Rome Statute (2010)

Crime of Aggression



Art. 8 *bis* (2) continued...

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) Invasion
- b) Bombardment
- c) Blockade
- d) Attacking armed forces of another state
- e) Breaking an agreement to station forces
- f) Allowing your state to be used as a staging ground for an attack by another state
- g) Sending armed bands or groups to attack another state

Elements of the Crime of Aggression


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



UN Charter (1945)

Art. 2(4)

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, or in any other manner inconsistent with the Purposes of the United Nations



Charter of the International Military Tribunal (1945)

Art. 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



**UN General Assembly
Resolution 3314 (1974)**
Definition of Aggression

Acts of Aggression

- Invasion
- Bombardment
- Blockade
- Attacking armed forces of another state
- Breaking an agreement to station forces
- Allowing your state to be used as a staging ground for an attack by another state
- Sending armed bands or groups to attack another state

ICC Jurisdiction Over the Crime of Aggression

Scenarios

- Security Council Referral (Art. 15 *ter*)
- State Referral (Art. 15 *bis*)
- *Proprio Motu* Investigation (Art. 15 *bis*)

The Significance of the Crime of Aggression

It strengthens the rule of law by making leaders personally responsible for the wars they start

- Leaders bring their populations to war and it is with leaders—not their populations—that responsibility should lie
- State responsibility alone fails to effectively leverage the force of international law

It better captures the sociological dimensions of modern war

- Increased complexity of modern wars
- New technologies
- Rise of insurgents and autocrats

It empowers legislatures, the judiciary and citizens to make principled determinations on whether a war is legal or illegal

- Most detailed legal definition of aggression to date
- Based on the Nuremberg precedent, the UN Charter, and customary international law binding on all states
- If states do not prosecute, the ICC can step in

THE

THE QUEST FOR JUSTICE IN AN

CRIME OF

AGE OF DRONES, CYBERATTACKS,

AGGRESSION

INSURGENTS, AND AUTOCRATS

NOAH MEISBOD