

Crime of Aggression under the Rome Statute of ICC

Abstract

The jurisdiction of the International Criminal Court over the Crime of Aggression, which has been defined at the Review Conference in Kampala, 2010, will be activated on 17th of July 2018. This paper is summarizing more than seventy years of continuing development of a definition of the Crime of Aggression which has started after the Second World War during so-called Nurnberg Trials (a forerunner of the Crime of Aggression - Crimes Against Peace have been tried during these trials) and which will be, at least for now, completed upon the activation of the jurisdiction of the International Criminal Court and upon a completion of the Rome Statute.

This paper deals not only with the history of the Crime of Aggression but also with its position as a crime under the international law with a connection to other crimes which can be prosecuted before the International Criminal Court. Furthermore, it analyses the main elements of the crime with a focus on difficulties which can potentially come up once they are used in practice.

A special part of this paper is focused on jurisdiction of the International Criminal Court over the Crime of Aggression, which has not quite met expectations from international society, as it seems that in case of state referral or *proprio motu* investigation the crime cannot be prosecuted when committed by a national or on a territory of a state, which has not ratified the Kampala amendments. The exercise of a jurisdiction based on a UN Security Council referral can also be rather problematic in connection to a political character of this body because permanent members of the Security Council can *de facto* prevent the exercise of the jurisdiction by using their right of veto. This paper also includes an analysis of few examples from the history, some present cases as well as some hypothetical future scenarios which can come up in a connection with the Crime of Aggression.

Last, but not least, the paper elaborates on a question whether the Crime of Aggression covers new forms of acts of aggression such as a cyber-attack.

This paper also contains an analysis of the activation resolution no. ICC-ASP/16/Res.5 and brings some insight on what can be expected in the future regarding the Crime of Aggression especially in a connection with the first possible investigation before the International Criminal Court who is presumed to deal with an interpretation issues of some controversial provisions of the Rome Statute amendments.

Key words: **Crime of Aggression, International Criminal Court, Rome Statute**