

International Legal Analysis of the Crime of Aggression under the Rome Statute

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Abstrak: *The crime of aggression is one of the most serious international crimes because it threatens global peace and security. This crime occurs when a state uses armed force against another state in violation of international law. To address this issue, the international community, through the Rome Statute, recognizes aggression as one of the crimes under the jurisdiction of the International Criminal Court (ICC). This article aims to analyze the regulation of the crime of aggression under the Rome Statute and the role of the ICC in prosecuting perpetrators of aggression. The study employs a normative legal research method using statutory and literature approaches. The findings indicate that the regulation of aggression in the Rome Statute represents an important step toward maintaining international peace and ensuring legal accountability for unlawful acts of aggression.*

Keywords: *Crime of Aggression, Rome Statute, International Criminal Court, International Law.*

INTRODUCTION

The development of international law demonstrates an increasing level of concern regarding various crimes that threaten international peace and security. As interactions among states continue to expand in the political, economic, social, and defense sectors, the need for legal rules capable of maintaining international order has become increasingly significant. International law serves as a legal instrument governing relations among states to promote stability, security, and harmonious cooperation within the international community¹. One of the primary objectives of international law is to prevent the outbreak of armed conflicts that may disrupt world peace and inflict widespread human suffering.

One of the crimes that has attracted particular attention from the international community is the crime of aggression. This crime is regarded as a serious violation of international law because it involves the use of armed force by one state against another in contravention of internationally recognized legal principles. Acts of aggression may include military invasion, territorial occupation, bombardment, naval blockade, or any other form of unlawful use of force prohibited under the Charter of the United

¹ Malcolm D Evans, *International Law* (Oxford: Oxford University Press, 2018); Malcolm N Shaw, *International Law* (Cambridge: Cambridge University Press, 2021).



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Nations (UN). Accordingly, the crime of aggression is considered a direct threat to state sovereignty and the stability of international relations.

Throughout the history of international relations, acts of aggression have frequently served as catalysts for wars resulting in massive loss of life, destruction of infrastructure, humanitarian crises, and widespread violations of human rights. The First and Second World Wars provide compelling examples of how acts of aggression can escalate into large-scale conflicts with devastating global consequences. Millions of people lost their lives, countless cities were destroyed, and the global economy suffered severe setbacks due to wars triggered by the unlawful use of force. These historical experiences encouraged the international community to develop legal mechanisms capable of preventing the recurrence of such tragedies in the future.

Following the end of the Second World War, the international community sought to establish a stronger legal framework for the maintenance of international peace and security². One of the most significant developments was the establishment of the United Nations (UN) in 1945. Through the Charter of the United Nations, member states agreed to prohibit both the threat and the use of force against the territorial integrity or political independence of any state³. This provision became one of the cornerstones of modern international law and laid the legal foundation for preventing acts of aggression at the international level.

In addition to the establishment of the United Nations, the international community also developed the concept of individual criminal responsibility for perpetrators of international crimes⁴. This concept emerged from the recognition that acts threatening international peace are often the result of decisions made by political and military leaders. Consequently, individuals responsible for committing international crimes should be held personally accountable under international law, regardless of their official position or status⁵. This principle subsequently became one of the fundamental pillars of international criminal law.

A significant step toward strengthening the enforcement of international criminal law was the adoption of the Rome Statute in 1998, which established the International Criminal Court (ICC). The Rome Statute constitutes the principal international legal instrument granting the ICC jurisdiction over the prosecution of the most serious international crimes. In its subsequent development, the crime of aggression was recognized as one of the core international crimes falling within the Court's jurisdiction, alongside genocide, crimes against humanity, and war crimes.

The recognition of the crime of aggression as an international crime reflects the commitment of the international community to maintaining international peace and preventing the arbitrary use of armed force. Through this legal framework, acts of aggression are expected to be deterred, while those responsible may be held accountable in accordance with applicable international law. Accordingly, the Rome Statute and the International Criminal Court have become essential components of the international legal system aimed at ensuring peace, security, justice, and accountability within the international community.

METHODOLOGY

² Antonio Cassese, *International Criminal Law* (Oxford University Press, n.d.).

³ "Charter of the United Nations," Piagam Perserikatan Bangsa-Bangsa Tahun 1945 § (1945).

⁴ Cassese, *International Criminal Law*.

⁵ M Cherif Bassiouni, *Introduction to International Criminal Law* (Martinus Nijhoff Publishers, n.d.).

This study employs normative legal research (doctrinal research), which focuses on the identification, explanation, and critical analysis of the positive legal norms governing the crime of aggression under international law. The research adopts a statutory approach to comprehensively examine relevant legal instruments and a conceptual approach to analyze legal doctrines concerning individual criminal responsibility. The primary legal materials consist of the Rome Statute of 1998 and the Charter of the United Nations of 1945, while the secondary legal materials are derived from academic literature, scholarly journals, and leading textbooks on international criminal law.

Legal materials were collected through library research by systematically identifying, classifying, and documenting relevant legal sources. Following the collection of the legal materials, the data were analyzed qualitatively using deductive reasoning, whereby conclusions were drawn from the general principles of international law to more specific legal issues concerning the jurisdictional challenges faced by the International Criminal Court (ICC). The analytical framework of this study is based on the doctrinal views of prominent international law scholars to examine the limits of the ICC's subject-matter jurisdiction and the implications of the veto power exercised by the United Nations Security Council.

RESULTS AND DISCUSSION

A. Regulation of the Crime of Aggression under the Rome Statute

The Rome Statute is the principal international legal instrument establishing the International Criminal Court (ICC). It was adopted on 17 July 1998 in Rome, Italy, and entered into force on 1 July 2002 after obtaining the required number of ratifications⁶. The establishment of the ICC through the Rome Statute marked a significant milestone in the development of international criminal law, as it created, for the first time, a permanent international judicial institution with the authority to prosecute individuals responsible for the most serious crimes of concern to the international community.

Article 5 of the Rome Statute provides that the ICC has jurisdiction over four core international crimes: genocide, crimes against humanity, war crimes, and the crime of aggression⁷. Unlike the other three crimes, however, the crime of aggression was not accompanied by a clear legal definition or provisions governing the exercise of the Court's jurisdiction at the time the Rome Statute was adopted. Consequently, the States Parties agreed to postpone the Court's jurisdiction over the crime of aggression until a consensus could be reached concerning its definition and the conditions governing its prosecution.

A major development occurred during the Review Conference of the Rome Statute held in Kampala, Uganda, in 2010. During this conference, the Kampala Amendments were adopted, providing the first official definition of the crime of aggression and establishing the legal conditions under which the ICC could exercise jurisdiction over the offense. These amendments constituted a significant milestone in the evolution of international criminal law because they introduced, for the first time, a comprehensive legal framework for individual criminal responsibility for acts of aggression⁸.

Pursuant to Article 8 bis of the Rome Statute, as amended by the Kampala Amendments, the crime of aggression means the planning, preparation, initiation, or execution, by a person in a position effectively to exercise control over or 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

⁶ "Rome Statute of the International Criminal Court," Statuta Roma Tahun 1998 § (1998).

⁷ Rome Statute of the International Criminal Court.

⁸ Bassiouni, *Introduction to International Criminal Law*.

the United Nations⁹. This provision clearly demonstrates that not every individual may incur criminal responsibility for the crime of aggression. Only those occupying positions of effective authority in state decision-making—such as heads of state, heads of government, ministers of defense, or senior military commanders—may be held individually responsible for committing this offense¹⁰.

Article 8 bis further identifies various acts that may constitute an act of aggression. These include military invasion or armed attack against the territory of another state, military occupation resulting from the use of armed force, forcible annexation of territory, bombardment of another state's territory, blockade of ports or coastlines, attacks against the armed forces of another state, the misuse of armed forces stationed within another state's territory in violation of applicable agreements, and other unlawful uses of armed force. These acts fundamentally violate the prohibition on the use of force established under the Charter of the United Nations and therefore constitute serious breaches of international law.

B. Challenges in the Enforcement of the Crime of Aggression

Although the crime of aggression has been incorporated into the Rome Statute and falls within the jurisdiction of the International Criminal Court (ICC), its enforcement continues to face significant legal and political challenges. Unlike other international crimes, such as genocide, crimes against humanity, and war crimes, the crime of aggression possesses a particularly strong political dimension because it is directly related to a state's foreign policy, national security, and the use of military force. Consequently, the prosecution of this offense is generally more complex than the prosecution of other core international crimes.

One of the principal challenges is the existence of divergent political interests among states within the international community. In practice, states frequently adopt different interpretations of military actions. A state may characterize its conduct as an act of self-defense or a legitimate measure to safeguard national security, whereas other states may regard the same conduct as an act of aggression. These conflicting interpretations often generate legal and political controversy, making it difficult to determine whether a particular military action satisfies the legal elements of the crime of aggression under the Rome Statute.

Another major challenge concerns the role of the United Nations Security Council. Under the international legal system, the Security Council bears primary responsibility for the maintenance of international peace and security¹¹. In certain circumstances, determining whether an act of aggression has occurred may involve consideration by the Security Council. However, decision-making within the Council is frequently affected by the veto power exercised by its five permanent members—the United States, the Russian Federation, China, France, and the United Kingdom¹². The existence of the veto may obstruct efforts to ensure accountability whenever the political interests of major powers are implicated in an international conflict.

A further challenge arises from the fact that not all states are parties to the Rome Statute. Several major powers have neither ratified nor acceded to the Statute and are therefore not fully subject to the jurisdiction of the ICC. This limitation creates substantial obstacles to prosecution, particularly where an alleged act of aggression is committed by political or military leaders of non-State Parties. As a

⁹ Rome Statute of the International Criminal Court.

¹⁰ Bassiouni, *Introduction to International Criminal Law*.

¹¹ Charter of the United Nations.

¹² Charter of the United Nations.

result, the limited jurisdiction of the Court has often been criticized for preventing the universal application of international criminal law relating to the crime of aggression.

Another significant challenge concerns the collection and evaluation of evidence. Establishing criminal responsibility for the crime of aggression requires proof that a political or military leader participated in planning, preparing, initiating, or executing an act of aggression. Obtaining such evidence is particularly difficult because it frequently involves classified state documents, confidential military strategies, high-level governmental communications, and other sensitive information that may not be accessible to international investigators. Furthermore, in situations of armed conflict, ongoing hostilities and unstable security conditions often impede access to evidence and witnesses.

The principle of state sovereignty also presents an important obstacle to the enforcement of international criminal law. Many states continue to regard national defense and security as matters falling exclusively within their domestic jurisdiction and therefore resist external scrutiny of their military policies. Such positions may significantly hinder efforts to prosecute the crime of aggression, particularly where the state concerned possesses substantial political, diplomatic, or military influence within the international community.

In addition, contemporary global geopolitical developments have significantly affected the effectiveness of enforcing international law against the crime of aggression. Strategic competition among major powers, conflicts over economic interests, and rivalries for regional influence frequently undermine the impartial application of international criminal law. In many instances, political considerations prevail over legal principles, making it increasingly difficult to ensure accountability for acts of aggression.

Despite these numerous challenges, the inclusion of the crime of aggression within the Rome Statute remains one of the most significant achievements in the development of international criminal law. It reflects the commitment of the international community to rejecting the unlawful use of armed force and to establishing a legal framework through which individuals responsible for such conduct may be held accountable. Accordingly, stronger cooperation among states, international organizations, and international law enforcement institutions is essential to enhance the effectiveness of prosecuting the crime of aggression and to strengthen the international legal order in the future.

CONCLUSIONS

The crime of aggression is recognized as one of the most serious international crimes because it poses a significant threat to international peace, security, and stability. The unlawful use of armed force not only causes substantial harm to the victim state but also gives rise to broader consequences, including armed conflict, humanitarian crises, widespread human rights violations, and disruptions to the international legal order.

The regulation of the crime of aggression under the Rome Statute reflects the international community's commitment to preventing and prosecuting conduct that violates the fundamental principles of international law. Through the Kampala Amendments of 2010, the crime of aggression was provided with a clear legal definition and formally incorporated into the jurisdiction of the International Criminal Court (ICC). This legal framework enables individuals who play a decisive role in planning, preparing, initiating, or executing acts of aggression to be held individually accountable under international criminal law.

Nevertheless, the enforcement of the crime of aggression continues to face numerous legal and political challenges, including divergent political interests among states, the limited jurisdiction of the ICC, evidentiary difficulties, and insufficient cooperation from certain states. These factors frequently affect the effectiveness of criminal prosecutions and the implementation of international criminal law.

Accordingly, stronger commitment and closer cooperation among states and international organizations are essential to enhance the enforcement of the law against the crime of aggression. Through effective international cooperation and consistent adherence to the principles of international law, the fundamental objectives of the international legal system namely the promotion of peace, security, justice, and accountability within the international community can be achieved more effectively.

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