The Concept of Aggression in International Law – Ali Raiss-Tousi LLB, LLM
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Although States have been attempting to define aggression since the end of the First World War and General Assembly resolution 3314 (XXIX) defining aggression was passed by consensus; it remains ‘soft law’ and we are still, in this age of the International Criminal Court, some way off from the prohibition of aggression becoming a *jus cogens* enforceable by international action.

My starting hypothesis is that international law is not strictly “law” and is also arguably not “international”. We live in a world where international order is not kept by the United Nations as an organisation of equal States, but by consensus or compromise among the major world powers within the UN system, each peddling their own interests.

My work starts by examining the legal concept of aggression prior to the adoption of General Assembly Resolution 3314. This shall consist of a study of the development of the concept of aggression in the Law of Nations prior to World War I which will progress to the study of efforts to define aggression in the inter-war years.

I will then continue with a critique of the Allies announcing aggressive war the ‘supreme international crime’ in the immediate aftermath of World War II, in order to punish the vanquished nations of Germany and Japan and will note the concern raised by many legal scholars about the unsafe convictions meted out by the Nuremberg and Tokyo Tribunals. From this critique of the Nuremberg and Tokyo trials, I will proceed to examine G.A. Resolution 3314 which finally defined aggression by consensus after 24 years of debate at the United Nations. I will discuss the significance of the resolution and also whether such a loose definition, capable of bearing opposing interpretations, was really worth the effort.

I will then move to study aggression and the International Criminal Court; the deadlock over finding a definition of aggression that could be palatable to the West while not being watered down beyond all practical meaning. I hope to conclude by examining whether the impasse between the Security Council (i.e. the ‘big five’) and Court over the issue of this ‘core crime’ can at all be resolved in a manner that give the ICC effective jurisdiction over it, and also whether such jurisdiction is, in itself, a good thing.

The ICC lies under the considerable influence of powerful states (members and non-members) that are in a position to direct and influence its work. It has become, as one commentator has said, “a tool to help the most powerful States to institutionalise and legalise political convenience by carrying out investigations against nationals of ‘pariah’ states, while effectively shielding themselves from the Court’s jurisdiction.”

If reaching an agreement on the definition of aggression, however far away this may be, results in the conclusion of a whole system of legal norms regulating the use of force in international relations, the efforts of the last 100 years would have been worth it; and in this larger context, I would argue that the immediate success or failure of the International Criminal Court is immaterial.