

The Crime of Aggression in International Criminal Law. Challenges in jurisprudence and doctrine.

The International criminal doctrine is making a strong effort to address critically the criminal type described in the Rome Statute, which nevertheless remained almost a decade (2002-2010) as an open criminal, until its definition in the Conference Kampala, Uganda, in 2010: the crime of aggression. The jurisdiction of the International Criminal Court -the CPI- around this offense will begin to be exercised in 2017, being an opportune time for others to direct attention to this figure.

The crime of aggression lasted for a long time (unlike the other three crimes contained in the Rome Statute: genocide, crimes against humanity and war crimes) as an open criminal precisely because of the difficulties that existed to define and the figure of "aggression" at the international level. Since its inception, there has been a difficulty to achieve at least a clear international consensus, or that would define aggression and allow the ICC to judge the crime. That step was taken in 2010 in Uganda: where aggression is eventually defined. its elements are set, it stated or sought to clarify the scope of this crime.

Many authors try to carry out, however, a critical reading of the definition achieved in Uganda, showing that it is, despite the remarkable efforts that demanded their consensus, notoriously insufficient because not enough efficient way to cover the forms that assault charges in the XXI century, with huge advances in technology, using even (to define it, in art. 8a of the Statute) at a resolution (3314) having half a century. Advances (or changes) of technology condition deeply how privacy is preserved and especially the way it is (or should be) designed and preserved by States. Advances in technology determine how attacks are planned and committed in the international arena. Resorting to set it to a resolution of almost half a century (regardless of whether the list of acts containing the same is "exhaustive", as he thinks of the German doctrine, Kai Ambos¹, at the head, or merely "exemplary" on aggression) set an anachronism that is not innocent in the jurisprudence, because it leads to double standard persecution, undermining the very legitimacy of international courts. Hence many African delegations have opposed the definition reached and that even some doubt about it: the debate on the scope of the crime of aggression did not end nor closed, it began in Kampala, it was the first step: not the last. is a path and a legal and doctrinal debate that is looming, a debate that is beginning. It is delineating in doctrine and in international politics what must be understood in the twenty-first century, in the light of advances in technology, such as "aggression". In what sense and under what conditions the aggression must set up a crime.

However, it is important to note that under the present format, the offense present in the Rome

¹ Ambos, Kai. "The Crime of Aggression After Kampala". In German Yearbook of International Law; Vol. 53, pp. 463-509. 2011. Both Professor understands that this list (1974) is "exhaustive" and not merely "illustrative" (or "exemplary") acts (crimes) that can eventually set-in full century XXI aggression. This is the core of the German "restrictive" doctrine we are questioning, as insufficient to cover the aggressions of the XXI century (attacks that exist in different forms, but they are not named) in global scenarios, technological, geopolitical, very different from which they took place last century. It understands, on the other hand, do not seek a definition of aggression (as Paulus aims, in its discussions with Claus Kreß) it is to be "functional" to the silence of the law. International Criminal Law cannot remain indifferent to these phenomena or changes. So you think that we must reconfigure -think again under new point of view- the concept of ". Agresión". There are "attacks" that are not being named in the law. International criminal law cannot remain blind and indifferent to this. The price you pay is too expensive: the loss of legitimacy. It is the loss of meaning.

Statute serves to focus only on the less-or cruder or poor (or “traditional”) attacks, which are committed in general by third world country (as many countries in Africa, which focuses almost exclusively the activity of the International Criminal Court, threatening its legitimacy and justice, as has been questioned by several authors, such as Danilo Zolo ou o Claus Kreß in Germany) It is functional to the exercise of jurisdiction concentrated in poor (or emerging) countries, but leaving aside, in a double standard, (so common in international law) more evolved or refined forms of “aggression”; leaving unpunished (as has been the historical trend) -the aggression of the States, more powerful or developed countries -Hence, it is crucial to overcome -in the doctrine, in the Academy’s “restrictive” view (German doctrine) on aggression. For a wider on the same vision, a broader view of what “aggression” must be considered, to broadening the historical and political implications of the legal discussion, broadening the understanding of the law to phenomena traditionally excluded from his gaze, his analysis, but it is important in the way of building a more equal and fairer justice (international criminal). More legitimate. A broader view of aggression can also permit (not only the law but in economics, sociology, religion) a broader historical reading, which allows understand and better understand the extreme inequalities that still exist between many countries and regions. A broader reading of aggression as a crime may be the kickoff for a reconstruction of the history of many regions. Understand a history of violence and inequality-and abuse-that often resists being named. Countries and regions colonized, pillaged, (“assaulted”) that “no history”. For all this we consider critical to overcome the “restrictive” view on aggression in the law. Reconfigure what we mean by “aggression” is a huge contribution that it can be made by the Right to Political History.

When rethinking the figure of the crime of aggression under a “restrictive” interpretation is not without consequences in practice: it might end up in the double standard criminal prosecution, resulting in impunity for assaults (sophisticated “ new “) who commit the most powerful states. The broad interpretation of the -set aggression from Latin America is the only one that really appeals to the utility itself -Sense matter, of a figure of “aggression”: that is to prevent precisely (in time) even greater crimes. The German--classical restrictive interpretation on the background disbelieves the figure of the “aggression”. It is no coincidence that this is the predominant “classic” in states like Germany which have a technological and scientifically advanced state on the other hand, industrial countries- a long history of aggression against other states, including, as noted Wolfgang Naucke position, the exploitation of resources and violation of sovereignty. A restrictive definition of “aggression” left in the shadows many forms of violence crimes on underdeveloped countries and regions, many victims of colonization and theft of resources - they should be understood as genuine “aggression” by the law. It seems that the “restrictive” interpretation (academically defended from industrial centers) is in turn supported the position -for powerful or developed countries, settlers present and past defense own national or geopolitical interests, and even commercial. The (International Criminal) law cannot remain indifferent to this, at the risk of undermining their legitimacy see it.

Difficulties in defining “aggression” in the XXI century are part of the difficulty thinking violence from the International Criminal law. We understand that the definition reached in Kampala, although it represents a valuable effort is insufficient and fails to cover forms of even-handed manner that aggression comes today, with advances in technology that have many states. The definition achieved in Uganda is insufficient and enough to cover only the (more “outdated”) precarious and rudimentary forms of aggression (as set out in Resolution 3314, Art. 8a, a resolution of 1974), but it leaves out of reach to the most sophisticated new forms of aggression or generating a sort of “double standard” of criminal prosecution. The International Criminal Court will begin to judge the crime of aggression from 2017, so it is a very opportune time to rethink this key figure time. It is essential to rethink what we mean by aggression between states (and countries) with different traditions and cultures, from a more open perspective, including the perspective (history, and interests) of many countries and regions (especially Latin America and Africa in a postcolonial

world), redefining what is the meaning of “aggression” in the international order. Rethinking the figure and the scope of the crime of aggression is of fundamental importance to the development of international criminal law.

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