



Study on the Jurisdiction of the International Criminal Court Over the Crime of Aggression

Geng Zhimin

PhD Student, University of World Economy and Diplomacy, Uzbekistan

E-mail: 515467315@qq.com

<http://dx.doi.org/10.47814/ijssrr.v6i11.1742>

Abstract

The jurisdiction of the crime of aggression involves an important topic in the field of international criminal law, that is, how to determine which country has the right to try and pursue criminal responsibility for individuals or groups involved in the crime of aggression. As the crime of aggression is a serious international crime, the determination of its jurisdiction should take into account international law, international criminal law, national sovereignty and other factors. Based on this, this paper will focus on the relevant issues of the jurisdiction of the crime of aggression by the International Criminal Court, and discuss the jurisdiction issues of the crime of aggression from multiple perspectives such as jurisprudence, international practice and relevant international treaties, in order to provide some useful thinking and suggestions for the international community.

Keywords: International Law; Jurisdiction; International Criminal Court; Crime; Aggression; International Community; Rome Statute; International Treaties; International Conventions.

Introduction

The International Criminal Court (ICC) is an international body independent of States, established under the Rome Statute to hold individuals criminally responsible for the most serious international crimes. Under the Rome Statute, the ICC has jurisdiction over four of the most serious international crimes, including genocide, war crimes, crimes against humanity and the crime of aggression. As the last type of crime to be included in the jurisdiction of the International Criminal Court, the crime of aggression has been concerned and disputed. The jurisdiction of the International Criminal Court over the crime of aggression has become an important issue in the field of international criminal justice. As a serious international crime, the crime of aggression involves the acts of force between states and the invasion of the territory of other states.

1. Implications of the jurisdiction of the International Criminal Court over the crime of aggression.

1.1. Definition of crime of aggression. The jurisdictional definition of the crime of aggression can be interpreted from the International Court of Justice and relevant international law instruments. Most

important are the instruments of the International Court of Justice, which was established in 1945, and the International Criminal Court (ICC), which was established in 2002. According to the Principles of the Nuremberg Tribunal, issued by the International Court of Justice in 1946, the crime of aggression is defined as “aggression against territory, its sovereignty or independence, or other acts contrary to the Charter of the United Nations or international law”. The document also specifies some specific elements of the crime of aggression, including: use of force, occupation of territory, armed attack on territory, etc. The Rome Statute of the International Criminal Court provides a more detailed definition and regulation of the crime of aggression. According to the Rome Statute, the crime of aggression refers to an act of a State or a group of States that violates the territory, territorial sovereignty or independence of another State through the use of force or otherwise, which meets one of the following conditions: (1) an armed attack by organized armed forces against another State; (2) Become an occupier in a manner inconsistent with international law; (3) Intervening in the internal affairs of another State by force.

1.2. Characteristics of the crime of aggression. The jurisdictional features of the crime of aggression can help us better understand and judge the act of aggression: First, the use of force or armed attack: the core feature of the crime of aggression is the use of force or the initiation of an armed attack. This means that the act of aggression is committed by military means, such as sending troops, troops invading the victim country, launching air strikes, missile attacks, etc. Second, against another country: the object of the act of the crime of aggression is another country or an independent political entity. An act of aggression is an armed aggression by one country against another country, so there must be two subjects: the aggressor and the victim country. Third, violation of international law: the act of aggression must violate international law, especially the UN Charter and international conventions. These international law documents stipulate the norms and norms of behavior between countries, and the act of aggression violates these norms and norms. Fourth, the destruction of territory, territorial sovereignty or independence: the purpose of the crime of aggression is to occupy, conquer or control the territory, resources or regime of the victim country through the use of force. The act of aggression seriously violates the sovereignty and territorial integrity of the victim country. Sixth, directness: the act of aggression is direct, that is, the aggressor directly uses force or launches an armed attack. This contrasts with the indirect form of conduct of other similar international crimes, such as war crimes. Seventh, affects international peace and security: the act of aggression poses a serious threat to international peace and security. It undermines peaceful relations between nations, can trigger wars and conflicts, and negatively affects global order and stability.

2. Prerequisites for the jurisdiction of the International Criminal Court over the crime of aggression.

2.1. Jurisdiction and conditions for the crime of aggression. The determination of the scope and conditions of the jurisdiction of the International Criminal Court over the crime of aggression is a complex issue. The Rome Statute stipulates that the International Criminal Court can exercise jurisdiction only with the consent of the state. However, the international community has not yet reached an agreement on the specific provisions of the jurisdiction and conditions of the crime of aggression. On the one hand, some countries advocate that the International Criminal Court should exercise broad jurisdiction, including the investigation and prosecution of the crime of aggression without the consent of the state. They believe that the crime of aggression is one of the most serious international crimes and is of great significance to the maintenance of international peace and security, so the International Criminal Court should exercise more active jurisdiction. On the other hand, some countries advocate that the International Criminal Court should exercise caution and restraint in the jurisdiction of the crime of aggression and avoid excessive interference in national sovereignty and international relations. They believe that the nature of the crime of aggression

makes it different from other international criminal crimes, and the International Criminal Court should respect the autonomy of states and the basic principles of international law when administering the crime of aggression.

- 2.2. The principle of state consent. The principle of state consent is an important basis for the jurisdiction of the International Criminal Court. The jurisdiction of the International Criminal Court over the crime of aggression is a complex and important issue. On the definition of jurisdiction and conditions and the application of the principle of state consent, there are different views and positions in the international community. In order to ensure the fairness and effectiveness of international criminal justice, the international community should seek the rationality and feasibility of the jurisdiction of the crime of aggression by the International Criminal Court through consensus and consultation. At the same time, the International Criminal Court should strengthen its authority and influence and enhance the legitimacy and credibility of its jurisdiction over the crime of aggression. Only in this way can we better maintain international peace and security and promote the development of international criminal justice. However, on the jurisdiction of the crime of aggression, the application of the principle of state consent is also controversial. On the one hand, some States considered that the principle of consent of States applied to all aspects of the jurisdiction of the International Criminal Court over the crime of aggression. In their view, the nature of the crime of aggression makes it closely related to state sovereignty and international relations, and the principle of state consent should be fully respected and protected. On the other hand, some States believe that “the International Criminal Court can moderately relax the principle of state consent in the jurisdiction of the crime of aggression”. The crime of aggression is one of the most serious international crimes, and the International Criminal Court, while protecting international peace and security, should be empowered to investigate and prosecute it.
3. Practice of the jurisdiction of the International Criminal Court over the crime of aggression.
 - 3.1. The legal basis of international law. The jurisdiction of the crime of aggression should first consider the legal basis of international law. According to the principles of international law, every sovereign State has the right to investigate and prosecute crimes committed within its territory. However, the crime of aggression has a transnational and international character, and it is clear that jurisdiction under national law alone cannot solve the problem. Thus, international law also gives the international community jurisdiction over the crime of aggression. For example, according to the principles of ordinary international law, the crime of aggression is an international criminal act of universal jurisdiction, and any State has the right to investigate and try it. In addition, the establishment of the International Criminal Court has provided an important mechanism for addressing the question of jurisdiction over the crime of aggression. The International Criminal Court is an independent international court that tries the most serious international crimes, including the crime of aggression. According to the Rome Statute, the International Criminal Court has jurisdiction over the crime of aggression, but in practice, the ICC has not exercised jurisdiction over the crime of aggression because its definition and the conditions for its application are unclear.
 - 3.2. Legal basis of international practice. In addition to the above legal basis, the practice of the international community also provides some legal basis for solving the jurisdiction of the crime of aggression. In the international community, some countries with relatively strong strength and influence play an important role. In accordance with the principle of de facto status in international relations, these States would normally exercise jurisdiction over the crime of aggression. For example, according to the trial practice of Nazi war criminals after the Second World War, the crime of aggression is an international crime, and any country has the right to investigate and try it. In the trial of Nazi war criminals and some similar international criminal trials, many countries

worked together to investigate and try the crime of aggression according to the actual jurisdiction of the State and the principle of the injured state. This practice has shown that the international community can solve the question of jurisdiction over the crime of aggression through cooperation. In addition, some international treaties also provide a certain legal basis for the settlement of the jurisdiction of the crime of aggression. For example, under the Charter of the United Nations, the United Nations has the power to sanction and prosecute acts of aggression. Under Articles 39 and 42 of the UN Charter, the UN Security Council can take military action to stop an act of aggression and can decide to impose sanctions on the aggressor country. These international treaties show that the international community can resolve the question of jurisdiction over the crime of aggression through multilateral institutions.

3.3. Provisions of relevant international treaties. In addition to the above-mentioned international jurisprudence and practice, there are also some relevant international treaties that provide for the jurisdiction of the crime of aggression. For example, the Rome Statute, adopted in 1998, sets out in detail the jurisdiction over the crime of aggression. Under Article 5 of the Rome Statute, the International Criminal Court has jurisdiction to try the crime of aggression. However, in accordance with article 5, paragraph 1, of the Rome Statute, the International Criminal Court does not exercise jurisdiction over the crime of aggression for the time being until consensus on the definition of the crime of aggression and the conditions for its application has been reached through consultations between the parties. Furthermore, under Article 8 of the Rome Statute, the jurisdiction of the International Criminal Court is complementary. This means that the ICC will only exercise jurisdiction over the crime of aggression if States are unable or unwilling to do so. Thus, the International Criminal Court would not exercise jurisdiction over the crime of aggression where the State exercised jurisdiction in accordance with the law. The jurisdiction of the crime of aggression is a complicated question of international law. To establish the jurisdiction of the crime of aggression, it is necessary to consider many factors such as the legal basis of international law, international practice and relevant international treaties. As an independent international institution, the International Criminal Court plays an important role in resolving the issue of jurisdiction over the crime of aggression. However, at present, the jurisdiction of the International Criminal Court over the crime of aggression has not been exercised, and the provisions of relevant international treaties require further consultation and consensus among all parties. In the face of the issue of jurisdiction over the crime of aggression, the international community needs to further strengthen cooperation and jointly solve this important issue of international law through multilateral institutions and treaties.

3.4. Jurisdiction of the International Criminal Court over non-member States. The Rome Statute establishes the ICC's jurisdiction over member states, but its jurisdiction over non-member states is not fully defined. However, although non-member states are not directly included in the ICC's jurisdiction, it is still possible for the ICC to exercise jurisdiction over individuals from non-member states. In certain specific circumstances, the ICC may initiate investigations against non-member States and pursue criminal charges against their nationals:

In one case, a national of a non-member state has committed a crime that is relevant to a case under investigation by the International Criminal Court. In such cases, the ICC can exercise jurisdiction to prosecute non-member nationals at the request of the country concerned. For example, if the nationals of a non-member state commit a crime against a State that has ratified the Rome Statute, those states may request the ICC to prosecute the suspect. Alternatively, non-member states may voluntarily accept the jurisdiction of the ICC. According to the provisions of the Rome Statute, non-member states may voluntarily accept the jurisdiction of the ICC by signing the Rome Statute or submitting an instrument of ratification of accession. Once the country becomes a signatory or ratifying State of the Rome Statute, the ICC will gain jurisdiction over the country. Alternatively,

the UN Security Council could pass a resolution granting the ICC jurisdiction over non-member states. Under the Rome Statute, the Security Council can decide to refer specific countries or specific incidents to the ICC, as authorized by Article 13. In that case, the ICC would gain jurisdiction over non-member states to investigate and prosecute crimes related to the resolution. However, despite some limited exceptions to the jurisdiction of non-member states, the jurisdiction of the ICC still faces some challenges and controversies.

First, since the jurisdiction of the International Criminal Court is inherited from national sovereignty, it is still controversial whether the jurisdiction of the International Criminal Court surpasses national sovereignty. Some States have argued that the International Criminal Court has no authority to prosecute nationals of States that have not ratified the Rome Statute. Second, the ICC's jurisdiction is not mandatory for non-member states. Non-member states can refuse to accept the jurisdiction of the ICC and take steps to prevent the ICC from prosecuting their nationals. For example, some States may adopt domestic legislation stipulating that they refuse to surrender their nationals to the ICC in order to avoid prosecution of their nationals by the ICC. In addition, the status and influence of non-member states on the international stage may also affect the ICC's jurisdiction over their nationals. For some powerful non-member states, they may exert pressure to block or interfere with the ICC investigation and prosecution of their nationals. Finally, the ICC's jurisdiction over non-member states is limited. The ICC may prosecute individuals of non-member States only in certain circumstances, such as when the crime is related to a case under investigation by the ICC, when the State voluntarily accepts the jurisdiction of the ICC, or when the Security Council has adopted a resolution granting jurisdiction to the ICC. However, the ICC's jurisdiction over non-member states remains challenging and controversial due to factors such as national sovereignty and the voluntary nature of non-member states.

In summary, the jurisdiction of the International Criminal Court for the crime of aggression is a complex and challenging issue. Although there are currently no cases of investigation or prosecution involving the crime of aggression, the ICC and its member states are actively working to ensure that the jurisdiction of the crime of aggression is clarified and enforced. Through cooperation and consultation, it is hoped that the ICC will provide a legal framework for the international community, take into account the provisions of domestic and international law, emphasize the independence and jurisdiction of the ICC, and strengthen international cooperation and resource support to ensure that the ICC can effectively carry out its mission and responsibilities.

Reference:

JIA Yu. *International Criminal Law* [M]. Beijing: Law Press, 2019.

Ling Yan. *Theory and Practice of the International Criminal Court* [M]. Beijing: China University of Political Science and Law Press, 2019.

Quan Hongliang. Study on the application of the Supplementary Jurisdiction Principle provisions of the Rome Statute to the crime of Aggression [J]. *Journal of Hunan Police College*, 20, 32(05).

Wang Xiumei. *Research on the International Criminal Court* [M]. Beijing: China Renmin University Press, 2002.

Wang Yi. Study and Response on Selective Justice in International Criminal Court [J]. *Journal of Shenyang Normal University*, 2022-04-01.



Xing Aifen, Nie Tong, Wang Xiao. Exceptions to the functional immunity of State Officials from foreign criminal jurisdiction: An analysis based on Article 7, paragraph 1, of the Draft Immunity of State Officials from Foreign Criminal Jurisdiction [J]. Journal of Gansu Radio and Television University, 21, 31(02).

Xue Ru. Study on the Relationship between the International Criminal Court and the UN Security Council [M]. Beijing: Law Press, 2016.

Yu Nan. A Study on the discretion of Judges of the International Criminal Court [M]. Beijing: Law Press, 2014.

Zhang Guiling. Research on the International Criminal Court [M]. Beijing: People's Publishing House, 2013.

Zhou Xingyue. Discussion on the jurisdiction of the International Criminal Court [J]. Journal of Tangshan University, 2022, 35(01).

Copyrights

Copyright for this article is retained by the author(s), with first publication rights granted to the journal.

This is an open-access article distributed under the terms and conditions of the Creative Commons Attribution license (<http://creativecommons.org/licenses/by/4.0/>).