



European Journal of International Law

INTERNATIONAL LAW AND THE CRIME OF AGGRESSION

Sunday 3th July 2016

19.30: DINNER - The Jam Factory Restaurant, Hollybush Row, Oxford, OX1 1HU

Monday 4th July 2016

Venue: Harold Lee Room, Pembroke College, Oxford

In June 2010, parties to the Statute of the ICC meeting in Kampala, Uganda agreed amendments to the ICC Statute which would allow the ICC to prosecute the crime of aggression. However, they also agreed that the Court would only be able to exercise jurisdiction with respect to the crime of aggression subject to a further decision to be taken after 1 January 2017 and only after the ratification or acceptance of the amendments by thirty States Parties. To date, there have been 28 ratifications or acceptances of the amendments and seemingly more are to follow. With ICC jurisdiction over aggression appearing to be just round the corner, this workshop will discuss a set of papers that consider the philosophical foundations of the crime of aggressions as well as the implications that ICC jurisdiction over the crime is likely to have on international law and in international politics.

9.00 - 9.10 *WELCOME & INTRODUCTIONS*

9.10 - 10.50 *THE IMPACT OF THE CRIME OF AGGRESSION ON THE *JUS AD BELLUM**

- **Antonios Tzanakopoulos**, Associate Professor of International Law, University of Oxford
- **Tom Ruys**, Professor of International Law, Ghent University

Commentator: Kevin Jon Heller, Professor of Criminal, School of Oriental and African Studies, University of London

This session will consider the potential for international criminal law to influence the development and the application of the law relating to the use of force. In particular, will the definition of 'act of aggression' weaken condemnation of, and responses to, the prohibition of the use of force in the *jus ad bellum*? The dilemma of imprecise definitions will also be examined for example, what constitutes a 'manifest violation' of the UN Charter? How will the ICC judges determine whether a State is acting in self- defense? How will necessity and proportionality be established? What analysis will be undertaken to determine whether a use of force to protect human rights is consistent with the UN Charter?

10.50 - 11.10 **COFFEE BREAK**

11.10 - 12.50	THE PHILOSOPHICAL FOUNDATIONS OF THE CRIME OF AGGRESSION AND THEIR IMPLICATIONS
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- **David Rodin**, Co-Director, Oxford Institute for Ethics, Law & Armed Conflict & Part time Professor, Dept of Political Science, European University Institute
- **Tom Dannenbaum**, Lecturer in Human Rights, Dept of Political Science, University College London

Commentator: Marko Milanovic, Associate Professor, University of Nottingham School of Law

Tom Dannenbaum's paper - *Criminal Aggression and Soldiers' Rights* - explores the implications of a normative account of the crime of aggression that locates the criminal wrong of aggression in unjustified killing of individuals, rather than in a breach of the sovereignty of states. The paper elaborates two doctrinal upshots of this normative account: (1) a theory of victim participation in aggression cases at the ICC and the scope of article 75 reparations for the crime; and (2) implications for the rights of soldiers to refuse to participate in aggressive war.

In David Rodin's paper - *Superior Law: Human Rights and the Law of War* - he notes that recent work in moral philosophy has argued that combatants fighting in an unjust/aggressive wars do not possess the moral right to kill enemy combatants. Yet symmetrical privileges enjoyed equally by just and unjust combatants is a central feature of the Laws of Armed Conflict. To what extent are these moral and legal norms compatible? The paper addresses the arguments of three prominent theorists who in different ways argue for a conservative approach to the law of war: Jeff McMahan, Michael Walzer and Henry Shue. It argues (against a prevailing consensus) that if recent moral arguments are correct, this will require far reaching amendments to the law and suggest that the Kampala aggression amendments do not go far enough. The paper explores some practical ways in which the law may go further than it currently does.

12.50 - 14.00 **LUNCH**

14.00 - 15.40 **THE CRIME OF AGGRESSION AND THE PURSUIT OF PEACE**

- **Frédéric Mégret**, Associate Professor of Law and William Dawson Scholar, Faculty of Law, McGill University
- **Diane Marie Amann**, Emily and Ernest Woodruff Chair in International Law, University of Georgia School of Law & Special Adviser to the International Criminal Court Prosecutor on Children in and Affected by Armed Conflict.

Commentator: Sarah Nouwen, University Senior Lecturer & Deputy Director, Lauterpacht Centre for International Law, University of Cambridge

In Fred Mégret's paper - *International Criminal Justice as a Peace Project* - he notes that international criminal justice was once seen as very much a peace project, from the inter-war to the high point of Nuremberg and its emphasis on "crimes against peace". In the 1990s, its focus turned to atrocities as an obstacle to lasting domestic and social peace. In the former view, crimes against peace lead to atrocities; in the latter view, atrocities disrupt the peace. The renewed project of banning aggression and that of stopping atrocities will be presented as persistently at odds despite the tendency to portray them as complementary.

Diane Marie Amann's paper - *The Value of Peace and the Crime of Aggression* - explores the contradictions between the efforts by the United States to derail the Kampala aggression amendments and the US' aspirations for peace. The paper argues that the project of international criminal justice has been a central part of the United States' relationship with efforts to secure peace among nations. It analyzes the proposed aggression amendments in light of this history and finds in the positions of US officials, and others, contradictions that have abided throughout the entire period that the United States has held global power: asserted aims for peace coupled with unilateral uses of force; praise for international accountability coupled with avoidance of international scrutiny.

15.40 - 16.00 **COFFEE BREAK**

END OF WORKSHOP

16.00 - 18.30 **Meeting of the Editorial and Scientific Advisory Boards of the European Journal of International Law - [For Board members only]**

19.30 **Dinner & continuation of EJIL Board meeting [For EJIL Board members only]**
VENUE: Fellow's Dining Room, BALLIOL COLLEGE

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