

The next and crucial step forward in the development of the International Criminal Court is to establish its jurisdiction over the Crime of Aggression as committed by individuals. This is a thicket of thorns characterised by the vested interest of states. It expresses itself in procedural wrangles which are serious in themselves but are also symptomatic of deeper problems.

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The International Criminal Court, the Security Council, and the Crime of Aggression.

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The International Criminal Court

The International Criminal Court (ICC) was established by the 1998 Rome Statute for the Establishment of an International Criminal Court. Based in the Hague it has powers to try individuals for the gravest crimes known to mankind, including war crimes, genocide, and crimes against humanity. For the first time the community of nation states has come together, willing to surrender or pool their own national sovereignty and to submit their own nationals to possible trial and punishment for these horrific crimes by a permanent international tribunal.

The Crime of Aggression

The Nuremberg Tribunal tried and convicted Nazi leaders for "Crimes against Peace". These comprised the planning, preparation, initiation

or waging of a war of aggression, or a war contrary to international treaties, agreements or assurances, by individual political and military leaders. According to Lord Justice Geoffrey Lawrence

"To initiate a war of aggression, therefore, is not only an international crime; it is the supreme international crime differing only from other war crimes in that it contains within itself the accumulated evil of the whole."

The term "Crime of Aggression" is now used to characterise this offence.

ICC Jurisdiction over Aggression

During the negotiations for the ICC There was much heated de-bate about the crime of aggression. Firstly there were problems about defining it. Secondly it would affect

the highest political and military leaders, and not just commanders in the field or ordinary service personnel. It is this crime which, more than any other, brings individual liability to the rule international criminal law, home to them. In particular the United States wanted further debate over the definition of the Crime of Aggression, and its jurisdiction by the Court. In addition it was argued that the Security Council must continue to be recognised as the supreme international body with exclusive, or at least primary, jurisdiction in relation to the prevention of international crimes such as these. As a result it was agreed that:

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- The Council may suspend the jurisdiction of the Court in any particular case for 12 months, and may renew these suspensions on a yearly basis indefinitely.
- the definition of the Crime of Aggression, and the circumstances under which the Court could try someone for, would be left for further debate and negotiation.

The Role of the Security Council

The debate is therefore about the precise role of the Council. Is it necessary for it to come to an agreement in order for a case before the ICC to go forward? This is the *Affirmative Role*, as agreed in the Rome Statute. Or is the Court empowered to proceed unless the Council vetoes it? This is the *Negatory Role*.

This matters. Under the Negatory Role, if the Council is deadlocked, which may well happen if members of the Permanent Five (P5) use their veto, the Court can still go ahead. In the case of an affirmative power, the any member P5 would be able to neutralise the Court.

The ongoing debate

The continuing negotiations and debates, are being carried out by by "The Special Working Group on the Crime of Aggression" (the "Group") which reports to, the "Assembly of States Parties" to the ICC (the "Assembly"), which is effectively the international parliament of the Court.

The Assembly meets yearly and the Group meets at informal inter-sessional meetings. All States are invited to attend and participate in the debates whether they have signed and ratified the Statute or not. France and the UK have done this. China has not signed and Russia has signed but not yet ratified. The USA signed under Clinton and then unsigned under Bush. Furthermore it has passed the American Servicemen's

Protection Act) which prohibits the federal government from making any expenditure whatever to-wards or connected with the Court. The USA doesn't even send observers to the Group.

Under the Rome Statute a Re-view Conference can take place as early as 2009. This will provide the opportunity to define the Crime of Aggression and to amend conditions for the exercise of the Court's jurisdiction over it. The Group is now working urgently to prepare proposals for the Review Conference.

The overwhelming majority of the Group accepts that the Council, under the UN Charter, has the supreme political role of acting in the interests of the restoration and maintenance of international peace and security.

The debate, however, concerns what should happen if, after six months, the Council is deadlocked on whether an act of international aggression by a state has occurred. Two proposals are under consideration

Option 1 suggests that the Court should then be able to continue (The Negatory Role)

Option 2 provides that the Court cannot proceed further with the matter at all. (The Affirmatory Role) In effect this would give any member of the P5 the power to veto any investigation of, let alone subsequent trial, by the Court for any allegation of aggression, whether of its own political or military leaders (current or former) or those of a political ally or otherwise.

The great majority of states contributing to the debate support Option 1. They argue that the Council has a political role whereas the Court's role is judicial. These roles should be kept separate. Otherwise there would be undue political influence on the Court which would neutralise what it was set up to do.

The position of the UK Government

The four members of the P5 present at the, including the UK, support Option 2. On the face of it they would be heavily outnumbered in an Assembly vote. However, we know very well that they, and the USA, are likely to exercise insidious political influence over other states. This influence is of course not exercised in open and public debate in the forums of the Assembly or even the Group, but rather quietly, privately and indeed secretly in back-rooms and back-channels and well away from public scrutiny. For example many Western European States may not be prepared to act against an intransigent position adopted by France and the UK.

Conclusions & Recommendations

In essence, those states with power will want to retain and enhance it. They want to extend immunity to their political allies. This would undermine any hopes of preserving any continuing genuine respect for the fundamental principles of international law and behaviour which were rendered in judgement in Nuremberg.

The legal and constitutional merits of Option 1 have been well rehearsed. It is now time to take serious political action. Robbie Manson therefore proposes a "*Parliamentarians for Option1*" meeting or seminar to be called in Portcullis House as soon as practicable. This could lead to future involvement of "Parliamentarians for Global Action".. There would be further such meetings and seminars with Parliamentarians, particularly from other Western European states, with the aim of creating such a Parliamentary political clamour for international justice as will be heard even by the waverers in the Assembly of States Party to the International Criminal Court.