

The crime of aggression under the authority of the security council

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Abstract:

The crime of aggression is considered one of the most controversial crimes, as it is a new name for an old crime, committed since ancient times, the attention to it clearly began since the end of World War II, as international efforts tried to define a concept for the crime of aggression and set legal

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mechanisms and procedures to combat it, except That this faced and encountered problems and Controversies for a long period of time, even after its inclusion in the list of international crimes and the adoption of its definition with the activation of the jurisdiction of the international criminal court over it in July 17, 2018, the Controversies still exist, especially as a necessary and binding procedures were stipulated exclusively to the Security Council over the crime of aggression, which established an exceptional authority of the security council over the crime of aggression.

Keywords: *Crime of aggression; international criminal justice; international criminal law; security council.*

Introduction:

The crime of aggression is an international crime that the International Criminal Court has jurisdiction over it, along with the rest of the three international crimes (genocide, crimes against humanity, and war crimes), and that's according to the provisions of Article 05 of the International Criminal Court statute, this jurisdiction was only activated on July 17. 2018 after the adoption of the definition of the crime of aggression, passing through a long and controversial historical path about it, but after this a new debates has been opened about another matter, and its about the jurisdiction of the Security Council over the crime of aggression, whether this jurisdiction assigned to it according to Chapter VII of the United

Nations Charter or under the Rome statute.

From the above, certain questions can be formed for us, but the main question is what is the nature of the authority entrusted to the Security Council in facing the crime of aggression?

We will try to answer the previous question, by broaching the concept of the crime of aggression, and illustrating the authority of the security council that was stipulated to it.

Chapter I: The concept of the crime of aggression:

The crime of aggression is a dangerous crime that can destabilize the world peace in any moment, and to deter it, the international community reached the point of the obligation of its prosecution, and to achieve that, it is important to search and set a full definition of the crime of aggression.

To give a good idea about the crime of aggression, we will try to provide its definition, with showing its elements and terms.

1-The definition of the crime of aggression:

The crime of aggression has two different definitions, the first one is juristic, and the second one is a legal definition.

A-The juristic definition: There are many definitions that the jurisprudence covered, and from the most important one's, we find the following:

- Vespasian Pella's⁽¹⁾ definition on crime of aggression: an act of aggression is Every use of force by an international group, except in the case of legitimate defense and participation in a joint action that the United Nations considers legitimate⁽²⁾.

- Georges Scelle's⁽³⁾ definition of crime of aggression: Aggression is any crime against peace and the security of humanity, and this crime consists every use of force with the violation of the provisions of the United Nations Charter, and that's lead to a breach of public order.⁽⁴⁾

From the two previous definitions, we can see that the jurists gave a general idea about the crime of aggression without entering in details, that's why we will provide the detailed one's.

- Nikolaos Politis's⁽⁵⁾ definition on crime of aggression: As Rapporteur of the Committee for Security Questions, Politis submitted to the League of Nations General Commission a definition of aggression, The 'Politis Definition' is an adaptation of a Soviet



proposal, provided that the aggressor was the state who commits one of the five enumerated acts: namely, a declaration of war; invasion of the territory of another state; attack on the territory, vessels, or aircraft of another state; naval blockades or the provision of support to armed bands which invaded the territory of another state; or refusal, notwithstanding the request of the invaded state, to take all the measures in its power to deprive those armed bands of all assistance or protection, also provided that political, military, economic, or other considerations may serve as an excuse or justification for the aggression.⁽⁶⁾

We can remark that the previous definition was so detailed, whether on the act or its cases and conditions, however it limited and restricted the crime of aggression, especially in the Contemporary time that witness a scientific and technological development which can contribute to new ways to commit acts of aggression, and for that jurists came up with a definition that can be in the middle of all the previous one's, with only mentioning examples of cases that can be defined as a crime of aggression, and those cases are :

- a declaration of war from a state towards another state.
- the invasion of the territory of another state even without a declaration of war.
- Naval blockade.
- The use of force against a state⁽⁷⁾.

B-The legal definition of the crime of aggression: There are many international efforts to provide a legal definition of the crime of aggression, so we will try to shed light on the most important and latest legal definitions reached.

•United Nations General Assembly definition of crime of aggression: This definition contains a general part, and an incomplete list of examples of acts of aggression.

1) The general part of the definition (Article 01): aggression is the use of armed force by a state against the sovereignty, territorial integrity or political independence of another state, or in any other manner inconsistent with the charter of the united nations, as set out in this definition.⁽⁸⁾

2) The list of possible examples of acts of aggression (Article 03):

a) The invasion or attack by the armed forces of a State of the

territory of another State, or any military occupation, however temporary, resulting from such invasion or attack, or any annexation by the use of force of the territory of another State or part thereof.

b) Bombardment by the armed forces of a State against the territory of another State or the use of any weapons by a State against the territory of another State.

c) The blockade of the ports or coasts of a State by the armed forces of another State.

d) An attack by the armed forces of a State on the land, sea or air forces, or marine and air fleets of another State.

e) The use of armed forces of one State which are within the territory of another State with the agreement of the receiving State, in contravention of the conditions provided for in the agreement or any extension of their presence in such territory beyond the termination of the agreement.

f) The action of a State in allowing its territory, which it has placed at the disposal of another State, to be used by that other State for perpetrating an act of aggression against a third State.

g) The sending by or on behalf of a State of armed hands, groups, irregulars or mercenaries, which carry out acts of armed force against another State of such gravity as to amount to the acts listed above, or its substantial involvement therein.⁽⁹⁾

This definition had some issues in a number of structural and substantial deficiencies, and also it lacked a binding force, although it did exercise a considerable impact on the drafting of the Rome statutes definition of the crime of aggression.⁽¹⁰⁾

- International law committee definition on crime of aggression:

It has been many drafts that ILC adopted, but the final draft code of crimes adopted by the ILC in 1996 defined crime of aggression⁽¹¹⁾, as Article 16 of it states: An individual who, as leader or organizer, actively participates in or orders the planning, preparation, initiation or waging of aggression committed by a State shall be responsible for a crime of aggression.

This formulation drawn from the 1945 London charter, left many questions and arguable matters regarding the short and non-detailing points in the definition⁽¹²⁾.

- International criminal court definition on crime of aggression :

The international criminal court statute is the result of many



international efforts for deterring the most dangerous crimes⁽¹³⁾.

Since the creation of the ICC, and the adopting of its statute, the last one “Rome Statute” didn’t provide a full definition of the crime of aggression, only after the Kampala amendments on the crime of aggression and until the year of 2017, the ICC defined it on its provisions in Article 08 bis as: the planning, preparation, initiation or execution, by a person in a position effectively to exercise control over or to direct the political or military action of a State, of an act of aggression which, by its character, gravity and scale, constitutes a manifest violation of the Charter of the United Nations.⁽¹⁴⁾

The definition of the crime of aggression in article 08 bis is the result of a long route of international debate and negotiations about it, and we can notice that result in the article, as it contains different parts of the previous legal definitions and also a list of acts of aggression that we are going to mention later.

2-The elements of the crime of Aggression:

It is generally agreed that the essentials elements of any international crime are four elements, the legal elements, the material elements, the mental elements, and the international element.

A-The legal element: It can be no crime or punishment without law, that’s why the legal element is so important and essential, this element is the provision or the text in law that criminalize and punish the criminal act, and because the crime of aggression is an international crime, the texts related to it are found in the statute of the international criminal court (ICC)⁽¹⁵⁾, where we find the criminalization part of the crime of aggression In Article 05, and that’s from the determination of the jurisdiction of the ICC over a specific crimes including the crime of aggression as the following article states⁽¹⁶⁾ :

Article 05 states:

“Crimes within the jurisdiction of the Court, the jurisdiction of the Court shall be limited to the most serious crimes of concern to the international community as a whole. The Court has jurisdiction in accordance with this Statute with respect to the following crimes: (a) The crime of genocide; (b) Crimes against humanity; (c) War crimes; (d) The crime of aggression.”.

Also, the ICC statute gave a full definition of the crime of aggression in the Article 08 bis, where it defined it in paragraph 01,

moreover it mentioned the different acts that it can be considered as a crime of aggression in paragraph 02⁽¹⁷⁾.

The penalties of the crime of aggression are located in the context of the part 07 of the Rome statute, and it's a general penalties for all the international crimes, without specializing a specific punishment for a specific crime.

Article 77 stipulates :

“1. Subject to article 110, the Court may impose one of the following penalties on a person convicted of a crime referred to in article 5 of this Statute: (a) Imprisonment for a specified number of years, which may not exceed a maximum of 30 years; or (b) A term of life imprisonment when justified by the extreme gravity of the crime and the individual circumstances of the convicted person.2. In addition to imprisonment, the Court may order: (a) A fine under the criteria provided for in the Rules of Procedure and Evidence; (b) A forfeiture of proceeds, property and assets derived directly or indirectly from that crime, without prejudice to the rights of bona fide third parties.”

B-The material element (Actus reus): Material elements determine whether the individual acted wrongfully, and wrongfulness is nothing other than a breach of a prohibitory norm⁽¹⁸⁾, that's why all crimes require actus reus⁽¹⁹⁾.

The conduct of the crime of aggression is defined in article 08 bis as planning, preparation, initiation or execution of an act of aggression⁽²⁰⁾.

The literal definition of these verbs is:

- planning: the act or process of making plans for something⁽²¹⁾, and also is to arrange in advance, ‘to devise, contrive, or formulate to lay out in a plan’, The term ‘plan’ is defined as something organized (and usually detailed) proposal according to which something is to be done⁽²²⁾.

- preparation: the act or process of getting ready for something or making something ready⁽²³⁾, a lot of jurists see that preparation has a similar meaning as planning⁽²⁴⁾.

- Initiation: Initiation is the commencement of the use of force, also it can be described as the act of beginning or starting something.⁽²⁵⁾

- Execution: denotes the action of carrying into effect (a plan,



design, purpose, command, decree, task, etc.).⁽²⁶⁾

After giving the meaning of the planning, preparation, initiation and execution of an act of aggression, the question that arise is which act is considered as an act of aggression?

Article 08 bis answered the question by determining the acts of aggression in paragraph 02 as follows :

“For the purpose of paragraph 1, “act of aggression” means the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State, or in any other manner inconsistent with the Charter of the United Nations. Any of the following acts, regardless of a declaration of war, shall, in accordance with United Nations General Assembly resolution 3314 (XXIX) of 14 December 1974, qualify as an act of aggression :

(a) The invasion or attack by the armed forces of a State of the territory of another State, or any military occupation, however temporary, resulting from such invasion or attack, or any annexation by the use of force of the territory of another State or part thereof.

(b) Bombardment by the armed forces of a State against the territory of another State or the use of any weapons by a State against the territory of another State.

(c) The blockade of the ports or coasts of a State by the armed forces of another State.

(d) An attack by the armed forces of a State on the land, sea or air forces, or marine and air fleets of another State.

(e) The use of armed forces of one State which are within the territory of another State with the agreement of the receiving State, in contravention of the conditions provided for in the agreement or any extension of their presence in such territory beyond the termination of the agreement.

(f) The action of a State in allowing its territory, which it has placed at the disposal of another State, to be used by that other State for perpetrating an act of aggression against a third State.

(g) The sending by or on behalf of a State of armed bands, groups, irregulars or mercenaries, which carry out acts of armed force against another State of such gravity as to amount to the acts listed above, or its substantial involvement therein.⁽²⁷⁾

The previous acts had six shared elements between them, and they

are :

The perpetrator planned, prepared, initiated or executed an act of aggression, also The perpetrator was a person in a position effectively to exercise control over or to direct the political or military action of the State which committed the act of aggression, the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State, or in any other manner inconsistent with the Charter of the United Nations, The perpetrator was aware of the factual circumstances that established that such a use of armed force was inconsistent with the Charter of the United Nations, The act of aggression, by its character, gravity and scale, constituted a manifest violation of the Charter of the United Nations, The perpetrator was aware of the factual circumstances that established such a manifest violation of the Charter of the United Nations.⁽²⁸⁾

C-The mental element (Mens rea⁽²⁹⁾): The framework of the mental element of the international crimes is in article 30 of the ICC statute:

“1. Unless otherwise provided, a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court only if the material elements are committed with intent and knowledge.

2. For the purposes of this article, a person has intent where :

(a) In relation to conduct, that person means to engage in the conduct;

(b) In relation to a consequence, that person means to cause that consequence or is aware that it will occur in the ordinary course of events.

3. For the purposes of this article, ‘knowledge’ means awareness that a circumstance exists or a consequence will occur in the ordinary course of events. ‘Know’ and ‘knowingly’ shall be construed accordingly.”

The context of the article 08 bis is not a contrary of what lays article 30, and for we can say that the mental element of the crime of aggression consists on the knowledge of the circumstances that hints of committing a crime of aggression, and that the act committed is considered as a manifest violation of the Charter of the United Nations, add to the knowledge there is the intent of committing the



acts that considered as a crime of aggression.⁽³⁰⁾

D-The international element:The crime of aggression like the other international crimes (Genocide, crimes against humanity, war crimes) has an international element, and it is defined as the commission of the crime by a state against another state, and that leads to the violation of an interest that is protected by the whole world community.⁽³¹⁾

Chapter II: The power of the security council over the crime of aggression:

Considering the security council (SC) as the responsible organ of the maintaining of the international peace and security, it has the authority of taking different measures, and as the crime of aggression is considered as an act that can disturb the international peace and security, the security council has a specific authority over it, that authority is submitted to the security council under chapter VII of the united nations charter and the international criminal court statute.

1-The power of the S.C under chapter VII of the united nations charter:

The Security Council can determine is there a case that can be considered as a crime of aggression or not, and also take enforcement measures to maintain or restore international peace and security.

A-Determination of the crime of aggression: The determination of the existence of a state's act of aggression by UN Security council is a condition "Sine qua non"⁽³²⁾ for the possible prosecution of the corresponding individual crime.⁽³³⁾

The security council is the only organ which have the power of determination the crime of aggression, which means that the ICC cannot proceed its legal procedures against the crime of aggression if the Security Council do not determine the act as a crime of aggression.⁽³⁴⁾

The Security Council derives its power of the determination of the act of aggression from chapter VII article 39 of the united nations charter.⁽³⁵⁾

Article 39, chapter VII of the UN charter states :

"The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore



international peace and security.”

Relevant questions were raised about the way of the determination, some of them are that Must a ‘determination’ be made in an operative paragraph? Is an explicit decision required or will an implicit determination, such as characterizing a State as ‘aggressive’ suffice? If the former, must the Council ‘decide’ that an act of aggression has been committed by the State concerned, or is it sufficient for the Council to ‘determine’ the existence of such an act?, The answer of these questions is hazy and may have to be determined by the ICC on a case-by-case basis through exercise of its kompetenz-kompetenz jurisdiction, and that will enable the ICC to review Security Council resolutions for the purpose of determining whether or not the Council has made a relevant determination⁽³⁶⁾.

B-Taking measures: The primary concern of the Security Council is the maintenance of international peace and security, and for doing that chapter VII of the UN charter gave the security council extensive powers, entitled “ Action with Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression”, if the council shall determine whether a particular situation is an act of aggression for, it may either make recommendations, or take provisional measures or decide on enforcement measures, or may authorize the use of measures involving the use of force.⁽³⁷⁾

Article 41, chapter VII of the UN charter states :

“The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations.”.

Article 42, chapter VII of the UN charter states :

“Should the Security Council consider that measures provided for in Article 41 would be inadequate or have proved to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations”.



After reading the previous articles, the measures taken by security council can be :

- Measures with non-involving the use of armed force, like the complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and the other means of communication, and the severance of diplomatic relation⁽³⁸⁾, it means it can be an economic or political sanction.

- Measures with the use of armed force, these measures can be taken by air, sea or land forces with different actions, that may include demonstrations, blockade and other operation as may be necessary to maintain peace and security.⁽³⁹⁾

2-The power of the security council under ICC statute:

The articles of the Rome statute states that the security council has the authority of making referrals over the crime of aggression, and also has the deferral authority.

A-The referral authority: The security council obtained its referral authority in ICC statute from the context of article 13, 15 ter.

Article 13 states :

"Exercise of jurisdiction

"The Court may exercise its jurisdiction with respect to a crime referred to in article 5 in accordance with the provisions of this Statute if:

(a) A situation in which one or more of such crimes appears to have been committed is referred to the Prosecutor by a State Party in accordance with article 14.

(b) A situation in which one or more of such crimes appears to have been committed is referred to the Prosecutor by the Security Council acting under Chapter VII of the Charter of the United Nations; or

(c) The Prosecutor has initiated an investigation in respect of such a crime in accordance with article 15".

Article 13 point in phrase (b) that the court can exercise its jurisdiction over the crimes referred in article 5 if the security council refer a situation in which one or more of the crimes (genocide, crimes against humanity, war crimes, and crime of aggression) is committed⁽⁴⁰⁾, we should indicate that the security council referral would not bind the international criminal court, which can make an independent determination, and that is important to preserve the



court's judicial independence, and we point out that article 13 (b) of ICC statute does not create security council referral power, because the power of the security council is created by the UN Charter which the ICC statute cannot expand or limit⁽⁴¹⁾.

The the security council can refer a Non-state parties to the ICC according to Article 13(b), so far it referred the situations in Sudan and Libya (and unsuccessfully tried to refer the situation in Syria) to the ICC, and these states are not parties in the international criminal court statute, this option can prevent the escaping of the international crimes responsables⁽⁴²⁾

From the issues that exist in the referral authority, is the funding support, it is noticed that in the practical cases, there is an absence of funding to accompany referrals to the ICC, and that leads to a lot of problematic matters, like in the cases of Darfur and Lybia.⁽⁴³⁾

Article 15 ter states:

“Exercise of jurisdiction over the crime of aggression (Security Council referral)

1. The Court may exercise jurisdiction over the crime of aggression in accordance with article 13, paragraph (b), subject to the provisions of this article.

2. The Court may exercise jurisdiction only with respect to crimes of aggression committed one year after the ratification or acceptance of the amendments by thirty States Parties.

3. The Court shall exercise jurisdiction over the crime of aggression in accordance with this article, subject to a decision to be taken after 1 January 2017 by the same majority of States Parties as is required for the adoption of an amendment to the Statute.

4. A determination of an act of aggression by an organ outside the Court shall be without prejudice to the Court's own findings under this Statute.

5. This article is without prejudice to the provisions relating to the exercise of jurisdiction with respect to other crimes referred to in article 5.”

Article 15 ter governs the court's exercise over the crime of aggression occurring in a situation referred to the court by the security council⁽⁴⁴⁾, We can extract two important points from this article, the first one is that paragraph (1) provides that the court may exercise jurisdiction over the crime of aggression in accordance with article 13,



paragraph (b), and the second one is in paragraph 2, it states that if the security council refer a situation of an act of aggression, the court will have jurisdiction over persons within the situation referred to it, and it may be an ICC state parties that have ratified or not ratified the Kampala amendments, and also a non-state parties ⁽⁴⁵⁾, and also we should mention that the referral authority of the security council does not allow the ICC to exercise its jurisdiction over the crime of aggression prior to 17 July 2018, and that's according to Article 15ter⁽⁴⁶⁾

The last point can be considered as a positive development, as it could potentially have nearly global reach, as for the first point it can be considered as negative point, if the referral power is used for political goals, that because the referral process does not stem from the Rome statute, but from the voting procedures under the UN charter, and that is the source that creates the referral power of the security council⁽⁴⁷⁾.

B-The deferral authority: The ICC statute authorizes the council to refer situations to the ICC (art. 13(b)) and also to suspend the court's investigations and prosecutions for a renewable period of twelve months (art. 16), and it creates a legally binding obligation for the Court.⁽⁴⁸⁾

Article 16 stipulates :

“Deferral of investigation or prosecution

No investigation or prosecution may be commenced or proceeded with under this Statute for a period of 12 months after the Security Council, in a resolution adopted under Chapter VII of the Charter of the United Nations, has requested the Court to that effect; that request may be renewed by the Council under the same conditions.”.

Article 16 stipulated four conditions for a valid deferral, the first one is that the security council can only issue a deferral through a resolution adopted under chapter VII of the UN charter, the second is that the time of the deferral has been limited in 12 months, but it can be renewed by the security council, the third one the request has to be explicit and destined to the Court to not commence or proceed with an investigation or prosecution, and also the deferral powers must be on a case-by-case basis.⁽⁴⁹⁾

The security council can suspend the investigations and the prosecutions over the crime of aggression, if it determines that there is

no act of aggression, and that's what article 15 ter paragraph 8 states, it is a clear provision that gives the exclusive determination of the crime of aggression to the security council ⁽⁵⁰⁾.

The main purpose of Article 16 is that the council can suspend the Court's investigations and prosecutions when there is a conflict between the perceived requirements of peace and justice, but the Council's deferral practice has been criticized, especially after using it for different purposes and in favor of specific states, that's why in recent years and Since 2008, African states criticized the Council for ignoring its peace concerns and not working with the real purpose of Article 16, after not responding to Africa's deferral requests to defer some prosecutions, like the requests of the African Union (AU) to the Council to suspend the prosecution of Sudan's President Omar Al-Bashir, and the request to defer the trials of the newly-elected President and Vice-President of Kenya, Uhuru Kenyatta and William Ruto, Both deferral requests have been discussed in the Council, but none has been endorsed, Whereas the Council did bow to the political pressure from other different parties. ⁽⁵¹⁾

The deferral practice is a serious authority if it can be used to serve different interests, furthermore article 16 is an unsolved puzzle, that has been criticized by many states, it is a key that can be used to lock the door for deterring the international crimes, especially the crime of aggression.

Conclusion:

Making effective mechanisms to deter the crime of aggression is a remarkable step towards the international peace and the protection of world security, thus, those mechanisms are mostly related to the security council, that by giving the latter an exclusive authority over the crime of aggression, whether from the determination of the crime to its prosecution, and that gave an important role to the security council, which has a positive and negative sides, but for an international justice any negative point is un-wanted, because it can lead to the obstruction of justice.

The security council is recognized as the responsible organ of maintaining the peace and the security of the world, for that the whole world community is expecting a rapid fair stands and acts from the security council in any dangerous situation that can threat the world peace, according to that any periodic silence of the security council or



any other measure that take too much time in such situations can lead to the aggravation of the situation which can lead to a negative impacts on the world, especially in the case of the crime of aggression.

For that it is preferable to make the same procedures that are applied on the three international crimes (genocide, crimes against humanity, war crimes) as for the crime of aggression, with also establishing effective mechanisms for the immunization of the impartial working of the international organs, and also creating a severe and rapid measures to deter the crime of aggression.

Notes:

(1)- Vespasian V. Pella was a Romanian legal expert, he promoted the notion of international criminal proceedings against heads of state found guilty of crimes against humanity by the establishment of a special international tribunal for that purpose. In 1938 he served as President of the Committee on Legal Questions of the League of Nations.

(2)- حسين فريجة، جريمة العدوان في ضوء أحكام القانون الدولي الجنائي، مجلة العلوم القانونية، العدد 3، جوان 2011، ص139.

(3)- Georges Scelle was an international jurist and member of the United Nations International Law Commission.

(4)- حسين فريجة، المرجع السابق، ص 139.

(5)- Nikolaos Politis was a Greek diplomat of the early 20th century. He was a professor of law by training, and prior to the First World War taught law at Paris University and the University of Aix.

(6)- Nicholas Tsagourias, Nicolas Politis' Initiatives to Outlaw War and Define Aggression, and the Narrative of Progress in International Law, the European journal of international law, vol 23, n° 1, page 258-259.

(7)- حسين فريجة، المرجع السابق، ص 139.

(8)- United nations general assembly resolution 3314 (XXIX), 1974, <http://hrlibrary.umn.edu/instreet/GAres3314.html>, consulted on 3 /february/2021/01.12.

(9)- Ibid.

(10)- Sergey sayapan, The Crime of Aggression in International Criminal Law, t.m.c.asser press, The Netherlands, 2014, page 104.

(11)- James crowford, the nternational law commissions works on aggression, page237, <https://www.cambridge.org/core/books/crime-of-aggression/international-law-commissions-work-on-aggression/5C042218F01AD309FD64555988E9A61D>, consulted on 03 /, February /2021 / 00.46.

(12)- Ibid.

(13)- زيتون فاطمة، استبعاد عوائل تتبع ومعاقبة مرتكبي الجرائم ضد الإنسانية، مجلة الباحث للدراسات الأكاديمية، جامعة باتنة 01 الحاج لخضر، المجلد 07، العدد 02، 2020، ص 320.



- (14)- Article 08 bis, Rome statute of the international criminal court, 2011.
- (15)- Carrie Mcdougal, The Crime of Aggression under the Rome Statute of the International Criminal Court, Cambridge University Press, New York USA, 2013, page 24.
- (16)- Article 05, Rome statute of the international criminal court, 2011.
- (17)- Article 08 bis, Rome statute of the international criminal court, 2011.
- (18)- Nikola R. Hajdin, The Actus Reus of the Crime of Aggression, page 06, <https://papers.ssrn.com/sol3/papers.cfm?abstract-id=3727821>, consulted on 03 /February /2021 / 00.46.
- (19)- Actus reus sometimes called the external element or the objective element of a crime, is the Latin term for the "guilty act".
- (20)- Nikola R. Hajdin, op.cit.
- (21)- <https://www.oxfordlearnersdictionaries.com/definition/english/planning?q=planning>, consulted on 03 / February /2021 / 00.50 .
- (22)- Nikola R. Hajdin, op.cit, page 11 .
- (23)- <https://www.oxfordlearnersdictionaries.com/definition/english/preparation?q=preparation>, consulted on 03 / February /2021 / 00.51 .
- (24)- Nikola R. Hajdin, op.cit.
- (25)- Nikola R. Hajdin, op.cit, page 12 .
- (26)- Ibid.
- (27)- Article 08 bis, Rome statute of the international criminal court, 2011.
- (28)- Article 08 bis, Elements of crimes, Appendix to Rome statute of international criminal court, international criminal court, 2011.
- (29)- Mens rea is a Latin word means guilty mind.
- (30)- Sergey sayapin, op.cit, page 293.
- (31)- إبراهيم الدراجي، جريمة العدوان ومدى المسؤولية القانونية الدولية عنها، منشورات الحلبي الحقوقية، لبنان، ط1، 2005، صفحة 521.
- (32)- “Sine qua non” is something that is essential before you can achieve something else.
- (33)- Sergey sayapan, The Crime of Aggression in International Criminal Law, t.m.c.asser press, The Netherlands, 2014, page 305.
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