

Patrycja Grzebyk, *Criminal Responsibility for the Crime of Aggression* (Routledge Research in International Law), Routledge, 2013, pp. 394

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The latest incidents in Crimea (Ukraine) have again focused our minds, together with scientific research and political discussions, on the question of the crime of aggression. Can we speak of aggression in context of the incidents in Kiev, when Russian secret service sabotaged civil demonstrations? Is the annexation of Crimea aggression under international law? Is the threat of aggression a crime in the light of international law? These questions must be raised, especially in that the Ukrainian incidents seem to augur just the beginning of what might subsequently happen in Europe. The peaceful relations lasting for more than 25 years in this part of the world seem to have come to an end, and political relations must be established anew. The question of international responsibility will also need to be eventually taken into account.

According to the amendments of the Rome Statute as adopted (but not yet ratified) in 2010 in Kampala,¹ an act of aggression is connected with the activities of a state; armed force must be used by a state “against the sovereignty, territorial integrity, and political independence of another state”, without the authorization of a Security Council resolution and without the justification of self-defence. Consequently, the crime of aggression is linked to the “planning, preparation, initiation, or execution by a person in a position effectively to exercise control over the direct political or military action of a state committing an act of aggression.” As can be observed, aggression as so understood can refer both to the responsibility of a state and an individual. Although aggression is perceived as a very old and traditional crime (we can refer to the discussion concerning crimes against peace), the individual responsibility for a crime of aggression is a rather new question in international law, as it may be prosecuted by the International Criminal Court (ICC) if the amendments from Kampala are ratified by 30 states by 2017.

Patrycja Grzebyk’s book is not only a pioneering work in this respect, it is also a very good analytical tool, much needed by academics. On the one hand it refers to current questions of international law and international relations, and on the other hand it summarises and analyses the current research, taking into account the traditional roots of codification of the crime of aggression.

The book, entitled *Criminal Responsibility for the Crime of Aggression*, is both a translation and an updated and extended version of the book published in Polish in 2010 under the title *Odpowiedzialność karna za zbrodnię agresji*, which was awarded the prestigious Manfred Lachs award for the best book in public international law in the

¹ See the text of amendments here: <https://treaties.un.org/doc/Publication/CN/2010/CN.651.2010-Eng.pdf> (accessed 25 April 2014).

category of debut. Indeed it was an extremely good debut. In this review however I will refer to the updated version published in English by the renowned publisher Routledge in its prestigious Research in International Law series.

The book consists of three parts. The first, entitled “Outlawing aggression” includes two chapters: “War as an institution of law” and “The notion of aggression”. The second part is devoted to “Criminalization of aggression” and consists of three chapters, namely: “The legal basis for criminalizing aggression”, “Trials of individuals charged with the crime of aggression” and “Scope of individual responsibility for the crime of aggression”. The third part is titled “Difficulties and risks” and includes two chapters focused on: “Procedural difficulties” and “Impact of aggression trials”. Additionally, a Conclusion, Notes, Bibliography, Appendix and Index are added at the end of the book.

In the first part the author presents the historical roots of the discussion concerning the de-legalisation of aggression, starting briefly with the period before the First World War, discussing the legality of war and the first international attempts to eliminate war as a practice in international relations. The status of aggression has dramatically changed in the 20th century from an accepted practice to the absolute ban provided in the United Nations Charter. The definition of aggression, as established in UN General Assembly resolution 3314, is presented in the second chapter, where certain elements of aggression are discussed.

The second part is focused on the question of the criminalization of aggression. This issue reaches deeply into the roots of the international responsibility of individuals, which is why the author starts her considerations from the Treaty of Versailles and the inter-war ideas regarding the establishment of a criminal tribunal to prosecute those guilty of committing international crimes. Further the statutes and judgments of the International Military Tribunals (including the IMT for the Far East) are presented and discussed, accompanied by the attempts concerning formulation of the Nuremberg principles and a Code of crimes against the peace and security of mankind. This chapter ends with a reference to the works concerning the statute of the ICC and the review conference in Kampala. The next chapter is devoted to the trials of individuals. The author first recalls some precedents from ancient history, and subsequently she discusses the Nuremberg and Tokyo trials as well as the related trials that took place before the national courts. This part constitutes a unique contribution, as hardly ever in the literature have the national trials after the Second World War been discussed on the basis of original sources, trial transcripts etc. Interestingly the author rightly points out that during last 70 years no one has so far been tried for a crime against peace, and that the “crime against peace has been constantly ignored in the numerous proceedings concerning war crimes.”

After presenting practical questions associated with bringing a charge of the crime of aggression, the next chapter focuses on the scope of individual responsibility for that crime. Dr. Grzebyk presents the difficulties with the precise specification of those criminal acts which would constitute the crime of aggression (*actus reus*), as well as the issues surrounding the *mens rea* element of a crime of aggression, specifically the guilt

of a defendant. It must be perceived that a fundamental part of author's considerations is whether it can be proved that a defendant committed the crime intentionally, being aware that her/his behaviour constitutes the crime of aggression. The author rightly points out the issue of determining the intent and knowledge of a defendant, as provided in Article 30 of the Rome Statute. Taking into account intent and knowledge will lead, in turn, to a situation whereby only the most responsible official leaders will be deemed responsible for the crime of aggression. As a result this could constitute a threat (in the deterrence sense) to a state and encourage it to avoid a policy of aggression. But these preventive effects of the criminalization of aggression may also be debatable, especially in that the conditions for activating the jurisdiction of the ICC make bringing a charge of the crime of aggression before the Court a very complex issue (see Art. 15 *bis*, Rome Statute), and most certainly a very time-consuming procedure. Finally, the last chapter in this part presents the grounds for excluding criminal responsibility based on a finding of lack of guilt, which in this part relates to the question of the *mens rea* of a defendant. Consequently, as discussed, a mistake of law, mistake of fact, or duress can exclude a defendant's guilt.

The last part takes into account problems associated with bringing a charge of the crime of aggression. The author discusses the problems with surrendering/extradition of the person charged with such a crime, the question of immunities (in the context of case of Al-Bashir before the ICC we can observe that the question of immunity can be viewed as an obstacle in all proceedings concerning international crimes), amnesties, statutes of limitations, or the *nullum crimen sine lege* principle. The overall considerations can be applied not only to the crime of aggression, but also (with a few exceptions, such as statutes of limitations or universal jurisdiction, which can be either difficult or impossible to apply in the context of the crime of aggression) to genocide, crimes against humanity or war crimes, as these problems also appear in the context of bringing charges of these crimes before international tribunals. This makes the author's considerations very universal in scope.

The last chapter is focused generally on the impact of aggression trials, taking into account the notion of peace and security, the international criminal justice system, and international humanitarian law, and trying to set the scene for the punishment of aggression. The author does not avoid the difficult questions, proposing also the idea of an alternative reading of the crime, newly "defined" for the purpose of the ICC Statute.

Writing a good book on aggression is a very complex issue, especially if we want the book to be at the same time a historical analysis of the roots of the crime, its elements, and the various perspectives connected with bringing such a charge, as well as describing the analytical research on individual responsibility for aggression. Patrycja Grzebyk has managed to provide a dichotomous analysis, and if anyone would seek to propose an ideal arrangement for the structure of such a book, it could well turn out that the one chosen by the author is such an arrangement. She seems to successfully attain a very difficult task, as she reconciles historical considerations with substantive discussion on the issue.

The only critical remark that can be made with respect to the author is that she did not take advantage of the opportunity to analyze any of the current international incidents in order to make observations or draw any conclusions concerning the current state of the crime of aggression, nor show the relationship between international practice and the theoretical approach to draw some practical lessons out of Security Council hegemony and the weakness of smaller states. The position of the crime of aggression alongside other international crimes prosecuted by the ICC could also have been presented and discussed in more detail.

With respect to the publisher one may be more critical. It should first be noted however that the book is published in a very high quality format, with hard cover, light paper and clear font, which makes it easy to read. In addition, the book is accompanied by an index and appendix presenting short biographies of persons mentioned in the book, which is a very commendable practice. But one somewhat bitter remark must be made (leaving aside the minor typographical errors). The footnotes are presented at the end of the book, and in addition they use continuous numbering of footnotes only within the scope of each chapter, i.e. each chapter starts with new numbering, what makes referencing the footnotes annoying and frustrating, as it is necessary to keep in mind the number of each chapter and then read the footnotes referring to that chapter. This is an extremely bad practice, especially in the context of the highly commendable footnotes compiled by Patrycja Grzebyk. They present a great deal of additional relevant information, and read almost like a second book in themselves. But they should most definitely be inseparably joined with the text. The technique could even be assessed as barbarous, if one may use such vocabulary. I do not know whether it is a common practice of Routledge's to attach footnotes at the end of the book, but if so, I would strongly suggest considering a change of the practice immediately.

Other than that I am extremely satisfied that this book was published by a very prestigious publishing house and will be widely disseminated, as I find it to be highly interesting and well worth reading, analyzing and discussing. It can be helpful not only for academics but also for students seeking to expand their horizons. Last but not least, this book is in line with ongoing international discussions concerning the responsibility of a state and the responsibility of individuals, and once again we get confirmation that international justice is a very important, serious and complex task.

*Karolina Wierczyńska**

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* Karolina Wierczyńska, Ph.D., is an assistant professor at the Institute of Law Studies of the Polish Academy of Sciences.