

# **The Effectiveness of The United Nation's Role in Responding to Wars of Aggression and Self-Defense**

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## **Abstract**

Transnational or cross-country relations result in the emergence of legal problems from one country to another that requires handling through good relations based on the law in each country. This is the reason for the formation of the International Criminal Court (ICC) which is the embodiment of the international criminal policy, a rational effort of the countries in the world to jointly tackle the four core crimes which are violations of delicto jus gentium. This policy is necessary because serious violations have real elements of a direct threat to peace and security in the world. The crime of aggression as international crimes stricto sensu indicates and fulfills the requirements that the crime is included in a serious human rights crime that is contrary to the highest legal norms in international law. The research uses a normative method with a statute approach and a historical approach. The results show that the ICC's jurisdiction over war crimes is already in the Rome Statute, however, the enforcement of the ICC's jurisdiction over crimes of aggression has not implemented concretely.

**Keywords:** United Nation, International Criminal Court, Crimes of aggression



## Introduction

International organizations as subjects of international law have an important role, they have rights and obligations set out in international conventions which are their articles of association. Therefore, the United Nations as an international organization also has rights and obligations in international relations, then international law emerged as part of the law that regulates the activities of international-scale entities.

In international law literature, there is an adage which states: *Inter Arma Silent Leges*, in war the law disappears. This Roman adage illustrates that from time immemorial there was a general trend or custom in which war was carried out indiscriminately. To win the war all means can be taken. The purpose of war is to conquer the enemy and occupy the opponent's territory, carried out with all tactics, strategies, and tactics without knowing the boundaries of morality and humanity. The war justifies all means, according to Machiavelli, war parties behave like wolves to each other or *homo homini lupus*, according to Thomas Hobbes. Montesquieu, in his book *Esprit Des Lois* (Soul of the Law), mentions the habit of the Iroquois tribe who likes to eat the body parts of captured enemies. John Locke asserted: a government without the law is a mystery in politics that is difficult to imagine humanly and inconsistent with human society (Starke, 1989: 128).

The war has also motivated various parties, especially the ruling government to finance the discovery and development of science and technology for war equipment. This spectacular war equipment science and technology changed the face of conventional warfare into modern warfare. In several incidents of war and armed conflict entering the modern era, it has been proven that the use of war science and technology has caused the loss of life and property in unprecedented numbers. The science and technology of war also make it easier for immoral and inhumane wars to be carried out.

The development of science in weapons and the use of airplanes and atomic bombs and then Nuclear, Biological, Chemical - NUBICA, has started a terrible war in the modern century, among others: First, the German aircraft attack devastated London, the British capital before the First World War. Second, the Japanese aircraft attack destroyed the United States military base at Pearl Harbor, which pushed the US into the Second World War. Third, the US aircraft attack with the Atomic Bomb on Hiroshima and Nagasaki Japan, caused Japan to surrender unconditionally. Fourth, attacks by US warplanes and the use of bombs in the Vietnam War. Fifth, attack by fighter aircraft (sea harriers) rockets, and missiles (Exocet) in the Falkland/Malvinas war.

The war incident above illustrates how terrible the discovery of the results of the war science and technology was. War in a short time and in an easy way can cause so many casualties and property, including children, women, elderly people, and other innocent civilians. At the same time warning mankind of the potential

threat of nuclear war in the future, of course, it will be far more devastating to destroy human life and civilization.

Thus, between war and peace is a very thin line. It's like two sides of the same coin, the options depend on the person: war or peace. There were many peace efforts carried out by various parties, starting from teachings, writings, international treaties, and conventions on legitimate and illegitimate wars, various prohibitions carried out related to war, affirming the prohibition on the use of armed violence to resolve international conflict to justice and punishment of war crimes perpetrators. Recent efforts have focused on the enforcement of humanitarian law by the international criminal court, based on the Rome Statute in 1998.

Based on Article 8 paragraph 2 (a) jo. Articles 112, 115, 117, 121, 123, 125, 126, 127, 128, ninth paragraph of the 1998 Rome Statute, the existence and criminal jurisdiction of the ICC refer to the 1949 Geneva Conventions within the framework of the United Nations systems. While the Geneva Conventions of 1949 are scriptures of the teachings of humanity in war and various types of armed conflict. Meanwhile, the teaching of humanity in war and other armed conflicts according to the 1949 Geneva Conventions is the previous name of Humanitarian Law. The arrangement of war and other armed conflicts focuses primarily on how to legitimately subdue the enemy. Meanwhile, Humanitarian Law focuses more on the protection of human rights related to war and armed conflict.

Now the role of the ICC is to carry out efforts to enforce humanitarian law, by examining and prosecuting the perpetrators of these crimes against humanity. Thus, crimes against humanity have always colored human life throughout history, with the development of advances in military science and technology that made modern war possible. Beginning with the Westphalian peace treaty of 1648 to end the 30-year war (1618-1648) in Europe, the 1815 Congress of Vienna to end the Napoleonic wars, the 1919 Versailles Peace Treaty to end the First World War (1914-1918), as well as forming the League of Nations, until the 1945 San Francisco Peace Treaty to end World War II (1939-1945) and the establishment of the United Nations.

Interspersed with various other peace agreements, such as the 1925 Locarno Pact in which France, Germany, and Belgium pledged together to carry out a policy of non-aggression. The Kellogg Briand Pact of 1928 in which the signatory countries (France, USA, and others) abolished war as a national political tool and pledged to seek a peaceful settlement of conflict (Nusbaum, 1970: 193). The provisions of the law of war that are more directly influenced by the humanitarian principle that animates the Geneva Conventions of 1864, are prohibitions on the use of certain weapons (Kusumaatmadja, 1986: 15).

Furthermore, it influences various international agreements that prohibit the use of certain weapons in peace conferences, including: First, the Declaration (No. I) of St. Petersburg in 1868, which prohibited the use of projectiles weighing less than 400gr. Second, the Declaration (No. II) of The Hague in 1899 regarding the prohibition of the use of suffocating gas (strangulation gas). Third, the Declaration

(No. III) of The Hague of 1899 regarding the prohibition of the use of dum-dum bullets. Fourth, The Hague Declaration (No. XIV) of 1907 regarding the prohibition of releasing projectiles and explosives from hot air balloons. Fifth, the Geneva Protocol of 1925 prohibits the use of suffocation gas, poison gas, and chemical and bacteriological warfare equipment. Sixth, followed by various international agreements that prohibit the use of NUBICA weapons (Nuclear, Biological, and Chemical). Including programs for the manufacture and development of the materials for nuclear weapons (uranium). It was already discussed in international meetings on the initiative of the United Nations and related International Organizations.

Finally, the principle of humanity in the war was adopted in the Hague Convention of 1899, the Hague Convention of 1907, and the 1949 Geneva Conventions and their 1977 Additional Protocols I & II.

## **Humanitarian Law Enforcement**

### **A. Ad Hoc Courts**

The protection and enforcement of the principle of humanity in situations of the international and non-international armed conflict began to be seriously manifested after the end of World War II, prosecuting and punishing the perpetrators of war crimes including crimes against peace and crimes against humanity through a special judiciary (Haryomataram, 2005:249). In this context, war is defined broadly to include all acts that threaten peace and violations of international security.

For this reason, ad hoc courts established (Napang, 2005: 6), namely:

1. The International Military Tribunal (IMT) in Nuremberg.
2. The International Military Tribunal for the Far East (IMTFE) in Tokyo.
3. The two courts were established to try and punish perpetrators of crimes, peace, and humanity in war.
4. The International Criminal Tribunal for the Former Yugoslavia (ICTY) in The Hague.
5. The International Criminal Tribunal for Rwanda (ICTR) in Arusha.

This court was established to try and punish perpetrators of crimes, against humanity in situations of armed conflict in the territories of the two countries.

In addition to the four ad hoc tribunals above, since the end of the first world war, five Investigatory Commissions (Muladi, 2002: 15) have been established to investigate and prosecute perpetrators of war crimes and crimes against humanity before the courts mentioned above, namely:

1. The 1919 Commission on the Responsibilities of the Authors of War and on the Enforcement of Penalties, which investigated crimes that occurred during World War I.
2. The 1946 UN War Crime Commission investigated German war crimes during World War II.

3. The 1946 Far East Commission, which investigated Japanese war crimes during World War II.
4. The Commission of Experts Established Pursuant to Security Council Resolution 780, which investigates violations of humanitarian law in the former Yugoslavia.
5. The Independent Commission of Experts Established by Security Council Resolution 935, the Rwanda Commission, which investigates violations committed during the Civil War in Rwanda.

#### **B. Permanent International Crime Court (ICC)**

In establishing the ICC, the concept of the crime of aggression is one of the things that has been discussed for a very long time, until the entry into force of the Rome Statute. In which there is no definition of aggression. The postponement in setting out the definition of the crime of aggression has caused problems because the crime of aggression is different from other substantive international crimes, aggression is a crime of leadership, and the accused was a leader in some capacity and had committed the aggression.

Finally, the 1998 Rome Conference agreed on a Statute called the 1998 Rome Statute as the basis for the establishment of a permanent International Crime Court (ICC). The 1998 Rome Statute came into force on July 1, 2002. That is after the 60th day has passed since the 60th state ratification on April 11, 2002. Pursuant to Article 126 of the Statute and it was recorded that 66 countries had ratified the Statute along with the 60th country. The institutional composition of the ICC is regulated in part 4 of article 34 to article 52 of the Statute.

#### **C. Jurisdiction of the ICC**

In the Statute, it is emphasized that the criminal jurisdiction of the ICC is serious crimes against humanity which due to the nature and circumstances of the acts are divided into four types of crimes, as stated in Article 5 of the Statute, namely: First, the jurisdiction of the Court is limited to the most serious crimes of concern to the international community. The Court has jurisdiction under the Statute concerning the following crimes; (a) The crime of genocide, (b) Crimes against humanity, (c) War crimes, (d) The crime of aggression.

Second, the Court exercises jurisdiction over the crime of aggression after a provision is passed according to articles 121. Articles 123 define the crime and establish the conditions under which the Court exercises jurisdiction concerning this crime. Such provisions shall be by the relevant provisions of the United Nations Charter.

Thus, three of the four types of universal crimes against humanity are formulated sequentially in Articles 6, 7, and 8 of the Statute. Meanwhile, the formulation of the crime of aggression is waiting for seven years from the entry into force of the Statute, namely: July 1, 2002, when the effective date of this Statute as referred to in Article 5 paragraph 2, which refers to Article 121 on Amendments and Article 123 of the Statute-on-Statute Review. This statute has been effective

since July 1, 2002, because it has met the requirements for ratification by 60 countries. However, the Court has not convened a review conference to ratify a provision that defines the definition and special conditions of the crime of aggression. So, it becomes a legal problem how the Court can carry out law enforcement against the crime of aggression which has been confirmed as part of the jurisdiction of the Court. The formulation of the crime has not been determined. Moreover, it is expressly stated in Article 21 (a) of the Statute, that the first law applied by the ICC is the Statute, Elements of Crime, and the Law of Procedure and Evidence, which has been established by the Assembly of Contracting States.

### **Jurisdiction Over the Crime of Aggression**

#### **A. National and International Ad Hoc Courts**

This crime of aggression has not been proposed and tried by the ICC because it has not been defined in a provision of amendments to the Statute and the Formulation of the Elements of the Crime of Aggression as referred to in article 5 paragraph 2, article 121, article 123, article 124, article 9, article 22, article 30, and article 21 of the Statute.

Law enforcement against perpetrators of crimes of aggression can be carried out by:

1. National Courts established under the national laws of the Parties to the 1949 Geneva Conventions, as regulated in Article 49 of Convention I, Article 50 of Convention II, Article 129 of Convention III, and Article 146 of Convention IV).
2. The Ad Hoc International Court of Justice established by the UN Security Council (Article 7 of the Charter).
3. The State of Indonesia regulates the Permanent Courts and Ad Hoc Courts as referred to in Law Number 26 the Year 2000, Human Rights Courts.

In Geneva Conventions 1949, initially, Indonesia was not a participant in the convention, but through a statement of participation (without reservation) in September 30, 1958, Indonesia became a participating country in the convention. This kind of participation statement is one way of binding oneself to an international treaty or convention known in international law (Ardhiwisastra, 2000: 170). Thus, Indonesia should also ratify the 1998 Rome Statute, moreover, it has been ratified by more than 60 countries on April 11, 2002, and has been effective since July 1, 2002.

#### **B. Understanding the Crime of Aggression**

Although the definition of the crime of aggression has not yet been formulated and the elements of the crime as referred to in the 1998 Rome Statute. Through efforts to find law and several legal sources, ad hoc National and International Courts, it is understandable, aggression which means attack, namely:

A country that sends its army to occupy another country is guilty of aggression, thus the general definition, aggression is the act of a country that sends its armed forces or war forces to attack and occupy another country. The country that sent its troops to occupy other countries is blamed for the aggression.

On the offense of the crime of aggression finally revealed, the perpetrator is the state and the victim is the state (sovereignty, territorial integrity, and political freedom). The crime of aggression is carried out by attacking, threatening, occupying the territory of the victim's country by using armed forces. Elements Definition of various sources: a). Use of armed forces by a country. b). Use of armed forces against the sovereignty, territorial integrity, or political freedom of other countries. c). The placement of one country's armed forces against another. d). Attacks and occupations without armed resistance. e). Attacks and occupations met with armed resistance. f). The threat of armed force from a country. g). The threat of armed force against other countries. h). Other armed acts are contrary to the United Nations Charter. i). Threat and use of armed forces not for self-defense (Article 51 of the United Nations Charter). j). Not on behalf of the United Nations Security Council (Article 39 in conjunction with Article 41 & Article 42 of the United Nations Charter).

## **Framework The United Nations**

### **A. United Nation Charter**

United Nations Goal (Article 1 of the United Nations Charter): “Maintain international peace and security”. Article 2 paragraphs 3 & 4 of the United Nations Charter stipulate the principle of conflict resolution without armed violence. Article 33 states the methods of peaceful settlement that can be taken by the parties to the conflict, so that war can no longer be used as a tool to resolve an international conflict. The United Nations Charter only justifies the use of military force in resolving an international conflict in two respects, namely: First, self-defense of a country from threats/military attacks of other countries according to article 51 of the PBP Charter. Second, Military Actions of the United Nations Peacekeeping Forces consisting of various countries following article 39 jo, Article 41 & Article 42 of the United Nations Charter.

Thus, all military actions of a country that threaten or attack other countries are conducted not based on article 51 and article 39 Jo. Articles 41 & 42 of the United Nations Charter are acts of aggression or war of aggression. In Chapter VII of the United Nations Charter, the authority of the United Nations Security Council broadly regulates actions related to threats to peace, violations of peace, and acts of aggression. According to Article 33 of the United Nations Charter, peaceful non-violent settlement of conflict is carried out by negotiation, investigation, mediation, conciliation, arbitration, legal settlement, through local bodies or agreements, or by other peaceful means of their choosing. Negotiation is the first route that can be taken by the conflicted countries.

**B. The Role of the Neutral States**

The role of a neutral state as a non-disputing have a role in seeking a peaceful conflict resolution, namely: a). Role of the United Nations: General Assembly & Security Council. b). The Role of Regional Organizations. c). The Role of the State.

Through the role of a neutral third country above, usually, the parties to the conflict can carry out negotiations. So that by the meaning of Article 40 of the United Nations Charter. Negotiations are the first among the methods of a peaceful settlement. It is an obligation for the parties to the conflict before asking for the jurisdiction of the United Nations Security Council. The third party's role is carried out utilizing mediation or conciliation.

Negotiations are usually held as an effort to reconcile conflicting countries. A country can offer good services if it seeks to invite other conflicting countries to negotiate between them and become an intermediary in conducting mediation and negotiations, so that conflicts can be resolved peacefully.

In negotiations, the conflicting countries will negotiate the resolution of the conflict either directly or through the state/intermediary party that accompanies the negotiation. If there has been an armed conflict, the first step is agreeing to a ceasefire agreement.

**C. Russian-Ukrainian Armed Conflict: War of Aggression and War of Self-Defense?**

On Wednesday 23 February 2022, President Vladimir Putin declared war on Ukraine. After the announcement, Russian military forces had carried out armed attacks on the sovereign territory of Ukraine, which Ukraine then retaliated for, resulting in war or armed conflict between the two countries. Russia argued that it was attacking Ukraine because its interests and national security were at risk by accusing Western powers of "crossing a red line" by establishing a NATO presence in the region. So that it becomes a topic of discussion whether Russia's armed attack is in self-defense (Article 51 of the United Nations Charter) or aggression that violates the United Nations Charter.

Ukraine carried out armed resistance for defending its sovereignty and national territorial integrity. So actually, carrying out armed resistance in Ukraine is an act of self-defense from attacks and invasions of other countries, according to Article 51 of the United Nations Charter.

Finally, we can analyze some strategic developments and opportunities of the conflict between Russia and Ukraine.

**a) United Nations General Assembly**

The United Nations General Assembly Resolution has convened and approved the Resolution: Requesting Russia to Stop its invasion of Ukraine. The United Nations General Assembly session was chaired directly by Abdullah Shahid as the United Nations General Assembly President. This General Assembly resolution was approved by 141 countries, disagreed with five countries, and did not vote (abstained) 35 countries. Indonesia is one of



the countries that have agreed, along with other Southeast Asian countries, namely: Malaysia, Singapore, Thailand, Philippines, Cambodia, Brunei, Timor-Leste, Papua New Guinea, even though Vietnam abstained. The attitude of the Southeast Asian country also gave optimism for the region's peace by refraining from easing tensions in the South China Sea.

This resolution addressed to Russia has not yet sought attention and action from the United Nations Security Council as referred to in Article 10 and Article 11 of the United Nations Charter. But every member of the United Nations should faithfully adhere to the United Nations Charter (Article 2 paragraph 2 of the United Nations Charter).

#### **b) United Nations Security Council Resolutions**

The decisions of the Security Council regarding the necessary actions by the resolutions of the United Nations General Assembly are adopted by a vote of approval. Thus, the five permanent members of the United Nations each are holders of veto power (Article 27 paragraph 3).

Since Russia is the holder of the veto power, it is impossible for the United Nations Security Council can approve a coercive decision against Russia. The veto power is the main obstacle for the United Nations in conflict resolution the Russian-Ukrainian armed conflict. Moreover, Russia opposes the United Nations General Assembly resolution. Meanwhile, China abstained. The attitude of Russia and China as holders of veto power still gives pessimism about the effectiveness of the United Nations in resolving conflict peacefully for the sake of world peace and international security.

#### **c) The Role of the Republic of Indonesia**

Indonesia is a country with a free and active foreign policy. First, Free; in the sense that Indonesia does not take sides with forces, it is incompatible with the nation's personality as reflected in Pancasila. Second, Active; means carrying out its foreign policy. Indonesia is not passive-reactive to international conflicts but is active in resolving conflict peacefully.

The basic foundations of Indonesia's foreign policy at the Preamble to the 1945 Constitution: The first paragraph states that “.....independence is the right of all nations and because of that, all colonialism must be abolished in this world as it is not in conformity with humanity and justice”.

The fourth paragraph emphasizes “.....the Government of the State of Indonesia, which protects the entire Indonesian nation and the entire homeland of Indonesia and promotes public welfare, educates the nation's life, and participates in carrying out world order based on independence, eternal peace, and social justice”.

So, President Jokowi's statement to stop the war and Indonesia's stance in supporting the United Nations resolution asking Russia to stop the invasion of Ukraine is by the objectives of a free and active foreign policy, and

constitutional obligations in the Preamble to the 1945 Constitution and Indonesia's international obligations as a member of the United Nations General Assembly to protect international peace and security. In a further strategic role, Indonesia can mobilize member countries of the ASEAN organization to jointly support all efforts to implement the United Nations General Assembly resolution by the spirit of Article 33 of the United Nations Charter.

### **Conclusion**

Law enforcement against crimes against humanity committed by the ICC based on the 1998 Rome Statute, also the enforcement of humanitarian law is the vision and mission of the 1949 Geneva Conventions. The Rome Statute and the Geneva Conventions, both provide as an international obligation for each participating country to establish a national court that examines and adjudicates perpetrators of crimes against humanity under their national law, or hand over the perpetrators of crimes to other countries or international criminal courts. It is an international obligation for every participating country to reach out to non-participating countries, proving international commitment and efforts to eradicate, prosecute and punish perpetrators of crimes against humanity, to free the world from threats to international peace and security.

The veto power of permanent members of the United Nations Security Council is the main obstacle for the United Nations to maintain and restore international peace and security effectively against armed conflicts involving the permanent member states of the United Nations Security Council. Meanwhile, without the support of the United Nations, the ICC cannot exercise its criminal jurisdiction to prosecute perpetrators of crimes against humanity in armed violence conflict, thus the only hope lies in the proactive role of the majority of United Nations member states through the United Nations General Assembly agreeing to a resolution to reduce conflict that threaten and violate international peace and security.\*\*\*

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