

Politi, Mauro, and Guiseppa Nesi, eds. *The International Criminal Court and the Crime of Aggression*. Burlington, VT: Ashgate, 2004.

Daniel C. Turack

Volume 25, numéro 2, winter 2005

URI : https://id.erudit.org/iderudit/jcs25_2br02

[Aller au sommaire du numéro](#)

Éditeur(s)

The University of New Brunswick

ISSN

1198-8614 (imprimé)

1715-5673 (numérique)

[Découvrir la revue](#)

Citer ce compte rendu

Turack, D. C. (2005). Compte rendu de [Politi, Mauro, and Guiseppa Nesi, eds. *The International Criminal Court and the Crime of Aggression*. Burlington, VT: Ashgate, 2004.] *Journal of Conflict Studies*, 25(2), 159–161.

Joseph T. McCann is a Clinical Psychologist at UHS Hospitals in Binghamton, NY, an Adjunct Assistant Professor of Psychology at Binghamton University (SUNY), and a Clinical Assistant Professor of Psychiatry at Upstate Medical University (SUNY).

Politi, Mauro, and Guisepe Nesi, eds. *The International Criminal Court and the Crime of Aggression*. Burlington, VT: Ashgate, 2004.

Although the International Criminal Court (ICC) is now operational, a specific issue remains unresolved in the post-Rome negotiations. Article 5 of the ICC Statute includes the crime of aggression, genocide, war crimes, and crimes against humanity, that are subject to the court's jurisdiction. However, the court cannot exercise jurisdiction with respect to the crime of aggression until there is agreement on the definition to be used for aggression, and agreement between the ICC and the Security Council of the United Nations that the crime of aggression shall be consistent with the relevant provisions of the UN Charter as they involve the Security Council.

This book contains a collection of papers presented at a second international conference on the ICC held at the University of Trento from May 30 to June 1, 2001, at which diplomats and scholars addressed the unresolved specific issues involving the crime of aggression and the related concern over the relationship between the ICC and United Nation's involvement with the use of force disrupting the maintenance of peace and security in the international community. The Preparatory Commission for the ICC (PrepCom), established by the final act at the Rome Conference, was given the task of dealing with the unresolved issues alluded to. As the PrepCom had not established a resolution of the issues, the 2001 Trento conference examined the topic.

The volume is divided into three parts. Part I comprises four papers that present the historical background of the crime of aggression. Although the unifying title encompassing these papers is "The Crime of Aggression from Nuremberg to the Rome Statute," some of the details precede the work of the United Nations, especially in one paper on how crimes against peace became the "Supreme International Crime." Another paper is woven around the question of whether perpetrators of the crime of aggression will ever be tried before the ICC. Still another contribution addresses the debates that took place during the three sessions of the PrepCom in 2000. It is the intricacies from a legal standpoint and the political factors that illustrate the impasse to a consensus.

Part II contains six papers that focus on the possible definition of the crime of aggression to be used by the ICC in the exercise of the court's jurisdiction. The

Janus-headed options bring to light all of the proposals submitted and ultimately rejected. One encounters a resort to the meaning of aggression under general international law, or follows a reconstruction of the trail leading to the UN General Assembly's adoption of a definition in 1974, or what was utilized earlier as an outcome of the Nuremberg Tribunal's post-World War II jurisprudence. There is also consideration of the link between criminal responsibility of the state and the individual's criminal responsibility as the ICC would only be concerned with the latter. Intermittent in the discussion is the relationship between the ICC and the Security Council as regulated by Articles 5(2), 13(b), and 16 of the statute of the ICC, and the impact of Articles 39 and 24 of the UN Charter. Readers are reminded that on eight occasions the UN General Assembly had to take the lead when the Security Council failed to act, and even the International Court of Justice found acts of aggression present in the Nicaragua case. All of the major proposals raised in the PrepCom are explored. What is an unlawful use of force against a state but does not constitute a "war of aggression" is analyzed in detail. Definitional models are put under the microscope and their variants are evaluated. Certain elements are manifestly non-controversial while others do not meet acceptability. In the final paper in Part II, the author examines what may prove meaningful both on a short-term basis and for the long-term forecast. Obviously, some five years later the gains have been minimal.

Part III contains five papers that examine the crime of aggression but with primary emphasis on the relationship between the ICC and the Security Council. In the first essay, the author looks at the respective roles of the ICC and the Security Council in determining whether an aggression existed. The fact that the Security Council has in its existence espoused aggression to exist on only one occasion does not lessen the chances of differences between the findings by both entities unless a formula is found to avoid opposite outcomes. What does it mean for the ICC if the Security Council determines as it has in the past that only a "breach of the peace" or a "threat to the peace" has occurred. In the second essay, the author reflects on various options under the UN Charter when the Security Council could not react to discharge its primary responsibility in respect of the maintenance of international peace and security. The author of the third essay looks at the international instruments of the past and he asserts that they were not meant to address questions of individual international criminal responsibility. He reviews what the UN Charter is supposed to do by way of its pertinent provisions and he shows the record of the Security Council. He does not rely on legal interpretation to harmonize overlapping competencies, but finds that the solution is political, necessitating a political compromise. The argument of politicization is expanded in the fourth essay. The final essay provides an assessment and conclusions derived from the four essays already presented.

Two further essays are presented in an "afterword." In the first, the author summarizes the work of the PrepCom from September 2001 to July 2002, and re-examines the various proposals that have already been discussed, as well as pro-

viding proposals on future steps to be taken. The final essay complements its predecessor, but the latter is presented by one of the persons in attendance at the second Trento conference while the first presenter is expressing his thoughts as an outsider to the conference.

With the PrepCom having completed its assignment in 2002 without an acceptable solution, the tasks were then taken up in the next phase by the working group of the Assembly of States Parties, the point at which we now stand.

The essays are comprehensive. A list is included of participants who were Trento conference attendees. For the uninitiated in this field, a paper and pen is recommended to keep track of the various proposals made by their proponents and their reasoning. It is a crossword without a solution found on another page, but no less intriguing.

Daniel C. Turack is a Professor of Law at the Capital University Law School.

Brunn, Stanley, ed. *11 September and Its Aftermath: The Geopolitics of Terror*. London and Portland, OR: Frank Cass, 2004.

Stanley Brunn's *11 September and Its Aftermath: The Geopolitics of Terror* is a collection of 11 essays which offer insight into the geopolitical implications of the murderous attacks that took place on 11 September 2001. The essays are very loosely related and the introduction of the book does not bind their themes with any main theoretical or paradigmatic framework. In addition, the book lacks a general conclusion. Consequently, there is no way in which all the themes of the essays could be adequately discussed here and certainly no invidious distinctions are implied with regards to those essays that cannot be mentioned here.

In the introduction, Brunn briefly summarizes the main arguments of the authors and then suggests 10 research themes, beyond the scope of this book, that merit further research. These themes include, most notably, the role of religion in foreign policy; the manipulation of the 11 September atmosphere by non-democratic states to de-legitimize their domestic opposition and minorities; border security; refugees and political prisoners; impacts of 11 September on pre-dominantly Arab and Muslim states; and the pre-emptive strike policies (the issue of Iraq).

In the second essay, Richard Mansbach argues that the terrorist attacks of 11 September did not cause fundamental changes in global politics but "sharply reflected those changes . . . [making] much of international relations theory seem hopelessly obsolete." (p. 16) The changes that Mansbach is referring to include