DEFINING AGGRESSION IN THE LIGHT OF UNIVERSAL JURISDICTION

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Abstract

Historical background of the crime of aggresion, in the light of Nuremberg Principles of 1947 and UN General Asembly Resolution of 1974. The Rome Statute, which created an International Criminal Court, enlists the crime of aggression, as one of the four crimes under its ratione materiae competence. Uunlike the other three crimes, the Rome Statute does not define the aggression, untrusting this task to the Assembly of State Parties, as the most important negociating fora of the Court. The Kampala Amendements, issued as a result of those negotiations, offer a significant distinction between the definition of the crime of aggression, imputable to a person, which fells under the ICC specific competence, and the aggression as an act of a state. The principle of universal jurisdiction, applied in light of the complementarity betwen ICC and national courts, represents an important additional avenue towards impunity, an efective means to discourage aggression, as an individual crime and as a crime of a state.

Keywords: *Crimes against peace, crime of aggression, act of aggression, Kampala Ammendements, universal jurisdiction, complementarity of ICC jurisdiction, impunity.*

1. Historical Background

The crime of aggression is one of the four *„most serious crime(s) of concern to the international community as a hole"*[1], which are under the jurisdiction of the International Criminal Court in the Hague ("ICC" or "the Court"). The crime of aggression is the only one whose definition was innitialy not included in the Statute (Part 2, Articles 6-8). According to Art.5, a definition of the crime of aggression was to be adopted, by the Assembly of States Parties at a later date, as an Amendement to the Statute[2].

During the first half of the 20th century, mainly after the first World War, numerous atempts did not conduct to the adoption of a legal, *generally accepted* definition of aggression - neither as a crime of an individual, nore as an act of a State[3].

The concept of aggression was introduced by Article 231 of the Treaty of Versailles in 1919, imposing on Germany the outbreak of the First World War: *"Germany accepts the responsibility of Germany and her allies for causing all the loss and damage to which the Allied and Associated Governments and their nationals have been subjected, as a consequence of the war imposed upon them by the aggression of Germany and her allies"*.

In 1928, a General Treaty for the Renounciation of War was adopted and ratified by a large number of States. The treaty is considered as prohibiting „wars of aggression" and brings to the forfront the importance of an agreed definition of the concept. According to its provisions, state parties engage not to recourse to war and resolve peacefuly all *"disputes or conflicts of whatever nature or of whatever origin they may be, which may arise among them."*

Under the auspecies of the League of Nations, in July 1933, during the Conference for the Reduction and Limitation of Armaments, in answer to a proposal of the Soviet delegation and after intense diplomatic negotiations, a definition of aggression was agreed upon[4], and two *Conventions for the Definition of Aggression* were adopted and signed in London and ratified afterwards by a number of states, mainly the *new States* from Europe and Asia[5]. The Conventions defined an act of aggression by the following **actions**:

„Declaration of war upon another State; invasion by its armed forces, of the territory of another State, with or without a declaration of war; attack by its land, naval or air forces, with or without a declaration of war, on the territory, vessels or aircraft of another State; naval blockade of the coasts or ports of another State; provision of support to armed bands formed in its territory which have invaded the territory of another State, or refusal, notwithstanding the request of the invaded State, to take, in its own territory, all the measures in its power to deprive those bands of all assistance or protection"[6].

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[1] Art. 5 of the Rome Statute

[2] Art. 5, paragraph 2 and Art. 121-122 of the Rome Statute

[3] History of International criminal law mentions King Conradino of Sicily to be the first ruler who, in 1268, was tried for waging an aggressive war.

[4] Among the politicians and scholars who took part in the negociations,the Soviet diplomat Maxim Litvinov,the Romanian statesman Nicolae Titulescu and the Greak politician Nicolaos Politis were most active.

[5] Romania, Czechoslovakia, Poland, Finland, Letonia, Estonia, Lithuania, the Soviet Union, Yugoslavia, Turkey, Persia and Afghanistan.

[6] Irronically, the only circumstances under which the League of Nations applied its definition of aggression were in December 14, 1939, when the League Assembly decided to expel from the organization a State member, the Soviet Union, following the invasion of Finland.

2. The Nuremberg Principles

In 1945, the London Charter of the International Military Tribunal identified three categories of crimes under the Tribunal jurisdiction: Crimes Against Peace („*count 2”*), War Crimes (*„count 3”*) and Crimes Against Humanity *(„count 4”).* The Charter defined ***crimes against peace*** as: *„planning, preparation, initiation or waging of a war of aggression, or a war in violation of international treaties, agreements or assurances, or participation in a common plan or conspiracy for the accomplishment of any of the forgoing”.*

In 1946, the final Judgment of the International Military Tribunal of Nuremberg, definining the nature of the crimes against peace, stated that "*to initiate a war of aggression, ... is not only an international crime; it is the supreme international crime, differing only from the war crimes in that it contains within itself the accumulated evil of the whole*".

During the Cold War period, the issue of defining aggression continued to be an imperative, assumed in the fora of United Nations, mainly by the UN General Assembly and the International Law Commission.

In 1950, after the outbreak of the Corean war, debates on defining aggression gain new importance in the UN phora. The main confrontation took place beteen the western governements which intended to qualify North Korea and the Peoples Republic of China as aggressor states, and the Soviet Union. As a reaction, the soviet Government proposed to draft an UN Resolution defining aggression, based on the 1933 Convention.

Following this proposal, the General Assembly decided to entrust the International Law Commission (ILC) with the task to elaborate a definition of aggression. Due to large disagreements among the ILC members, it was decided that *„the only practical course was to aim at a general and abstract definition (of aggression)*".

In 1967, after several unsuccesessful attempts, the General Assembly created a *Special Committee on the Question of Defining Aggression*, composed of the representatives of thirty-five UN Member States.

The *Special Committee* held seven yearly sessions and in1974 recommended to the General Assembly for adoption a definition of aggression. On 14 December 1974, the UN General Assembly adopted *by consensus* the Resolution 3317/1974. The Resolution identifies seven actions, which decided and perpetrated by the government of a UN Member State, were qualified as aggression. In short, they were formulated as:

(a) Invasion or attack by the armed forces of a State of the territory of another State;(b) Bombardment of another State territory;(c) Blockade of the ports or coasts;(d) Attack by the armed forces of a State on the land, sea or air forces, or marine and air fleets of another State;(e) Uuse of armed forces of one State which are within the territory of another State with the agreement of the receiving State (f) Allowing its territory to be used by other State for perpetrating an act of aggression against a third State (g) Sending mercenaries to carry out acts of armed force against another State."

Since no description was considered to be exhaustive, Resolution 3317 introduces those seven actions by mentioning *„such as... ".* The formulation leaves open the possibility that in the future other actions might be aided to the list, qualifying as aggression

3. The Kampala Amendements to the ICC Statute.

The ratione materiae of the Court is described in Paragraph 1 of Article 5: *„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*."

Paragraph 2 of the same **Article** introduces the *exceptionality* of the fourth crime under the jurisdiction of the Court; it reads:

„The Court shall exercise jurisdiction over the ***crime of aggression*** *once a provision is adopted, in accordance with articles 121 and 123, defining the crime and setting out the conditions under which the Court shall exercise jurisdiction with respect to this crime. Such a provision shall be consistent with the relevant provisions of the Charter of the United Nations."*

According to **Paragraph 2,** the ICC can not exercise jurisdiction over the crime of aggression **until** a definition of this crime is agreed by the *Assembly of State Parties*, as the only authority empowered, under Articles 121 and 123 of the Statute, to amend the Statute.

In accordance with these provisions, a **Review Conference** was held, on June 11,2010, in **Kampala**,Uganda. The so called „*Kampala Amendements*" represent the result of the Review Conference. Representatives of 111 States Parties to the Rome Statute agreed *by consensus* to adopt a Resolution on the definition of aggression and the conditions for the exercise of ICC jurisdiction over this crime. The Resolution introduces an important distinction as the *ratione materiae* competence of the ICC by identifying and conecting two concepts:

- The ***crime of aggression***, imputable to ***a person*** (who falls under the *ratione personae competence* of the **ICC**).
- The ***aggression***, as an ***act of a state,*** consisting of one or several of the the seven acts, qualified as such by the Resolution 3317 adopted in 1974 by the UN General Assembly.

3.1. The **crime of aggression,** comited by **an individual,** is defined in the new **Art. 8 bis (1)** of the

Rome Statute, adopted at the Review Conference in Kampala, as:

„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.”

3.2. The act of aggression, as an action attributable to a State, is described in Art.8 bis (2) of the Kampala Amendements, by *literally* reproducing the *seven actions,* already described in UN General Assembly Resolution 3317/1974.

Article 8 bis (2) enumerates, as 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 annexationby 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
c) of any weapon by a State against the territory of another State;
d) The blockade of the ports or coasts of a State by the armed forces of another State;
e) An attack by the armed forces of a State on the land, sea or air forces, or marine and air fleets of another State;
f) 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;
g) 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;
h) 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.”

3.3. The exceptionality of the crime of aggression, as compared with the other three crimes under the jurisdiction of the ICC, consists in the closer connection it imposes between: actions of an individual, the national or international criminal law and the issue of the use of force under the Chapter VII of UN Charter.

The crime of aggression is often qualified as *„a leadership crime”,* since the author is usually in a position to “effectively exercise control over or to direct the political or military action of a state”. Often such a decision implies the use of force in violation of Art. 2.4 of the UN Charter.

It is not surprising that, during the Cold War, in 1974, when adopting the Resolution 3317, the General Assembly also called the attention of the Security Council to the Definition it adopted and recommended that the Security Council should, as appropriate, take account of that Definition as guidance in determining, in accordance with the Charter, the existence of an act of aggression, in light of the Art 39 of UN Charter[7].

Thus, under the Kampala Amendments[8] the ICC can exercise jurisdiction over individuals, responsible for comiting *crimes of gression*, under one of the following three situations:

- Acts of aggression committed by a state party to the ICC Statute, when the Security Council has made a determination, under Art. 39 of the Charter, that such an act of aggression has been committed by a UN Member State;
- Acts of aggression committed by any state, when the Security Council refers a situation of agression to the Court;
- When the ICC’s Pre-Trial Division *authorizes* the Prosecutor to proceed with an investigation, if no determination is rendered by the Security Council, within six months of an incident.

Those relevant amendments to the Statute, however have not entered into force yet.

4. Complementarity betwen ICC and national courts jurisdiction, an efective means to prosecute international crimes of aggression.

The *principle of complementarity between ICC and national courts* is advanced in the Preamble of the Rome Statute (Paragraph 10) [9]. First and formoust the Preamble stresses that the four categories of crimes which constitute the competence *ratione materiae* of the Court must not go unpunished and that their effective prosecution must be assured by measures taken at national level: *„Every state has a duty to exercise criminal jurisdiction for crimes of concern to the international community as a whole”.*

Art. 1 of the Rome Statute establishes *expressis verbis* the complementarity principle between ICC and national courts as follows:

„...(The Court) shall be a permanent institution and shall have the power to exercise its jurisiction over persons for the most serious crimes...as referred to in

[7] Article 39, in Chapter VII of the United Nations Charter, provides that the UN Security Council shall determine the existence of any 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".

[8] No sooner than January 1, 2017.

[9] Statute of the International Criminal Court, UN Doc. A/CONF.183/9 (1998).

this Statute, and shall be complementary to national criminal jurisdictions...”

For effective impunity, the cooperation at international level under the jurisdiction of the ICC should come only as a safeguard, the ICC beeing a court of last resort, exercising its above mentioned jurisdiction only when domestic courts are *unwilling or unable* to prosecute.

Art. 17 of the Rome Statute offers the full content of the principle of complementality betwen the Court and the national jurisdictions, by defining in its second and third Paragraphs the termes *unwillingness* and *inability* of national courts to „genuinly...carry out the investigation or prosecution”of a case.

The situations where a state is unwilling or unable, clearly described in Paragraphs 2 and 3 of Art.17, offer in fact a *per a contrario* definition of the principle of *due process,* which is actually the corner stone of complementarity Art. 17.2 provides in full that*:*

„In order to determine unwillingness in a particular case, the Court shall consider, having regard to the principles of due process recognized by international law, wheth er one or more of the following exist, as applicable:

a) The proceedings were or are being undertaken or the national decision was made for the purpose of shielding the person concerned from criminal responsibility for crimes within the jurisdiction of the Court referred to in article;
b) There has been an unjustified delay in the proceedings which in the circumstances is inconsistent with an intent to bring the person concerned to justice;
c) The proceedings were not or are not being conducted independently or impartially, and they were or are being conducted in a manner which, in the circumstances, is inconsistent with an intent to bring the person concerned to justice.

Art. 17.3 determines some procedural circumstances which qualify the inability of a national court to offer due process:„*... a total or substantial collapse or unavailability of the national judicial system,the State... being unable to obtain the accused or the necessary evidence or testimony or otherwise unable to carry out its proceedings.*”

5. Universal jurisdiction, an additional avenue towards impunity for crimes of aggression

5.1. The term *jurisdiction*, synonymous especially in common law systems, with *competence*, refers to the exercise of a State’s authority to prescribe, to adjudicate and to enforce its legislation over persons and territory under its sovereignty. In a narrow meaning, the term jurisdiction points only to the exercise of contentious functions by a State’s judicial bodies. In connection with the concept of jurisdiction, a main distinction is well observed between the State’s competences over persons and over territory.

In principle, international law rules do not determine the content and exercise of each state’s competences over persons, being only concerned with determining the limits of the exercise of such competences by a State, in its relations with other States. Nevertheless, in civil matters, States may agree, under certain conditions, to mutually accept the extension of the exercise of some competences of one State on the territory of another[10].

In criminal matters, on the contrary, the exercise of the State’s jurisdiction is limited to national territory, by stringent requirements. Still, a range of exceptional circumstances in international relations, which offer a legal definition seem to have avoided even those strictly protected territorial limits of a State’s criminal jurisdiction.

From this perspective, several distinctive *principles* have received over the years a certain degree of support, from both practice and doctrine: *the principle of territoriality* which stems directly from the exercise of State’s sovereignty and takes into account the exercise of its criminal jurisdiction over all acts committed on the national territory, either by citizens or by foreigners[11]; *the nationality principle (or active personality principle)* refers to State’s competence to submit to its jurisdiction criminal acts perpetrated by its nationals, on the territory of another State[12]; *the passive personality principle* which refers to the State’s criminal jurisdiction over acts committed by *foreigners abroad*, significantly harmful to the rights or interests of the nationals of the forum; *the principle of universal jurisdiction,* adopted in time by a considerable number of states, allows the exercise *of any State’*s criminal jurisdiction over particularly serious crimes, such as piracy, slavery, genocide, crimes against humanity, certain war crimes, the crime of aggression, torture, terrorism, etc., committed on the territory of another state, regardless of the nationality of the authors (citizens or aliens alike) or of the victims.

[10] In certain legal relations, with one or more *foreign elements* (such as the whereabouts of the assets, the venue of the conclusion of the document or the foreign status of one of the parties), the rules of private international law of each State will be applied. Due to the diversity of the solutions of those rules, relatively few principles or customary rules of public international law have been imposed by state practice, concerning the exercise of their jurisdiction in civil matters.

[11] It is based on the State’s right and duty to ensure public order within its national borders. Another reason which requires the application of this principle takes into account the management of the evidence, which is facilitated by the fact that authorities it is to be presented to are within the limits of the same territory, versus the venue of the offending acts (*forum conveniens*).

[12] Due to the diversity of national criminal legislations and constitutional principles for granting citizenship, positive conflicts in the exercise of criminal jurisdiction between several States may occur, when enforcing this principle.

5.2. Universal jurisdiction provides states with the authority, under international law, to prosecute certain universally condemned crimes, committed by foreign citizens, in foreign territory[13]. This principle is not the result of recent developments or initiatives. Equal to the other principles mentioned above, it was primarily imposed by custom, through States' legislation and case law. The importance it gained lately is mainly related to the role it is called to play in order to *universally bring an end to impunity*, for authors of „*most serious crimes of concern to the international community as a hole.*

The 1945 *Nuremberg precedent* accelerated the formation of a customary norm concerning individual responsability and punishment, in the name of universal jurisdiction, for *crimes of aggression* (identified as „crimes against peace", accordimg to Nurenberg Principles), *crimes of war* and *crimes against humanity.*

In the years since the Nuremberg and Tokyo prosecutions, there have been *several notable domestic prosecutions* based on universal jurisdiction, outside the context of WW II atrocities. A court in the United Kingdom relied on universal jurisdiction authorizing the extradition of former President of Chile, Augusto Pinochet, to Spain for acts of torture committed in Chile in the 1980s; Courts of Denmark and Germany have relied on universal jurisdiction in trying Croatian and Bosnian Serb nationals for war crimes and crimes against humanity committed in Bosnia in 1992; Courts in Belgium and Canada have invoked universal jurisdiction as a basis for prosecuting persons involved in the atrocities in Rwanda in 1994; United States employed universal jurisdiction in prosecuting Charles Taylor Jr. For torture committed in Sierra Leone in the 1990s.

In view of the customary nature of the principle of universal jurisdiction, *the duty* to prosecute those crimes concerns not only the states in whose territories such crimes have been committed or whose nationals were perpetrators; it applies to all states where perpetrators of such crimes are found.

After the entry into force of the K*ampala* definitions concerning aggression, State Parties to the Rome Statute could exercise universal criminal jurisdiction over the crime of aggression, imputable to a person.

5.3. Concerning the competence of the International Criminal Court to exercise universal jurisdiction, during the negotiations which led to the adoption of the Statute, a large number of states argued that *the Court should be allowed to exercise universal jurisdiction.* The proposal was defeated due in large part to opposition from the United States. A compromise was reached, allowing the Court to exercise universal jurisdiction only under the following limited circumstances:

- where the person accused of committing a crime is a national of a state party (or where the person's state has accepted the jurisdiction of the Court);
- where the alleged crime was committed on the territory of a state party;
- where the state on whose territory the crime was committed has accepted the jurisdiction of the Court); or,
- where one of the three situations mentioned above are referred to the Court by the UN Security Council.

6. The controvesial side of complementarity in light of the universal jurisdiction principle

6.1. Since the adoption of the ICC Statute, as a consequence of the duty of states to prosecute and the complementarity principle, there has been a proliferation of national laws establishing universal jurisdiction over international crimes. In 2016, in a survey of legislation around the world, Amnesty International identifed 145 countries having authorized their courts to exercise universal jurisdiction over the following crimes within the ICC's jurisdiction: war crimes, crimes against humanity, and genocide. Five countries (Azerbaijan, Belarus, Bulgaria, the Czech Republic, and Estonia) already have enacted laws giving their courts universal jurisdiction over the crime of aggression. Other countries have adopted laws giving their courts universal jurisdiction over "offenses against international law", under international treaties as well as customary internationa law. If aggression is viewed as falling into that category („*offenses against international law")*, these countries, too, might exercise universal jurisdiction over the crime of aggression.

6.2. An effect of the complementarity between the ICC and national courts, that should enhance the role of the Court is the risk that *in national courts, defendants may not be treated with all the guarantees of due process,* compared with those strictly followed by the ICC. In front of the Court, defendants are the beneficiaries of all the protections imposed by the UN International Covenant on Civil and Political Rights, „whereas most national criminal-justice systems, by contrast, are *far less even-handed ,* particularly those States have experienced atrocities serious enough to draw the Court's interest"[14].

The question one must answer is the following: is a case admissible under article 17 of the Rome Statute, if the Court has reasons to suspect *an unfair national*

[13] *Inter alia*, a definition of univesal jurisdiction was adopted by in a Regulation of the United Nations Transitory Authority for Eastern Timor (UNTAES) on the creation of specific courts in Eastern Timor. It provides that : *"universal jurisdiction means jurisdiction* ***irrespective of*** *whether: (a) the(...) offence at issue was committed within the territory of East Timor; (b)the (...) offence was committed by an East Timorese citizen; (c) the victim of the (...) offence was an East Timorese citizen."(*UNTAET Regulation No. 2000/15, available at http//www.un.org/peace/etimor/untaetR/Reg0015E.pdf.

[14] See K.J.Heller,*The shadow side of complementarity:the effect of article 17 of the Rome Statute on national due process*, in Criminal Law Forum (2006) - Springer 2006. A particular situation in Sudan is described by the author, as an exemple: routinely sentences, unrepresented defendants setenced to death after secret trials,involving confessions obtained through torture, practiced by the Specialised Courts in which Sudan intended to prosecute those responsible for the atrocities in Darfur.

proceeding by the State asserting jurisdiction? Since, according to the Statute the Court has the competence to decide under such circumstences, it may quualifiy a State as unwilling to investigate or prosecute. In this respect,one should focus mainly on the conditions of *independence* or *impartiallity* (Art. 17.2.c) of the courts.The opinion has also been expressed that, if due process is not guaranteed, the State should be considered also unable (Art.17.3) to exercise jurisdiction over a particular case[15].

This is also the position taken by the authors of the *Informal Expert Paper,* commissioned in 2003 by *the Office of the ICC Prosecutor*, *on complementarity*[16]. According to this report, the Court should take into account a State's „legal regime of due process standards, rights of accused, and procedures" *when determining whether it is able to investigate and prosecute.* To avoid abuses, States which exercise universal jurisdiction have an obligation to ensure that adequate safeguards are established.

6.3. In criminal matters, the crime of aggression notwithstanding, one has to take into consideration that there might always be *„another side of the coin".* Sometimes, states might have an interest, in the name of complementarity, to establish universal jurisdiction over the crime of aggression, *in order to shield the perpetrators of such a crime* from the jurisdiction of the Court.

6.4. Under a different perspective, exercise of universal jurisdiction by national courts might also give rise to some other abuses. Such are the concerns perceived, for instance, in the *Joint Separate opinion* of three Judges of the International Court of Justice (Higgins, Kooiman and Burgenthal) in the *Arrest Warrant* case (April 11, 2000)[17], as well as those voiced in a document drafted by a Group of Scholars for the Pace in the Middle East[18]. In short, some of these limitations considered as safeguards are proposed: establishing a nexus between the state and the alleged transgression; providing mechanisms to prevent politicization; recognizing *qualified immunities for certain governmental officials;* requiring prior exhaustion of adequate and available domestic remedies, in the country of origin.

7. Some other reasons of concern in the light of the Kampala Amendements?

During the negociations of the Amendements in Kampala, US representatives expressed serious reservations, due to the before mentioned trend: the concern that many states will enact legislation, under the principle of universal jurisdiction, enabling domestic courts to prosecute crimes of aggression, *commited by non-cytizens, outside the state territory*.

In order to prevent that US citizens be prosecuted abroad for crimes of aggression, US and other countries pressed for some *restrictive interpretations* of the Amedemets. The compromise resulted in the adoption of an accopaning interpretative document, namely an Undersanding[19]. The document stipulates that *„it is understood that the amendments shall not be interpreted as creating the right or obligation to exercise domestic jurisdiction with respect to an act of aggression committed by another State.*

References:

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[15] *Id.*

[16] ICC Office of the Prosecutor, Informal Expert Paper: *The Principle of Complementarity in Practice* (2003),http://www.icc-cpi.int/library/organs/otp/complementarity.pdf.

[17] Arrest warrant of 11 april 2000 (Democratic Republic of the Congo v. Belgium) (merits) Judgment of 14 February 2002.

[18] *Statement of the Legal Task Force of Scholars for Peace in the Midle East, On the Abuse of Universal Jurisdiction, 2004.*

[19] *Understandings* are officially adopted *interpretative documents*, appended to an aggreed text. They are used sometimes in multilateral negotiations,with an important interpretative weight, when last-minute changes to a negociated text are no more possible. According to the Vienna Convention on the Law of Treaties, *a treaty is to be interpreted within its contex.* Under the concept of „context", a formally adopted document as an „understanding" bears *important interpretative consequences.*