Mobilising Law on the Side of Peace: Security Council Reform and the Crime of Aggression

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‘We therefore propose to charge that a war of aggression is a crime, and that modern International Law has abolished the defense that those who incite or wage it are engaged in legitimate business. Thus may the forces of the law be mobilized on the side of peace.’

1 Introduction

It is hard for me to separate Roger Clark the scholar from Roger Clark the man, which is a strong testament to his integrity. I met him first as a colleague and discovered his work afterward. I’m honoured that he’s a friend of mine. He helped me as I began doing work in international law, and he helped me grow as a scholar, teacher, and person.

Clark has mobilised law on the side of peace. He challenged, head-on, the legality of nuclear weapons.2 Recently, as part of the States Working Group on

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2 See Legality of the Threat or Use of Nuclear Weapons (Advisory Opinion) [1996] ICJ Rep 226; Roger S Clark, ‘Is The Butter Battle Book’s Bitsy Big-Boy Boomeroo Banned? What Has International Law to Say About Weapons of Mass Destruction?’ (2013/2014) 58 NYU Sch L Rev 655 (‘Clark, ‘Is The Butter Battle Book’s Bitsy Big-Boy Boomeroo Banned?’’) 666 (‘That case was a frontal attack on the legitimacy of the weapons themselves, as opposed to their testing’); Roger S Clark, ‘The Laws of Armed Conflict and the Use or Threat of Use of Nuclear Weapons’ (1996) 7 Crim LF 265 (Clark, ‘The Laws of Armed Conflict and the Use or Threat of Use of Nuclear Weapons’), 266 (Clark ‘was a member of a multinational team representing a coalition of three Pacific states—Marshall Islands, Samoa, and Solomon Islands—that made a joint presentation of the antinuclear side at the oral proceedings in these cases.’)
Aggression (‘SWGA’) for the Statute of the International Criminal Court (‘ICC’), Clark helped draft a definition of the international crime of aggression and the jurisdictional conditions for prosecution in the ICC. Gaining international consensus on putting this crime on the books was an enormous accomplishment: it was one thing for the World War II victors to define aggression as perpetrated by the vanquished and powerless Axis powers, but it was quite another thing to define it to apply generally to all nations, ‘good guys’ and ‘bad guys’ alike. Clark’s work against nuclear weapons and on aggression may have seemed at first like tilting-at-windmills or doomed to failure, or, perhaps worse, doomed to become a long-term effort ending in lousy compromises (and stealing time from scholarly work). The risk and sacrifice may be hard to see in hindsight. These are among the most important tasks of our generation, and Clark rose to the occasion.

Clark and I share a strong passion for reducing, if not entirely eliminating, nations’ resort to ‘the brutalities and dreadful suffering of war’. This shared passion caused us to move from colleagues to brothers-in-arms, so to speak. I remember Clark gave me a copy of a short paperback in his office, Keith

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6 Beth Van Schaak, ‘Par In Parem Imperium Non Habet: Complementarity and the Crime of Aggression’ (2012) 10(1) JICJ 5 (‘Up to this point in time, the crime of aggression has been noticeably absent in the penal codes of the nations of the world. Most domestic courts lack jurisdiction—under any jurisdictional basis—over the crime of aggression stricto sensu, and there is little purely domestic jurisprudence involving the crime.’).
7 Clark, ‘The Laws of Armed Conflict and the Use or Threat of Use of Nuclear Weapons’ (n 2) 287.