

THE INTERNATIONAL CRIMINAL COURT – PART OF THE INTERNATIONAL PENAL JURISDICTION – REALITIES AND CHALLENGES OF THE 3RD MILLENNIUM

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In the context of globalization and the phenomenon of international crimes, as they are defined by the Rome Statute, the existence and the functioning of the International Criminal Court are elements of actuality, under the circumstances in which the member states do not want to inter-relate for a better cooperation on the subject of international penal concern. On this line, the role of the International Criminal Court is a defining one. This is the more that the Member States, all together, admit the fact that through the serious crimes at the global level the life of the citizens, the security, the peace and the welfare are jeopardized.

Keywords: globalization, international crimes.

The atrocities and the crimes against millions of people, in different parts of the world, represent a challenge for the world's people now in the 3rd millennium, but they also represented an extreme problem in the last century. This is how it is explained that in 1998 in Rome, the participant states settled the instruction of an international penal court, admitting the fact that through the gravity of the global crimes the life of the citizens, and world peace and security are jeopardized. Global security, through the instruction of an international penal court, is still an actual problem, with global implications.

The international penal jurisdiction is the most important, being a form of application for the international right in matter, with the declared purpose to have international public order.

We will submit, in our succinct analysis, to the International Criminal Court and to its important role which it plays in the international jurisdictional system.

The idea to form an international penal court is not a recent one. So being, we must underline the proposal made in 1875 by the Swiss Moynier, to create a court that was to judge the crimes against the gens. Also, in the interwar period there have been similar initiatives that have been promoted, for example, by the International Association of Penal Law.¹¹

The most important moment in creating the Court is the adoption by the Union of the Society of the Nations in the Convention of the creation of an International Criminal Court, Genève, November 16th 1937, which was about to judge the persons convicted of

¹ We remember here the initiative of Romanian Vespasian V. Pella, who promoted in 1919 the organizing of an international penal court that established the responsibility of the individual, and the responsibility of the states, as a novelty;

crimes foreseen by the Convention for preventing and punishing terrorism, opened for signing in the same time.^{2 2}

The foundation of the International Criminal Court was done in the same time as the adoption of the Court's Statute by the Diplomatic Conference of the Plenipotentiaries on July 17th, 1998, in Rome. Romania adhered to this international juridical policy by signing the Statute on July 7th, 1999³.

ICC was settled as a permanent jurisdictional institution, with mandatory competence for the states that have adhered to its Statute⁴. Its jurisdiction is complementary to the national penal jurisdictions, having an international juridical status.

The most important plan of our projection regards the material competence of the court which refers to the crimes that are to be analyzed from a penal point of view.

The court has the competence to judge and to punish the individuals guilty of committing some particularly serious crimes⁵⁵ (as they appear from the content of the Statute) which contravene with the interests of the wholeness of the international community⁶: genocide, crimes against humanity, war crimes, and crimes of aggression⁷⁷.

Genocide is defined as "any crime committed with the intention to destroy, partially or wholly, a national, religious or ethnical group, through: killing the members of the group, seriously endanger the physical or mental integrity of the members of the group, the intentional submission of the members of the group to living conditions that will lead to their partial or full physical destruction, measurements against natality inside the group, forced transfer of children from one group to another".

Crimes against humanity are any of the one mentioned, when they are committed during a general attack or launched systematically on civilian population: killing, extermination, slavery, deportation or forced transfer of population, condemnation to imprisonment or any other forms of lack of freedom, torture, rape, sexual enslavement, forced prostitution, forced pregnancy or sterilization or any other form of sexual violence of comparable gravity, persecution of a group for political reasons, or racial, national, ethnic, cultural, religious, sex based reasons, or for any other universally acknowledged criteria as being inadmissible in international rights, apartheid, and any other acts with a similar particularity, that cause serious suffering and seriously endanger physical and mental integrity.

² Bogdan Aurescu – "International Jurisdiction System", Ed. All Beck, Bucharest, 2005;

³ To see Law no 111 from March 13th, 2002 for ratifying the Statute of the International Penal Court, Rome, July 17th 1998. Preamble: **The States Parties to this Statute, Conscious** that all peoples are united by common bonds, their cultures pieced together in a shared heritage, and concerned that this delicate mosaic may be shattered at any time, **Mindful** that during this century millions of children, women and men have been victims of unimaginable atrocities that deeply shock the conscience of humanity, **Recognizing** that such grave crimes threaten the peace, security and well-being of the world, **Affirming** that the most serious crimes of concern to the international community as a whole must not go unpunished and that their effective prosecution must be ensured by taking measures at the national level and by enhancing international cooperation, **Determined** to put an end to impunity for the perpetrators of these crimes and thus to contribute to the prevention of such crimes;

⁴ Betarice Onica-Jaka – "International penal Jurisdiction. Second edition", Ed. CH Beck, Bucharest, 2008;

⁵ Constitutive elements of the crimes have been adopted in September 2002;

⁶ Press release of the IPC from the 4th of October, 2004, regarding the signing of the IPC Cooperation Agreement;

⁷ Raluca Miga Bestelciu, Catrinel Brumar "The International Protection of the Human Rights", Universul Juridic, 2008;

The Court has the competence to judge war crimes, especially the ones that are part of a plan or elaborate policy. By war crime it is understood, through the Genève Convention in 1949 about human rights and other international conventions: intentional killing, torture or inhumane treatments, including biological experiments; intentionally causing strong suffering or serious endangerment of physical integrity, destruction of goods, possession of goods not justified by needs of war, illicitly making a war prisoner to serve another army than its own, intentional lack of a fair trial for a war prisoner, deportation or illegal arrest, taking hostages, launching deliberate attacks on civil population, launching deliberate attacks on humanitarian missions, launching deliberate attacks when it is obvious they will cause damage on civilians, killing or hurting enemies after they have surrendered, wearing enemy uniform when it will cause losses of lives, establishment by the occupying force of a part of its population on the occupied territory, transfer inside this territory of native population, launching deliberate attacks against religious, educative, artistic, scientific, buildings, against historical monuments and hospitals, when they are not military objectives, experimenting on prisoners, destroying enemy goods, when it is not imposed by military needs, obliging people to participate in war operations against their country, using poison, gas, and weapons that are meant to cause futile sufferings, attacking ones dignity through humiliating treatments, rape, sexual slavery, forced prostitution, forced sterilization, usage of civil hostages to protect military areas, deliberate attacks against buildings, materials, units and means of transportation that have the distinctive signs seen by the Genève Convention, deliberate starvation of civilians, enrolling teenagers under the age of 15⁸⁸.

And so, the challenges which the international instance must solve and overcome in the same time as solving crimes that we have talked about are surely much more important and they are beyond a simple application of some penal norms at some point. As shown above, the International Criminal Court was created to respond to a recurrent need for global justice. From a different perspective is a continuous step in trenching abominable crimes at an international level, crimes that ignore the passing of time, principles, laws, repercussions or penal consequences⁹.

We must be aware of the fact that the acts that are judged by the Court are not in an abstract plan, in a world of illusion¹⁰, that we cannot see; they are very real, “alive”, a constant reality of the past century and also of the present one.

In seeing the importance the International Penal Court has in the context of global criminality, there has to be mentioned the current projects developed by the adhered states develop in order to sustain the Court start from the salvaging of the human values and of human security. Returning to human values, even only at an individual status, is the most important element in the international penal jurisdiction. And so, as it was sustained, the Court is one of the international organs that form the frame in which the man, the individual, can feel and is protected¹¹.

We proposed to draw attention on the major role ICC has in the domain of international penal jurisdiction. We cannot hide the concern we have about the fact that the

⁸ This is simply an enumeration with character of example, not a limitation;

⁹ To have in mind the conflicts in Kurdistan, North Uganda, Congo (for example the enrollment done by the former chief of the militia of children under the age of 15, Thomas Lubanga), the genocide in Darfur etc.;

¹⁰ In “The European Union and The International Criminal Court”, produced by the General Secretariat of the Council, May 2010;

¹¹ Diana Larisa Cindea – “International Criminal Court. An interdisciplinary analysis”, Ed. Militara, 2010;

desideratum this institution wants is one almost illusory, as the skeptical ones could call it. Why do we say this? It is enough to draw a short parallel between the international cooperation in matters of incrimination and judging penal acts against penal order, punishing regardless of the citizenship of the defendants or their victims, of the place where the crime was committed, where we can talk about a support that the states give to each other (conventions and guarantees), on one hand, and the matter of the crimes that have been the object of our synthesis, against peace, humanity and war crimes, on the other hand. In the latter, we cannot overcome the fact that the Court realizes this with the help of the member state on the territory of which the crime was committed. So, if we also have in mind the low activity of the Court, we can be worried about that most of the abominable crimes will remain unsanctioned.

With all of these in mind, the importance of the institution is overwhelming. For example, based on the international conventions that assure the humanitarian protection of the war victims, the Member States engaged to take all measures to suppress the international crimes. We remind once again the Genève Convention from 1949 that establishes measures for protection of the combatants or civilians, and their goods, on the ground and on sea¹². And so there are three large categories of obligations for the Member States: to incriminate inside internal law (national law) the serious acts of breaking humanitarian rules, to sanction the person that commits crimes of this nature and to assure certain guarantees of procedural order for the defendants concerning the trial¹³. These obligations are assumed by the Member States and in the summary of the conventions referring to the repression of other international crimes (for example, genocide, through article V of the 1948 Convention, terrorism, through article 1 of the 1937 Convention, etc.)

We must underline that the international jurisdiction in cause has to be permanent and impartial, capable to have, with the aid of all the Member States, necessary and rightful means to judge all international crimes. This represents, beyond any doubt, another plan for the international crime in cause, but we cannot oversee the efforts for cooperation and improvement of the jurisdictional environment to optimize the capacity of the ICC to sanction all who through their acts offend international law.

¹³ For example, the right for defeasance, ways of attack, presence at his own trial (art 63 paragraph 1 of the Statute). So, art 67 of the Statute establishes trial guarantees which we can find in internal laws: the right for the defendant to be informed in the shortest time and with details about the nature of the cause and about the charges in a language he understands and speaks fluently; to have the means for his defense and to freely speak to his attorney; to be judged without delay; to be questioned the witnesses of the defense in the same conditions as the witnesses of the prosecution; not to be obliged to confess against him; not to be imposed the burden of proof.

¹² Art 49 of the Convention, art 50 of the 2nd Convention, art 105-108 and 129 of the 3rd Convention, art 146 of the 4th Convention, the additional Protocol I and II of these conventions, from 1977, the Genève Convention from 1954 for the protection of cultural goods in the case of war;

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