

UDC 341

THE ROLE OF THE INTERNATIONAL CRIMINAL COURT IN

THE PROTECTION OF HUMAN RIGHTS

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International Criminal Court (ICC) is an embodiment of hope and beliefs of millions of people witnessing massive cruel human rights violations throughout the history and currently it is truthful and effective mean to restore international criminal justice.

Some scholars and international criminal law specialists can disagree with abovementioned statement. Due to their opinion the realization of effective protection of widespread human rights violations began since the establishment of Nuremberg and Tokyo criminal tribunals in order to prosecute and punish persons responsible for international crimes committed during the Second World War. Others will provide the examples of International Criminal Tribunal for Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR). And partially they are right. However, Nuremberg and Tokyo tribunals, ICTY and ICTR on their nature are *ad hoc* international justice bodies. The term of their existence is defined by particular historical events which caused massive and widespread breach of international human rights law. But such tribunals are subject to dissolution after the last case is heard and the sentence on it has been pronounced.

In our opinion international community was in need of stronger guaranty that cruel international atrocities will be punished and impunity will be over. Therefore, almost the whole world appreciated the start of functioning of International Criminal Court with regards to the Rome Statute which entered into force in 2002.

The nature of ICC is unique because it is the first institutional international criminal justice body which works on the permanent basis. According to the opinion of the former UN Secretary-General Ban Ki-moon, this is a fundamental break with history. The old era of impunity is over. In its place, slowly but surely, we are witnessing the birth of a new “**age of accountability.**” Today, the ICC is the keystone of a growing system of global justice that includes international tribunals, mixed international-national courts and domestic prosecutions [1].

What does “age of accountability” and creation of ICC mean in the perspective of human rights protection?

Firstly, as Gerhard Werle fairly noted, international criminal law is the mean of protection of human rights and it reacts on massive violation of fundamental human rights. In other words, international criminal law is the response to the failures related to traditional mechanisms of human rights protection [2]. And in this sense ICC embodies not only international criminal law rules but also the norms of international human rights law. The provisions of the Rome Statute can serve as a prove.

Secondly, the jurisdiction of the ICC should be in the spotlight. With regards to the Art. 5 of the Rome Statute, 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 [3].

As it could be seen the jurisdiction of the ICC covers the cruelest and inhuman international crimes the commission of which must be punished in order to demonstrate to the whole international community that the era of impunity is over and the age of accountability is in force. Millions of victims of genocide, crimes against humanity and war crimes in different parts of the Earth deserve justice. And ICC can restore the justice for them by realization of its jurisdiction. Of

course, the territorial jurisdiction of ICC is restricted by the territory of State Parties to the Rome Statute, **but** on the basis of special agreement, **it can spread on the territory of the any other state**. The UN Security Council acting under Chapter VII of the Charter of the United Nation can refer to the ICC Prosecutor in order to start an investigation. Currently there are 123 countries are States Parties to the Rome Statute of the International Criminal Court. Out of them 33 are African States, 19 are Asia-Pacific States, 18 are from Eastern Europe, 28 are from Latin American and Caribbean States, and 25 are from Western European and other States [4]. Republic of Kazakhstan is not a member-state to the Rome statute, but the issues on ratification are under the discussion by human rights protection community of our country. Moreover, by the results of the United Nations Universal periodic review in 2019, Kazakhstan was recommended to ratify the Rome Statute.

Thus, the Rome Statute envisages sufficient legal grounds to restore justice and their effectiveness depends not only on the ICC State parties but on every honorable and decent member of international community.

Thirdly, in the conflicts between state sovereignty and human rights protection international criminal law advocates for **humanity**. By such action it complements and reinforces mechanisms of human rights protection and on the equal basis contributes to protection of human rights [2]. In this sense we are talking about subsidiary character of the Court's jurisdiction which means that ICC is complementary to national criminal jurisdictions. ICC can start to consider the case on international crimes commission only if the State, where the atrocities had place, does not react or doesn't want to react in appropriate way (prosecute the criminals, provide the hearings of the case, protect victims etc.). ICC's human rights protective function can be visible through crimes against humanity, which includes widespread and massive breach of such human rights as right to life, human dignity, freedom of movement etc. And by this way the idea of humanity as a fundament for human rights protection and international criminal law manifests itself [2],[5].

The establishment of the International Criminal Court is in many ways the culmination of a series of international efforts in the direction to replace a culture of impunity for the commission of very serious crimes with a culture of accountability [6].

Nowadays International Criminal Court faces many challenges such as criticism of its activity due to costs and delays of cases considerations, the focus on Africa, the threat of politically motivated prosecutions, issues of protection of victims and witnesses and so on [7], [8]. And it is normal. ICC is the young international body which bears the burden of not only prosecution of perpetrators who committed cruelest international crimes, but also restoration of rights of every victim, maintenance of international peace and security, prevention and deterrence of further possible commission international crimes etc. In this regard I will totally agree with the statement of the Judge Hans-Peter Kaul (Second Vice-president of the ICC) according to which ICC system can and will be only so strong, effective and credible as the State parties and international community will make it.

Literature

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