

25 years of imprisonment [6, p. 708]. In addition, in the case of this offence, there are grounds for the court to also impose the penal measure of deprivation of public rights. This is a public complaint crime [10, p. 42].

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**Wójtowicz Monika, Zając Edwin,**  
Students of Faculty of Law and Administration,  
Maria Curie-Skłodowska University in Lublin, Poland

### **THE INTERNATIONAL CRIMINAL COURT AS A REFLECTION OF THE PURPOSE OF INTERNATIONAL CRIMINAL JUSTICE**

The international judiciary plays a key role by settling legal disputes between subjects of international law (States) and between States and other entities [1]. Its main goal is to achieve justice, prevent impunity for the perpetrators of some of the most serious crimes, strive to reconcile the disputing parties and, consequently, deter the commission of crimes [2].

Throughout the twentieth century, and in fact since the end of the Second World War, the international community has made many efforts to solve the problem of the impossibility of enforcing the individual criminal responsibility of those who have committed the most serious crimes of international dimension, i.e. war crimes, genocide or crimes against humanity. The solution

to this problem was to be the establishment of the main body of the international criminal justice, i.e. the International Criminal Court based in The Hague. It was created on 17 July 1998 at the Diplomatic Conference of Government Plenipotentiaries in Rome. According to the PWN encyclopedia, the International Criminal Court is the first permanent international court with competence to prosecute and punish the perpetrators of crimes of an international nature on the basis of international law [3].

The International Criminal Court is distinguished from other bodies by a number of special features. Firstly, it is a permanent body with international legal personality (the basis for its functioning is the Rome Statute of 17 July 1998 [4]). The Court's jurisdiction includes the prosecution as well as the hearing of cases of the most serious international crimes. The Court exercises its powers in this respect only in relation to natural persons and, therefore, neither the State nor legal persons are subject to it. The Court's jurisdiction is complementary to the national courts [5]. The provisions on the jurisdiction of the ICC require particular emphasis because 'States are very reluctant to relinquish their own jurisdiction in criminal matters because they fear that this may undermine their sovereignty and seek to protect as far as possible the interests of their citizens, for whom the question of national jurisdiction in criminal matters is guaranteed, as a rule, at the constitutional level [6]. This principle is considered to be the most important of the principles governing the functioning of the ICC, as it determines to a fairly significant extent the future functioning of the universal international criminal justice [7]. And finally, a distinctive feature of the ICC is that it is a body independent of the UN, unlike the ICC for the former Yugoslavia and the ICC for Rwanda [8].

The scope of the ICC's jurisdiction should be considered in terms of subjectivity, territorial, temporal and substantive aspects.

As previously mentioned, in terms of subject matter, the Court can only judge natural persons, it does not have the power to judge legal persons or states. A person who committed a crime on the orders of his superior is not exempt from criminal liability (under normal circumstances). The commander bears criminal responsibility for all crimes committed by soldiers under his command and control. He is also liable even if he knew or could have known with minimal care that his soldiers were committing or intending to commit a crime, and in this situation he did not punish its perpetrators. Heads of State or Government, Members, Ministers, Civil Servants and other civil servants are not exempt from criminal liability under the ICC. It should be stressed that the liability before the ICC of natural persons is not limited by the immunities and other privileges associated with the performance of a given State function [9]. Nor is it a reason to impose a more lenient penalty [10]. The jurisdiction of the Tribunal extends only to persons who are at least 18 years of age at the time of the crime [11].

The ICC can only prosecute criminals who are nationals of the State (Party-

Treaty), it should be noted that any State that has signed the Statute has at the same time recognized the jurisdiction of the Court. The person being tried must commit a crime in such a state [12], but also other persons for whom the UN Security Council will request an investigation [13]. The Court shall then exercise jurisdiction unconditionally, even if such person is not a national of a State which is not party to the Statute. This solution was intended to exclude the need for additional ad hoc tribunals. The Court shall judge only for acts committed after the entry into force of the Rome Statute (that is, after 1 July 2002) or after its adoption by the State concerned (in the case of a State which is not the original signatory to the Statute).

The key to these considerations is the substantive competence of the Tribunal, which includes the prosecution and examination of cases of the most serious international crimes, which in the light of Article 5(1) of the Statute include: crimes of genocide, crimes against humanity, war crimes, crimes of aggression.

It should be noted that "Genocide is assigned the rank of the most serious crime in international law, since one of the elements of this crime is a special intention (*dolus specialis*) [14]. Genocide shall be understood in accordance with Article 6 of the Statute of the ICC in conjunction with Article 2 of the UN Convention on the Prevention and Punishment of the Crime of Genocide, signed on 9 December 1948 [15]. Article 6 of the ICC and Article II of the said Convention define genocide as any of the following acts, committed with the intention of destroying in whole or in part national, ethnic, racial or religious groups, as such: (a) the murder of members of a group, (b) causing serious bodily injury or mental health disorder to members of a group, (c) deliberately creating for members of a group living conditions calculated to cause their total or partial physical destruction; (d) the application of measures aimed at suspending births within the group, (e) the forced transfer of the children of group members to another group.

Crimes against humanity are enumerated exhaustively in Article 7 of the ICC Statute and are 11 acts directed against the civilian population: murder; extermination; slavery; deportation or forced movement of the population; imprisonment or other severe deprivation of physical liberty in violation of the fundamental rules of international law; torture; rape, sexual slavery, forced prostitution, forced pregnancy, forced sterilisation and any other form of sexual violence of comparable gravity; the persecution of any identifiable group or community on political, racial, national, ethnic, cultural, religious, gender grounds [...] or for any other reason generally held to be inadmissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court; enforced disappearances of persons; the crime of apartheid; other inhuman acts of a similar nature intentionally causing great suffering or serious bodily harm or mental or physical health.

War crimes, simply put, are large-scale crimes that are part of a plan or

policy. The catalogue of war crimes is quite wide and includes, m.in, unlawfully and arbitrarily causing serious damage unjustified by military necessity: hostage-taking, attacks on humanitarian aid institutions or peacekeeping missions, using civilians as human shields, subjecting people who belong to the opposing party to medical or scientific experiments – who are unjustified medical acts [16]. The rich achievements of international law allowed to shape the categories of war crimes contained in the Statute. War crimes were defined, inter alia, on the basis of the Geneva Conventions for the Protection of Victims of War (1949) and Additional Protocols (1977) [17], the Fourth Hague Convention on the Principles of Land War (1907) [18], the Protocol on the Prohibition of Chemical and Gas Weapons (1925) [19].

The crimes of aggression constantly arouse a lot of controversy, which is caused by the lack of an international definition of the term "aggression", which is why the cases considered in this type have been suspended [20]. War of aggression is considered "the gravest crime of international law, because it results in other crimes, and it itself consumes the largest number of victims and causes the greatest destruction" [21]. What is relevant here is Article 5 of the Rome Statute, according to which the International Criminal Court will begin to exercise jurisdiction over the crime of aggression when its definition is adopted and the conditions for its exercise by the Court are determined [22]. Many participants in the Rome conference called for terrorism and drug trafficking to be placed under the jurisdiction of the Court, but this concept was eventually abandoned. "The most difficult task when considering the principles of responsibility for aggression seems to be to precisely determine what a given criminal act (*actus reus*) is. [...] The Statute of the ICC decided to criminalize aggression, and in defining it, the term "acts of aggression" was referred to. That is accurate. [23]"

There are certain limitations to the ICC's jurisdiction, namely where the Security Council deems it justified, for example due to the political circumstances of international security, it may request the Court to postpone the initiation or stay the proceedings for a period of 12 months. This request, made by the Security Council, must be granted by the Court.

One can therefore ask oneself, what is the significance of the functioning of the International Criminal Court? Firstly, it should be noted that it is important to establish the truth about the facts, to determine the guilt or innocence of the accused in a fair, fair criminal trial, with full respect for the rights of the accused.

It is also important to create circumstances and a space in which every voice of the victims of crime is heard and recognized in the light of the law. Victims of the most serious crimes can talk about their experiences, feelings and fears with a sense of the "importance" of these words. The court's work gives hope that a fair and open procedure will lead to criminals being held accountable, which may be a warning for future planned events. War crimes,

crimes against humanity, occur constantly all over the world, although sometimes they do not directly concern ourselves. The ICC aims to show that all victims of crime deserve justice, which in turn is a form of peace [24]. The work of the ICC is undoubtedly a positive step, bringing humanity closer to justice and security.

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**Zaręba Aleksandra,**  
Uniwersytet Marii Curie-Skłodowskiej w Lublinie, Poland

### **CRIMINAL LIABILITY FOR THE INTERNATIONAL CRIME OF AGGRESSION UNDER THE POLISH PENAL CODE**

Crimes against peace, humanity and war crimes are acts of the highest degree of social harmfulness, which is reflected in the heaviest penalties and the international interest in prosecuting their perpetrators. These three groups of crimes have emerged through a long and painful historical process with the aim of protecting the universal values of universal peace and the right of people to live in peace. The disturbance of these fundamental rights nullifies the satisfaction of all other needs of life by individuals as well as societies or nations. A crucial moment in the development of international criminal law was the Nuremberg trials against the main war criminals of the German Reich during World War II, held before the International Military Tribunal. Article IV of the Court's Statute distinguished, as we know it today, the division into crimes against peace, war crimes and crimes against humanity. However, they required more precise and clear formulation which resulted in further development of these principles and standards. Solutions on the grounds of international law give rise to the necessity to regulate the issue of responsibility for these crimes in domestic law, resulting, inter alia, in the inclusion of a catalog of crimes within the jurisdiction of the International Criminal Court into Polish substantive criminal law.