INTERNATIONAL CRIMINAL LAW

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Abstract

This paper contains the concept and development of International criminal law. Regarding with concept there are given several opinions of several eminent world authors. Given is a author opinion of the paper about the concept of International criminal low. Further in the paper is described the development of International criminal law. The development of the International criminal law covers the period of all social formations. At the end of the paper, given is the opinion of the author, according to which in XXI century International criminal law as a universal and over international will experience expansion in its development.

Keywords: International criminal law, Territorial principle, Social formations

1. Concept And Development Of International Criminal Law

International criminal law represents a new branch in the legal system of the states and a new scientific discipline within the criminal- legal science which thus got its plural character.

International criminal law is integrative right which contains a national and an international component. Therefore it can be defined as the entirety of the criminal- legal norms resulting from international relations.

It is not created by the state's usual legislative route, but it is created by supranational institutions of the international community through international agreements. But although these norms derived from international agreements of states, they don't bind only the signatories but also the individuals who thus receive protection in international criminal law, but also receive certain obligations. In some theories it created a base the International criminal law to be understood as a part of the International public law, because it is more concerned with criminal behavior, which is horrible enough to affect whole societies and regions.

So according to contemporary Russian legal theory, some authors to be more precise, the International criminal law is defined as part of International public law containing the principles and norms, regulated by

cooperation between countries and international organizations in the fight against crime.[75] But in the Russian theory there are authors which present different notion of the International criminal law, under which it contains principles and norms of criminal law aimed at combating crime that reaches the goods of all countries or on certain parts.[76]

In other theories as well we may encounter the opinion that international criminal law is a branch of public international law[77], because the rules for creating this legal body derived from sources of international law.[78]

The inevitability of the creation of international criminal law as a result of the tendency of internationalization of crime and the need for the creation and construction of an International criminal law for its successful suppression on the one hand, and existing dogma of sovereignty on the other hand, led to the emergence of two separating directions.

One refers to the international aspects of national criminal legislations, and the other refers to the national criminal-legal aspects of international law. These separating routes led to differences in terminology distinction between 'criminal international law' (Droit pénal international) and "international criminal law" (Droit international pénal).[79]

According to some authors, the concept of International criminal law also has a three-sided meaning. One refers to the international aspects of national criminal law, which fits the above mentioned separate understanding of international criminal law as 'Droit pénal international″ and stresses the international dimension of national criminal law as a branch of national law. The other also suits the above mentioned separate understanding of international criminal law as 'Droit international pénal″ and comes down to the criminal-legal aspects of international law, listing it as a branch of public international law. The third relates to international criminal law stricto sensu, which includes international incriminations.[80]

That shows the complexity and mixed legal nature of International criminal law and its autonomous system of norms that seem as an independent branch of law, which aims to respect the corpus of human rights and other fundamental values of modern society. Still more common are integrative concepts in the definition of International criminal law by putting an apostrophe on national and international dimension. In this direction some

[75] Panov, p. 8, same as Naumov, p. 9.
[76] Grabar, p. 456.
[77] Brownlie, p. 587 and futher.
[78] Cassese, p. 3 and 4.
[79] Bassiouni, p. 406.
[80] Wise, p. 40.

understandings of the concept and subject of international criminal law will be listed.

Thus, by definition Jescheck, the concept of international criminal law covers all criminal law institutes with a foreign element, provisions restricting the repressive state power towards other states, types of international cooperation and assistance, including the extradition, protection of supranational legal resources and criminal law in the area of the European Union.[81]

According *Nenov* the International criminal law is a comprehensive system of legal norms established on the basis of international conventions governing the responsibility of certain individuals for their committed international offenses, conditions and judicial assistance between states in combating these offenses. Its features can be outlined in several directions. It is about international law because the source of its norms are normative activities of the authorities of a country with an international agreement, because its task is to protect the interests not of one or another particular state, but the basics of international relations in general from the actions that constitute international offenses and because it establishes criminal responsibility for certain individuals that affected the basics of international relations in performing an offense foreseen within relevant international law.[82]

Stoŭnov believes that international criminal law is a result of the internationalization of crimes and a result of cooperation between the countries regarding the prosecution of crimes within their territories. That is the essence of the development of international criminal law, which is built on the basis of that cooperation which notices particularly strong development in the trials of war criminals from World War II.[83]

Mihajlov considers that the subject of International criminal law includes: 1) the system of fundamental principles and norms, regulated international offences or offences with an international character and penalties for them, 2) the conditions and order to establish criminal responsibility for those offences, 3) establishment of order and mode of subsistence of imposed penalties; 4) cooperation of states, prevention of certain categories and types of international offences, an indication of legal assistance between states in criminal acts, surrender of offenders and other, 5) learning about the offences' composition, structure and dynamics in the world in general and in specific regions and making it the basis of norms of newly appeared international offences, establishing minimum standard rules

[81] Jescheck, p. 579.
[82] NenovI, p. 21.
[83] Стойнов, p. 31.

for criminal justice, systematization, unification and codification of international criminal-legal norms. This author defines the international criminal law as autonomous and complex part of the law, which contains a system of legal principles and norms or international offences and offences with international character and penalties for them, the conditions and procedure for conducting criminal liability and execution of imposed penalties, as well as cooperation between countries for further development and improvement of criminal justice in the fight against international crime.[84]

According Marjanovic, the International criminal law is a set of rules of international law by which certain human behaviors are declared international offenses and provide the conditions for liability of their executors regardless of internal state law.[85]

The meaning of the term "international criminal law" depends on its use and has many definitions, but not all are consistent.[86] International criminal law is a body of international rules designed to prohibit categories of behavior, and to make people who engage in such acts criminally responsible.[87] International criminal law is the law which prosecutes international crimes.[88]

The concept of international criminal law through "offenses against international law" has been used in international acts involving typical international crimes and offenses of international nature.[89]

The above mentioned regarding the concept and subject of International criminal law leads to the conclusion that international criminal law is a new branch of the legal system and a new scientific discipline, which contains national and international components which prescribe the international offenses, court jurisdiction, terms of the responsibility of their perpetrators and procedures, regardless of the internal states law.

2. Development Of International Criminal Law

The emergence and development of International criminal law are determined by historical facts and processes in the international cooperation of states on local, regional and global plan.

[84] Mihajlov, p. 21-23.
[85] Marjanovich, p. 8.
[86] Cryer, Friman, Robinson, Wilmshurst, p. 1.
[87] Cassese, p. 3
[88] Kittichaisaree, p. 3.
[89] The Resolution 96 from 11 December 1946 year on General Assembly of UN. Same as the preamble and article 1 from Convention on the Prevention and Punishment of the Crime of Genocide and penalty regulated for it from 1948 year.

We find he first sprouts of international criminal law during the rule of Roman law in which there was a dual legal regime: "jus civile" for the Romans and "jus gentium" for foreigners. The legal regime "jus gentium" particularly stretched in the provinces of the Roman Empire, which became the provincial and particularistic way of governance.[90] In the Roman law, sea pirates are treated as devils for all mankind (hostis humanis generis). Penalty was death without procedure.

We come across sprouts even in Egyptian law related to agreements for action in case of an uprising of slaves.

Also in ancient states Athens and Sparta a peace treaty existed between Athens and Sparta concluded 421 BC that referred to the fact that Athens gives up support in the event of an uprising of slaves in Sparta.[91]

In the Chinese civilization we come across rules and practices agreed between countries for warfare. We can see contracts with international criminal elements later on between Russia and Byzantium and between Bulgaria and Byzantium. We see international legal threats in the acts of the Vienna Congress of 1815 as well as in the acts of the Aachen Congress of 1918, which condemned slavery and the slave trade as banned criminal offenses.

Later on we meet many other declarations and conventions that govern offenses of international nature, such as the Hague Conventions of 1889 and 1907. The Congress in London from 1899 that discussed women trafficking should also be noted here.

Between the two world wars tendencies occur for punishment of conducted war offences with proposals for the establishment of an international court in whose jurisdiction international offenses committed against different nationalities would remain, offenses related to repressions in the camps and anti-legal actions during the conduction of illegal orders towards citizens and military officials, armies and people of the opposite side. This, and especially the idea of establishing an International Criminal Court of war crimes, will give a special mark in the further development of understanding international offenses and will influence in the development of international criminal law.

It can be concluded freely that the former and the later development of International criminal law is based on territorial governing principle, dominant in medieval criminal law until recently which can't be rid out even in modern criminal law because of its lasting establishment. Such is the case with England and other areas of governance system of "common law" closely connected with the basic characteristics of English criminal

[90] Puhan, p. 251.
[91] Lukashuk, Naumov, p. 10-11.

procedure, especially through the institution of jury which occurs in England in the XII century, initially in the form of jury as official witnesses who compile a report to the king of what happened in their environment, and later as accusatory or grand jury (grand juru) that decides to initiate a procedure and a small jury (petts juru) which decides about the guilt of the defendant, two jury systems kept even today in the United States.[92]

Placing the territorial principle as the hallmark of the particular criminal law on the one hand and the intense relationships between the states of any kind, especially economic relations, imposed the problem of finding solutions to resolve the conflict of laws with mutual acceptance of collision norms when in one crime a foreign element is present. Thus, despite the territorial principle, in the learning of the glossators and post glossators the subsidiary principle of "forum domicilii" is found, which means application of national law to the perpetrator of the offense and "forum deprexensionis", which means application of the law on the place where the perpetrator of the offense is caught.

So at that time the territorial principle emerges as a fundamental principle, universal principle referred to strays, and the personal principle existed as a subsidiary. These principles are complemented by the acquisition of criminal prosecution on the basis of agreements between states. During the rule of absolutist and centralist regimes in medieval law comes to reaffirmation of the territorial principle.

On theoretic plan the first theoretical processing of the extension of the repressive power of state occurs in the work "De jure belii ac pacis liberi tres" of Grotius published in 1625, which as a basic plan explains the doctrine of natural rights, and in terms of passive and active personality considers that the justification of repressive government application is found in the understanding of state as representative of the basic natural solidarity between people.

The state in which the criminal offense has been committed has the priority right to punish (Jus puniendi) and the state may also require from the state in which the perpetrator fled to punish or extradite the perpetrator. On these theoretical views Grotius formulated the famous principle "aut dedere, aut punire" (extradite or punish the perpetrator) which many authors today bind with the beginning of the creation of International criminal law.[93]

Under the influenced of the philosophical teachings of Montesquieu, Ruso and Voltaire, whose ideas later on would be accepted by Beccaria, after the French bourgeois revolution, as well as resistant relation towards the other still-conservative arbitrary feudal-criminal legal systems, comes to

[92] Kambovski I, p. 21-22.
[93] Kambovski II, p. 23.

reaffirmation of the territorial principle, under which influence as a result of understanding is the absolute sovereignty of the state with completely autonomous criminal- legal systems and thereby accepting the territorial principle, will influence on major codifications of XIX century, that principle would be abandoned modestly even with the reform of 1866, by which the active personal principle was extended to all acts committed by French nationals abroad, and foreigners remained true to the real principle, which means application of French law on foreigner who will commit offenses against certain property abroad.

In the German particular right, after the surge of nationalist ideas, despite of placing the territorial principle as fundamental, an active personal principle was accepted, starting from the Bavarian Penal Code of 1813 and especially in the German Penal Code of 1871 which already provides developed norms' system for physical validity. This model later on will make an impact on other major codifications in the XIX century.

According Jescheck, opinion expressed in his work *Gegenstand und ncueste Entwicklung des Internationalen Strafrecchts, Festschrift für Maurach, Karlsruhe, 1972, p. 580,* each state determines its own boundaries of repressive power while still it must be managed by rational bonding points as the territorial, real, personal and universal principle.

On the basis of the above mentioned it can be concluded that, based on intensive international relations and the growing presence of foreign element in carrying out offenses, the tendency to expand the repressive power of the state for acts committed outside its territory, is logical and is expressed in the establishment of standards in national penal legislation with implications on acts committed outside the territory of the state. This leads towards international conflict of laws and collision of repressive governments of various countries in terms of a criminal event. This necessarily entails setting uniform rules for resolving that conflict with acceptance of universal principles and standards. Although with the internal universal dimension they remain at the national level, however by content they belong to the category system of International criminal law.[94]

As a modern positive legal branch and discipline the International criminal law began to form in the second half of XX-th century after the Second World War, in terms of the Cold War and continues to grow extensively within the global relationships and commitments of states combating international offences.

The processes that mark the XXI century talk about that, and those are strong economic, cultural, political, social, legal and other development processes in the international community and the radical transformation of

[94] Kambovski I, p. 24-25.

nation states. In contemporary international community processes of cooperation between states are increasingly contributing to the change and evolution of consciousness that the world community is not a conglomeration of absolutely independent states, but it is a human community with common interests, needs and similar views on many aspects of social life.

Before the impact of universal beliefs of equality between people and their universal rights and freedoms that must be protected by the legal system, the myths about state borders giving way to the global community without borders are being broken. These global processes are neither utopia nor illusions but a result of the adoption of various international institutional forms contained in bilateral and multilateral conventions to which appropriate contribution is given by the universal, regional and international organizations such as the United Nations, European community and others, which contribute the largest number of nation-states to accept obligations for protection and respect of human rights, thus contributing each individual member to feel that he/she belongs to the international community, because nearly half of the last century was characterized by the fact that individuals protected their guaranteed international rights before national courts in procedure prescribed by the national law. To this we should add the existence of differences in the development of separate legal systems of the states that objectively created opportunities the same rights of individuals in different ways and with different success to be protected in different countries. This led the individual in a disadvantaged position, which means unequal treatment of citizens of all members of the international community. It is actually the base for demanding immediate application of the norms of international law as a necessity in the modern development. However, because of the absence of codified international criminal law, each individual is also a subject of national and international criminal law, which that way has a parallel function in almost all countries in the world.

Therefore in the development of international criminal law, especially in its beginnings, as a major impediment the dogma of state sovereignty appeared. Thus, although the corpus of human liberties and rights today are generally accepted norms in international criminal law, in everyday life people still about the protection of their rights refer to the national courts, which often rely on norms of internal law. However, these norms must be in accordance to the generally accepted international standards, with the necessary harmonization of national legal systems with regional and international standards and rights. All modern legal systems are obligated in their own national legislation to incorporate the generally accepted norms and values of international law and the provisions of the Rome Statute. It is especially important to establish the practice of direct application of the

norms of International criminal law by national courts and the creation of conditions in which these norms will constitute a source of national criminal rights. This situation with parallel action regarding the protection of human liberties and rights has its proper influence in criminal law theory because of the persistence to the point of radical form expressed by the claim that the international criminal law does not exist to date, by the influenced of its development those claims are slowly abandoned. The abandoning of that dogma is a result of inevitable global integration processes, based on the economic, political, cultural, social, legal and other factors, the strengthening of solidarity and sense of belonging to the world community, the tendency of internationalization of crime and the need to create and build international criminal law whose main goal is to establish a system of international instruments, based on the principle of consensus of states conform to the postulates of legal order and international law.

It is realistic to expect that the XXI century will be a century in which the development of international criminal law as universal supranational law will experience expansion in its development. National criminal laws will be forced to make harmonization of their penal systems with international penal system, because the development and modernization of the international community will impose the priority of generally accepted cogent norms of international criminal law over national legislations.

The International criminal law is summarized by the creation and functioning of ad hoc international criminal tribunals and finally by the formation of a permanent criminal court.

Development and cooperation within international criminal courts, clearly indicates that it is necessary to find new forms of international criminal justice cooperation on permanent bases. Crime has crossed state borders and it is manifested as a phenomenon that takes the universal character. That does not mean that politics in the suppression of crime have lost their autonomous national characteristics, but it means that it is a unification of criminal policy. However, despite the present tendencies for unification of international criminal law and criminal policy, they are still heavily influenced by national penal legislation although the necessity for mutual cooperation in this area is more and more stressed each day.

Nevertheless today the prevailing view is that the task of the criminal law, and thus of international criminal law is to provide peace and minimum justice, with the goal to provide to every individual the opportunity for free expression of his/hers personality, which is essential content of the functioning of legal state and international legal order.

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