THE INTERNATIONAL CRIMINAL COURT, JURISDICTION AND THE CONCEPT OF SOVEREIGNTY

Ebru Coban-Ozturk, Ass.Prof.Dr.
Cankaya University, Turkey

Abstract

The necessity of prosecution of major crimes committed against individuals or groups has become a common opinion today due to the increasing importance attached to the concept of human rights. The international community demands punishing those individuals committed major international crimes regardless of their duties and powers. The International Criminal Court has become the indicator and the outcome of this demand. It is a development welcomed by the majority of the international community in terms of an idealistic approach. However, there are debates on the jurisdiction of the International Criminal Court. The powers of the Court superseding national jurisdiction and challenging the concept of national sovereignty are the most discussed ongoing issues in particular. The existing jurisdiction of the Court as well as the criticism of this jurisdiction will be discussed in this study.

Keywords: International Criminal Court, state sovereignty, international criminal law, jurisdiction

Introduction

The quest for justice and beyond the limits of the jurisdiction of nation states has emerged after the World War I. Furthermore, the will to establish international legal mechanisms has become increasingly stronger. The International Criminal Court founded by the Rome Statute of 1998 which came into force in 2002 is the result of this trend. The Court, as a universal and permanent one, overlaps with the trends of recognizing the concepts of globalization, international law, and human rights after the 1990s. A permanent and universal criminal court is a significant development anticipated in international law for a long time. Independence of the International Criminal Court from national jurisdiction and prosecution of individuals who have criminal liability are some of the major achievements. On the other hand, many criticisms are directed at the Court.

In order to understand the current structure and jurisdiction of the Court as well as the parts thereof problematic in relation to the concept of national sovereignty, we should look at the historical processes to begin with.

Historical Development of International Criminal Courts

The International Criminal Court is different from other international criminal courts established previously. In order to assess the present situation, we should have a look at the characteristics of the previous courts. A demand to establish a new political order has emerged after the World War I, the first war spread over a very wide area, which profoundly affected the warring parties and even the parties not involved, in terms of economic, military, and political aspects, and disrupted the international balance of power. The United States of America (USA), the United Kingdom, and France, the states emerged victorious from the war tried to prosecute the senior commanders and politicians, who were in charge during the war, of the defeated states such as the Ottoman Empire, Austria, and Germany by establishing an international court. The legal processes started for numerous officials who were seen as war criminals in this *ad hoc* court. However, there are inconsistencies in this court, so that no prosecutions were filled against many German officials. Some prosecutions against the Republic of Turkey which has taken the place of the Ottoman Empire were considered in the first place, but these proceedings could not be initiated due to expectations about Turkey's potential alliance (Nill, 1999, p. 120). Moreover, although it was known that there were also some officials of the victorious states, who committed war crimes, there was no attempt to prosecute these persons either. Despite the suitability between the demand of prosecuting war criminals and the trend of international law, this demand became suspicious due to the tendency toward prosecuting the officials of the defeated states only.

Punishment of German state officials, who caused massive destruction, was considered appropriate on behalf of the international community for similar reasons after the Second World War. Based on the necessity of preventing impunity of those who brought war and of prosecuting them, Nuremberg International Military Tribunal was established in Nuremberg. German government officials were started to be tried there. A similar court was established in Tokyo and some Japan officials were tried too. The Nuremberg Tribunal, which was established based on the treaty, has some negative aspects like the jurisdiction of trial in absentia. Furthermore, these proceedings served as a scene of political propaganda for self justification of France, the United Kingdom, the USA, and the Soviet Union. However, these prosecutions are significant in terms of identifying international crimes and demonstrating the fact that an action

not considered as a crime in national law can be considered as a crime in international law. In addition to war crimes which have been identified since the 19th century, centuries, genocide and crimes against humanity have also come up and identified as new types of crime during the trials.

A common feature of postwar courts is the effort to identify major crimes in the international arena. Despite all the problems, the allied states have taken steps considered significant to establish legal concepts. It was intended to be shown that, those who breach international law will not go unpunished whatever their positions and responsibilities (Nill, 1999, p. 120; Falk, 1999, p. 695).

From the perspective of the Realist Theory, victorious states tried to keep the balance of power in the international system and that deteriorating states were punished in this system. According to this theory, while trying to create new norms by establishing a court, establishing an international order functioning in their own interest may become a priority. Considering this aspect, efforts to internationalization of justice can be interpreted as an intention to provide a source of legitimacy for their own political orders, power relations, and structures. However, for the Idealist Theory, the Court has a meaning for giving serious response by the international community to the systematic violence and the deaths committed and conducted by Germans on Jews and for punishing such actions on behalf of the international community beyond the jurisdictions of nation-states. The concept of international justice would be improved in this regard. Based on the fact that none of the theories is effective on its own in practice, it may be said that the Nuremberg Tribunal is a common result of these two perspectives.

After the Nuremberg Tribunal, international criminal courts became dysfunctional because of the politics of Cold War divided into camps. Indeed, international law stayed behind the scene during this period. After 1990s the international criminal courts were established in 1993 and 1994 in the Former Yugoslavia and Rwanda respectively, for prosecuting and punishing individuals seem responsible for the crimes committed during the conflicts in both territories. By the end of the Cold War, historical trends which had been paused during the Cold War started to continue. Although being established after the conflicts, these tribunals are different from their predecessor in Nuremberg and Tokyo. In fact, in the late 1940s, one of the projects set forth in the United Nations with regard to human rights was establishing an international criminal court (Lee/ Lietzau/ Fletcher/ Dicker/ Dubinsky, 2000, p. 505). The International Criminal Tribunal for the Former Yugoslavia and International Criminal Tribunal for Rwanda, which was established subsequent to conflicts and serious human rights violations, have an impact coinciding to this tendency and accelerating process, regarding the permanent court. The violence exposed with the end of the Cold War in

addition to keeping this violence up by communication channels like newspapers and televisions has enhanced the public response and sensitivity to human rights. The courts in the Former Yugoslavia and Rwanda have been established by means of this concern and the desire to prevail the concepts of international law which were remained undervalued during the Cold War. The International Criminal Tribunal for the Former Yugoslavia has been established by Security Council Resoution, No. 808 based on 41st and 42nd articles of the 7th Chapter of the United Nations Charter. The 7th Chapter of the Charter entitles the Security Council to impose economic sanctions, engage in diplomatic initiatives, and to rebuild the peace on behalf of the international community in case of threat to peace, breach of the peace, and act of aggression (Bodley, 1999, p. 438).

The Security Council adopted a resolution regarding sanctions and then established this Court in 1993 to investigate severe violations of law within the territory of former Yugoslavia. In fact, there is no phrase in the relevant section associated with the subject directly for establishing such type of a court. But, the authority has been used based on these articles. Under the normal circumstances, establishing such a court is predicted within the frame of a multilateral agreement, rather than an initiative taken by the Security Council (Bodley, 1999, p. 438). A multilateral agreement provides advantages for states for decision-making about establishing a court and for the conditions exposed to their national sovereignty or the relevant limitations on their national sovereignty. However, the Security Council preferred to establish a court binding the member states rapidly after the commission report.

Those who want to establish the International Criminal Tribunal for the Former Yugoslavia were not the victorious states this time, but the major powers in the international arena. The permanent members of the Security Council of the United Nations were not in a position of state while making this decision. The permanent members' right to represent the international community and their responsibility for providing peace has overlapped with the tendency of post-1990s trend of making international law superior. Exercising the authority to make such a decision, lack of agreement signed to provide a legal ground, and establishing the Court based on the 7th section, the authority limits of which is suspended, have created a serious topic of discussion. However, this situation has not lead to a significant objection on the level of states within the international arena. In fact, the responsibility and legitimacy of stopping crimes committed in Yugoslavia and performing prosecution on behalf of the international community have been provided by the fact that the member states of the Security Council have a high power of sanction in international politics as great powers. The Court is thought to

provide important contributions in terms of punishing war criminals, controlling disputes, and contributing to international justice.

Prosecuting the persons engaged in horrible violations in the Former Yugoslavia's territory immediately was found necessary from a humanistic point of view and in terms of stopping the dispute, preventing dissemination thereof, and finding political solutions. Self-authorization of the Security Council to establish courts and the potential of exercising this authority in the future have not met with serious objections from the international community (Bodley, 1999, p. 439). The Court has equipped with powers like a national court to demand delivering perpetrators and evidences, to conduct proceedings and even to collect evidence. According to Bodley, it has almost gained a supranational characteristic (Bodley, 1999, p. 470). In the case of Nuremberg Court, the war criminals were prosecuted by an international court. However, considering the fact that Germany was defeated and under the influence of the victorious states and the potential of the Court, which was established by the victorious states, in obtaining all evidences without any intermediary of a sovereign state, supersession of the existing national courts by the International Criminal Tribunal for the Former Yugoslavia can be understood to be a quite distinct improvement. While the Tribunal was entitled to collaborate with the national courts, it could have the priority as well. In other words, a case tried in a national court can be transferred to the international court upon request.

The International Criminal Tribunal for Rwanda has been established in 1994 and deployed in Arusha, the capital city of Tanzania, to investigate and prosecute the violations of law that occurred in Rwanda during the period between January 1st and December 31st, 1994, based on Resolution No. 955 by the United Nations Security Council. This Tribunal is one of the significant and uncommon developments in terms of international law. The structure of the Tribunal, international crimes under its jurisdiction, senior officials among those who have been put on trial, and its purpose of establishment to achieve social and regional peace on the initiative of United Nations Security Council are some of the special characteristics of the Tribunal. More than twenty years have passed since the founding of the Tribunals in the Former Yugoslavia and Rwanda. Since established temporarily for only a certain location and time span (*ad hoc*), both tribunals have reached the stage of termination. In this context, their jurisdiction and the remaining cased will be transferred either to national courts or to the Residual Mechanism for Criminal Tribunals. Both Tribunals bequeathed their great experience and an idealistic law perception for the international law while their missions are coming to an end. In addition to numerous contributions of these tribunals to law and politics, it is known that they have been exposed to many criticisms as well.

The will of international lawyers and legal persons to establish a new understanding of international law after the Cold War and to enable international law has created an accelerating effect both on international criminal tribunals already established in the Former Yugoslavia and Rwanda and for establishing a permanent international criminal court. The way to a permanent international court paved by the limitations of criminal tribunals to a specific region, event, and period due to their *ad hoc* characteristics. The need to punish individuals engaged in and caused disputes all over the world, the increase in the sensitivity of the international community, and the convenience of the international politics and environment at a new understanding and activeness of international law paved the way for a new, universal and permanent court by the end of the Cold War.

The Jurisdiction of the International Criminal Court

While the proceeding were ongoing in the Tribunals of Former Yugoslavia and Rwanda, an international law commission has been established in 1994 for a permanent international criminal court and the Rome Statute has been signed in 1998 in the light of the commission's work by sixty states at the beginning. The Statute stipulates a permanent and universal international criminal court. The states, which prepared the Statute, has envisaged sustainability and consistency as well as enforcement and effectively introduced by the permanent court to international law (Nill, 1999, p. 140).

The Rome Statute has been signed by hundred and thirty-nine countries in 1998. Sixty countries were needed to sign the agreement in order to have the Rome Statute entered into force and the International Criminal Court accomplished. The sixty states ratified the Statute as of April 11th, 2002. Consequently, it has been declared in a ceremony held in the headquarters of the United Nations in New York that the Statute would enter into force on July 1st, 2002 and the Court would start to function as of 2003. The USA signed the agreement during the Clinton administration, but the Congress did not approve then. Three of the permanent members of the Security Council, the USA, the Russian Federation and the People's Republic of China, did not become the parties of the Statute. This is a problematic situation in terms of financial contribution, enforcement of jurisdiction, and confidence in the Court. However, the high number of states signed the agreement and a strong Europe-based support to the Court significant.

The International Criminal Court stipulated by the prepared Statute is capable of conducting trials for three categories of crimes, war crimes, crimes against humanity, and genocide. Crime of aggression was expected to take place as the fourth category of crime as well. However, it has not been included in the crimes trialed in the Court today due to definitional problems.

Besides, since the Court is a criminal one, those to be prosecuted for these crimes are individuals. States are not included in the jurisdiction of the Court as legal subjects.

The Court is entitled to try the crimes committed after the date of Court's establishment and the date of signing of the Statute by the relevant state. Older cases and the relevant states are not included in the jurisdiction of the Court (Schabas, 2000, p. 70). In fact, jurisdiction would arise for the abovementioned types of crimes committed after the date when the relevant state has become a party the Statute of the Court. For example, if the USA, which has not signed the statute, decides to become a party of the Statute and approves the Statute in 2030, then individuals can be prosecuted for the actions which could be committed after 2030 only. According to this example, the Court would not be authorized for the acts committed before signing of the Statute by the relevant state.

Each investigation shall be conducted by a prosecutor selected by the states that are parties to the Rome Statute. The prosecutor, the Security Council or the party state to the Statute shall be entitled to request launching investigation within the frame of the mentioned crimes (Schabas, 2011, p. 157–186). The Security Council shall be entitled to bring cases to Court or to request abandoning any investigation. However, the Security Council shall not be effective on the functions of the Court since it is independent (Cassese, 2003, p. 721–756). The Court shall be entitled to try and punish any individual because of the crimes he/she committed, if the country that he/she is a citizen of or he/she committed the crime within the boundaries of which.

The important point here is that, a permanent body is punishing these types of crime and applying sanctions for the first time. The Court is entitled to intervene to any relevant process when national courts delay trials or not conduct at all. If the proceeding of the national court is deemed inadequate, the Court shall be able to conduct a second trial. It means that the international court overtakes the verdicts of the national court. There is no annulment of national jurisdiction; the International Criminal Court is in collaboration with the national courts in evidence gathering and capture and imprisonment of offenders. However, renunciation of some of the rights of national sovereignty, in other words punishment of its own citizen in an international court instead of a national court has arisen. Although the International Criminal Court does not seem universal because of the condition of being a party, it is a supreme court with universal characteristics in terms trying international crimes without the consent of states. Nuremberg, Tokyo, Former Yugoslavia, and Rwanda Tribunals established previously are limited to certain regions, not universal, and they did not

introduce a legal continuity one after the other. The permanent court is claimed to provide continuity and find a universal field of application.

When we examine the territorial jurisdiction, we see that the Court has jurisdiction for three types of crimes committed within the territories of the countries that are the parties of the Statute. The nationality of an individual alleged to have committed crimes in the territory of a state party is not important, because the territory where the action took place belongs to one of the state parties and the Court has jurisdiction here. For example, individuals, whether citizens of the USA or not, committed one or some of the abovementioned crimes within the territory of the USA, which we assume that it become a party to the statute in 2030 may be tried and punished for committing a crime within the territory of a state which is a party to the Statute. An individual, who is a citizen of a state party, committed crime within the territory of a state, which is not a party of the Statute, may also be tried. This means that the court is entitled to exercise jurisdiction based on citizenship and before state parties.

If neither the state which the offender is a citizen of, nor the sate which the crime is committed within, is a party of the statute, the jurisdiction of the court becomes problematic. For example, an individual who is a citizen of Iraq which has not signed the Statute commits a crime within the territory of Israel, which has not signed the Statute neither, then it can be thought that then Court has no jurisdiction. On the other hand, there are still some possibilities to exercise jurisdiction. Based on the 13th article, the Security Council is entitled to request from the prosecutor to open an investigation for the state not accepting the jurisdiction of the Court (The Rome Statute, Article 13 (b)). In cases where the Court has jurisdiction, both the Security Council and any other state party are entitled to request investigation from the prosecutor (The Rome Statute, Articles 13, 14). In this case, jurisdiction may be used by the Court despite the state, where the crime were committed or which the individual is a citizen of, is not a party of the Statute. Initiating an investigation under these circumstances is not a mandatory jurisdiction, but is left to the discretion of the Security Council. The Security Council is entitled to bring a case to the Court or to request abandoning an investigation (The Rome Statute, Article 16). But it shall not be effective on the functions of the Court since they are separate organs.

The first example of this provision is experienced after the incidents in the Darfur region of Sudan. The Security Council requested the prosecutor to initiate an investigation because of the conflict and increasing chaos in the Darfur region of Sudan at the beginning of the 2000s. The person alleged to have committed the defined crimes against the people of Sudan was the president and a citizen of Sudan. In other words, Sudan, which is the country where the actions took place and president was a citizen of, was not a party

of the Statute. An investigation was initiated by the prosecutor based on a Security Council Resolution and the cases began to be proceeded. The trials of individuals who have been accused in Darfur events of 2005 are still continuing (The International Criminal Court and Cases). In addition, some cases have been completed at the International Criminal Court for some citizens of three African countries (Central African Republic, Democratic Republic of Congo, and Uganda), which are the parties of the Statute, for the actions executed within the territories of these countries during the conflicts. Furthermore, some investigations have been initiated in Libya with Security Council regulations and Libya is not a party of the Statute. Most of the proceedings related to the citizens of the current countries are still continuing.

The role of the prosecutor in the International Criminal Court is important and the prosecutor is expected to act as an independent organ of the Court. The prosecutor is elected by the vote of majority of the state parties. The prosecutor is appointed to conduct the investigations and prosecutions and does not take orders from anywhere. The prosecutor may initiate any investigation on the recommendation of the States parties, raised by the Security Council, or on his/her own. The power of the Security Council to veto an investigation of the prosecutor is limited. The Council and the Court is expected to act independently of each other, thus the political role of the Security Council in the International Criminal Court has been intended to be reduced (Bolton, 1999, p. 66–70).

There is a huge effort to have the Statute signed and approved by many states. Increased number of state parties will obviously expand the range of the Court's jurisdiction. However, the deficiency in the jurisdiction and the main problem will arise when the countries which are permanent members of the Security Council but not parties of the statute, such as the USA, the Russian Federation, and the People's Republic of China. Since neither of these countries is a party of the Statute, the Court will have no jurisdiction for crimes committed (by their citizens or others) in their own territories. Besides, the crimes committed by their citizens in the territories which are not parties of the Statute also may not be prosecuted. Since they are the permanent members of the Security Council, the Council will not be able make a decision to appoint the prosecutor to initiate an investigation on such a subject, because it is well-known rule that when a permanent member vetoes the appointment, the Council cannot take any decision. In this case, the universal jurisdiction of the Court becomes problematic.

The universality of the International Criminal Court is damaged because of the reasons such as the condition of being a party, the conditions limiting the jurisdiction, the three major countries of the Security Council not being parties of the Statute and the possibility of an incomplete jurisdiction

when it comes to these three states, and leaving the jurisdiction to the discretion of the Security Council in case of the conditions of non-parties. However, being a supreme court with universal characteristics is implied by the facts such as possibility of prosecuting international crimes without the consent of states, possibility of initiating judicial procedure even in case of non-parties, approval of the Statute by many states, the agreement on the crimes to be prosecuted, and the acceptance of the fact that these crimes are relentless that will affect all of humanity. Another important point for the International Criminal Court is that the universal and permanent body prosecutes major crimes at the level of individuals for the first time.

The demand for punishing individual crimes internationally which have been raised after the First World War seems to have reached its aim by the International Criminal Court. On the other hand, the physical incapacity of the Court for large-scale trials and the small number of judges are some of the criticisms frequently voiced. Besides, the criticisms include unclear limits of cooperation with national courts in terms of jurisdiction, negative experiences in providing prisons for offenders, and lack of jurisdiction of the crimes committed before the Court (Roy/Fletcher/Lietzau/Dicker/Dubinsky, 2000, p. 550). Financial contributions to the Court to fulfill its mission must be provided smoothly, because financial support is the preliminary condition for the functioning of the Court. When the place where the crime was committed is far away from the Court, some difficulties may arise in terms of gathering evidence and cooperation with local administrations. There are also arguments about the necessity of clearer definitions of crimes in order to prevent differences in cases. The most criticized point is the ongoing argument that the Court would weaken national jurisdictions, and hence restrict national sovereignty (Casey/Rivkin, 1998, p. 57).

The Concept of National Sovereignty

The concept of sovereignty in international law is as an indispensable right of states. It has both legal and political content. It can be divided into two groups: internal and external sovereignty. Internal sovereignty is defined as the ability of a state to exercise legislative, executive and judicial powers on everything and everyone in its own country (Sönmezoğlu, 1996, p. 167), whereas external sovereignty means state's refusal of all impacts and limitations on the actions of the state without its consent (Sönmezoğlu, 1996, p. 167). The sovereignty is a concept including the jurisdiction of the state in the widest sense. It is neither possible for a sovereign power to establish legal authority on another sovereign power (Bodley, 1999, p. 470). It is a concept recognized by the United Nations and its continuity and necessity in national and international fields have been agreed on. A sovereign state is the

highest and final authority in legal and political sense within its country. This authority is independent of external impacts theoretically.

When it comes to practice, states have given concessions of sovereignty throughout the history. The sovereignty is shared internally by means of conciliations between the groups within the country. In addition, economic developments in the 20th century, sophisticated communication networks, mutual economic and political interdependence, international organizations, and non-governmental organizations in particular are external barriers to protect the sovereignty of state truly. The sovereignty of any state has been significantly restricted by economic and political tools, diplomacy, military power, economic or political sanctions, and the political pressure of the international politics.

The International Criminal Court has been perceived favorably in the context of universality and international law. But it is a development restricting national sovereignty in terms of the Realist Theory. Although the state continues to use the jurisdiction which it exercises for everyone within its country, it shares jurisdiction with the International Criminal Law for the defined crimes of genocide, crimes against humanity and war crimes and abandons a part of its sovereign rights. Punishing a citizen of a state in an international court is exercising the jurisdiction of that nation state. Despite the nation-state is still possessing its jurisdiction, the International Criminal Court is able to exercise jurisdiction in case of delay or lack of trials, so that the case will be tried. Furthermore, a second trial is also possible, if an opinion is concluded about the lack of justice at the end of the prosecution process. This means that the International Criminal Court is an institution over the jurisdiction, and hence the sovereignty of the state. In fact, there is no cancelation of national authority and the Court is in collaboration with the national court in gathering evidence, capturing and imprisonment of offenders. However, it has paved the way for abandoning some parts of the national sovereignty rights, in other words for trying of its own citizen not before the national court, but the international one.

In this context, limitation of judicial sovereignty and sharing thereof with an international court reveal as a process which can be hardly turned back. According to Ball, despite the jealous attitude of the Realists on national sovereignty, it is necessary to share national sovereignty with the international authority in the legal sense in order to stop international crimes only because of the need for justice (Ball, 1999, p. 227).

The circumstance of non-acceptance of any restrictions by the state without its consent is no longer valid, because the International Criminal Court's jurisdiction is automatic and proceedings can be made without considering whether the Statute is approved by the states of the citizens held responsible for the defined crimes (Schabas, 2011, p. 224–235). The

jurisdiction of the Court can be applied to individuals committed crime and to commanders or persons who ordered for it as well as to those who know or are needed to know the crime is being committed or to those who do not provide control over their subordinates in place (Bolton, 1999, p. 70). This circumstance directly erodes the state's jurisdiction creating dispute related to sovereign rights. Reservations to the Rome Statute are not allowed and many countries oppose making changes on it. The jurisdiction of the Court deems adequate to have one of the parties as a member of the Statute in the case where the crime was committed. The membership of the state of the territory either the crime committed in or the person committed crime is a citizen of which is sufficient.

Those who consider the existence of the International Criminal Court necessary say that, despite the limitations on sovereignty with an optimistic approach, the International Law has moved from state-centered approach and shifted towards the axis of human rights. This fact started to be reflected on trials and the power of Court as well (Nill, 1999, p. 130). It is observed that the international law is getting far away state-centric approach throughout the historical process. And the International Criminal Court is a continuation of this trend. However, considering that the law also contains unwritten customs and traditions taking long times, it is obvious that the International Crime Court will experience difficulties in practice and require a process of change for many states. The point that we observe today is that states allow prosecutions of their own citizens by others, only if coinciding with their interests and when they hope political benefits. Therefore, it is difficult to expect the states to share their judicial sovereignty with an international court which are not already doing this by means of international agreements.

While nation-states are under external pressures due to increased number of international and non-governmental organizations as well as multinational companies; nation-states are weakened by internal pressure from ethnic fragmentations or demands of minorities. Although nation state is faced with serious pressure both internally and externally, it is still deemed necessary to control labor and intervene in markets financially. While international organizations are acting in the direction of weakening the state, they are also contributing their survival by recognizing them counterparts in their policies. It has also be considered that the institutional structures of the states created as a result of long historical processes would not be changed easily and the existence of nation-states will continue as long as the tradition and the desire to retain the authority to represent exist. Furthermore, the surveillance mechanisms over the citizens established by the nation-state by the support of technology increase the controlling power of the state. The International Criminal Court must be evaluated within the scope of these developments. The sovereignty of the nation-state is eroded by this Court in

terms of law. This is why nation-states, who are reluctant to share sovereignty, are facing with difficulties in drawing the boundaries of the jurisdiction of the Court and in the issues related to the applicability of the court procedures.

Conclusion

Kelsen stated that an international court with compulsory jurisdiction to be established together by victorious and defeated states based on an agreement is vital to ensure peace (1944, p. 14). He claims that international conflicts can be solved by law. According to Kelsen, since there is no central army, necessary sanctions shall be applied concurrently to any state which is reluctant to implement the Court's decisions in order to make this state obeying the decisions by other states may use their own armed forces if necessary (Kelsen, 1944, p. 20, 120). It is impossible not agree with the will of Kelsen to prevail law and peace. The International Criminal Court has been established as a result of such Idealist approaches. The body who would apply sanctions against disobeying the decisions of the International Criminal Court appears to be the Security Council. It would be appropriate to evaluate this need if some changes in the function and structure of the Security Council are considered.

Limitation of the jurisdiction and hence the sovereignty of the nation-state and sharing these with an international court appear as a process, which is unlikely to return and created as a result of the new needs of the international community. Considering the functions of the Court, such as preventing relentless international crimes and punishing those who violated international norms of human rights, the existence of the Court can be deemed necessary. There are universalized concepts such as human rights, multinational companies with global economies, and wide-spread mass communication networks. The demand for not leaving conflicts and major crimes unpunished regardless of their power and authority of the offenders. However, it should also be noted that nation-states are jealous of their sovereignty and the international politics is shaped on the basis of states and within the framework of power policies. In this context, problems in practice are continuing to arise about the International Criminal Court.

References:

Ball, H., *Prosecuting War Crimes and Genocide, The Twentieth Century Experience*, (Lawrence: University Press of Kansas ,1999).

Bassiouni, C., *International Criminal Law: A Draft International Criminal Code* (Alphen aan den Rijn: Sijthoff and Noudoff, 1980).

Başak, C., *Uluslararası Ceza Mahkemeleri ve Uluslararası Suclar* (Ankara: Turhan Kitabevi Basım Yayın, 2003).

Beigbeder, Y., *Judging War Criminals: The Politics of International Justice* (New York: St. Martin's Press, 1999).
Blom-Cooper, L. J., *Law and Spirit of Inquiry* (The Hague: Kluwer Law International, 1999).
Bodley, A., 'Weakening the Principle of Sovereignty in International Law: The International Criminal Tribunal for the Former Yugoslavia', *International Law and Politics*, Vol. 31, No. 417, 1999.
Bolton, J., 'The United States and the International Criminal Court', http://www.state.gov/t/rm/ 13538.htm. 16 September 2002.
Boot, M., *Genocide, Crimes Against Humanity, War Crimes: Nullum Crimen Sine Lege and the Subject Matter Jurisdiction of the International Criminal Court* (Antwerpen, Oxford, New York: Intersentia, 2002).
Casey, L. A., D. B. Rivkin, 'The International Criminal Court vs. the American People', http://www.heritage.org/research/reports/1999/02/the-international-criminal-court-vs-the-american-people
Cassese, A., 'International Criminal Law', M. Evans, *International Law* (Oxford: Oxford University Press, 2003).
Clark, R. R., 'The Mental Element in International Criminal Law: The Rome Statute of the International Criminal Court and The Elements of Offences', *Criminal Law Forum*, 291, 2001.
Fein, H., 'Genocide: A Sociological Perspective', Current Sociology, Vol. 38, No: 1, 1990.
Kelsen, H., *Peace Through Law* (Chapel Hill: The University of North Carolina Press, 1944).
Kuper, L., *Genocide: Its Political Use in the Twentieth Century* (New Haven: Yale University Press, 1981).
Lee , R. S., *The International Criminal Court, The Making of the Rome Statute, Issues, Negotiations, Results* (The Hague: Kluwer Law International, 1999).
Lee, R., Lietzau, W. K., Fletcher, G. K., Dicker, R., Dubinsky, P. R., 'The International Criminal Court: Contemporary Perspectives and Prospects for Ratification', *New York Law School Journal of Human Rights*, Vol. 16, Spring 2000.
Lemkin, R., *Axis Rule in Occupied Europe, Laws of Occupation: Analysis of Government, Proposals for Redress* (Washington: Carnegie Endowment for International Peace, Division of International Law, 1944).
Makino U., 'Final Solutions, Crimes Against Mankind: On the Genesis and Criticism of the Concept of Genocide', *Journal of Genocide Research,* Vol. 3, No. 1, 2001.
Morton, J. S. ve Singh, N. V., 'The International Legal Regime on Genocide', *Journal of Genocide Research,* Vol. 5, No. 1, 2003.

Morton, J. S, *The International Law Commission of the United Nations*, (Columbia: University of South Carolina Press, 2000).
Moshman, D., 'Conceptual Constraints on Thinking About Genocide', *Journal of Genocide Research*, Vol. 3, No. 3, June 2001.
Nill, D.A., 'National Sovereignty: Must It Be Sacrificed to the International Criminal Court?' *BYU Journal of Public Law*, Vol. 14, No. 1, 1999.
Panel Discussion: Association of American Law Schools Panel on the International Criminal Court, *American Criminal Law Review*, Vol. 36, No. 2, Spring 1999.
Paust, J. J., M. C. Bassiouni, S. A. William, M. Scharf, J. Gurule, B. Zagaris, *International Criminal Law: Cases and Materials* (Durham, N.C.: Carolina Academic Press, 1996).
Pazarcı, H., *Uluslararası Hukuk*, (Ankara: Turhan Kitabevi), 2004.
Schabas, W. A., *Genocide in International Law: The Crimes of Crimes* (Cambridge: Cambridge University Press, 2000).
Schabas, W. A., *An Introduction to the International Criminal Court* (Cambridge: Cambridge University Press, 2011).
Semelin, J., 'Toward a Vocabulary of Massacre and Genocide', *Journal of Genocide Research*, Vol. 5, No. 2, June 2003.
Sönmezoğlu, F., (ed.), *Uluslararası İlişkiler Sözlüğü* (İstanbul: Der Yayınları, 2010).
Strauss, S., 'Contested Meanings and Conflicting Imperatives: A Conceptual Analysis of Genocide', *Journal of Genocide Research*, Vol. 3, No. 3, 2001.
Sunga, L. S., *The Emerging System of International Criminal Law* (The Hague: Kluwer Law International, 1999).
The International Criminal Court and Cases, http://www.icc-cpi.int/en_menus/icc/Pages/default.aspx
The Rome Statute of the International Criminal Court, http://www.icc-cpi.int/nr/rdonlyres/ea9aeff7-5752-4f84-be94-0a655eb30e16/0/rome_statute_english.pdf
The United Nations Convention on the Prevention and Punishment of the Crime of Genocide, 1948, http://www.unhchr.ch/html/menu3/b/p_genoci.htm.
Von Hebel, H.A.M., 'An International Criminal Court- A Historical Perspective,' H.A.M. von Hebel, J. G. Lammers, J. Schukking, (eds), *Reflections on the International Criminal Court* (The Hague: T.C.M.Asser Press, 1999).