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Violations of international law that represent crimes of international law, are incriminated in many international conventions, rules and regulations of international institutions and statutes of international criminal tribunals and the Rome Statute of the International Criminal Court, and the majority of national legislations. With the evolution of international criminal law we can see the process of criminalization of certain actions by different entities, such as international crimes has been too long.It had to pass a long time since such actions took place of proper legislative national and international pyramid. Difficulty incrimination of such punishable acts as international crimes, is probably determined by the quality of the subjects that can be presented as potential perpetrators of international crimes. Also other factors in prolonging the term of these actions incrimination and trial of persons who commit acts qualified as international crimes, has been the reluctance and the refusal of states to do so by reason that states had to give up from a part of their sovereignty which they understood as absolute. Most incriminating actions as international crimes can be committed during the armed conflict, whether national or international, but not only, for now the most modern legislation incriminated as international crimes prescribed the actions carried out in peacetime, such as terrorism, computer crime, corruption, economic crime etc. The creation of Nuremberg and Tokyo tribunals after the end of WWII, has ended accountability and impunity of the perpetrators of international crimes. During spawning before the international criminal responsibility of the perpetrators before tribunals the main problem has been the principle of legality, which means that no one can be tried and punished for actions that are performed before they are prescribed by law. Ie was the violation of the principle of legality, by which criminals want to protect and to escape criminal liability. However, this reasoning as such has no standing to reason that actions qualified as international crimes are provided with the majority of national legislation or international customary law such as: murder, torture, rape, etc., though perhaps not specified declaratively as international crimes, which today are incriminated as the national legislation and the international Conventions or the statutes of international organizations, qualified as international crimes. In a variety of international legal mechanisms, there are still many international conventions which incriminate actions qualified as international crimes. Also, in this regard very important are the statutes of the international ad hoc tribunals and the Rome Statute of the International Criminal Court. International conventions approved by the organizations of international character, are very important source of international criminal law, and as such the ratification by national states become part of national legislation binding on states. The way the ratification and entry into force of international conventions on the national state can be varied depending on what the particular country has foreseen which system. Besides international conventions and norms contained in the Statutes of the ad hoc tribunals or the Rome Statute for the International Criminal Court, in theory, also referred to other resources that are important for the theory of international

criminal law, as well as practice. Given the fact that international criminal law is the branch of public international law, we can conclude that the legal sources of public international law, at the same time can also be secondary sources of international criminal law, such as customary law, bilateral or multilateral agreements between countries, the general principles of international criminal law and general principles of international law, general principles of criminal law recognized by the international community, various regulations and other rules of international law and judicial decisions and the opinions of experts. (Cassese, from 2003.13 to 26).

THE COSTUMARY LAW

In almost all areas of law, customary law is presented as additional source, in cases when faced with gaps in legal practice, but is meant only in certain cases. The customary law can be taken as a source of law in certain cases when it is sanctioned by legal norms by the legislative body. This applies to countries with continental system, while in countries with Anglo-Saxon common law system it is estimated asdirect source of law. The customary law as a source of law is characteristic of public international law which is considered when two conditions are met, including: permanent practice relatively uniformed states associated with a particular issue and persuading countries that a set practice is legally binding. (Sean D. Marphy, 2006.78). Countries that are part of the anglosystem are mainly based on judical presedent in deciding, ie if a previous case is similar to the present case that is being tried then it determined the judgemenet to be based on the previous one . In opposite of this the continental system is based solely on the written law, while the customary law could become a source of law only if it is sanctioned by legal norms. As far as international criminal law and seeing the practice of the action of international tribunals and the International Criminal Court we can say that it applies a mixed system, initially for making desicion on trial issues that appear Statutes dealing rates or international conventions, but also without prejudice to the rules of common law, where in many cases the international court is based on common law rules to determine the content and form of any international rule that deals with harmful action not previously defined the prohibited act. (Cassese, 2003.18)..

Bilateral or multilateral agreements between states

Agreements between states are the leading source of international criminal law. In Article 2 of the Vienna Convention for the right deals, it is defined as an international agreement in written form contained in one, two or more related instruments, regardless of denomination. (Sean D. Marphy, 2006.67). International treaties can be classified according to several criteria and that according to the subject, objectives, shape, manner of connection, time that will be in force, geographic area, etc. possibility of accession. According to legal norms treaties are divided into treaty law or the vein rate treaties, and treaties contracts. (Gruda, 2007.56). Through laws , treaties or norm rate are contracted new rules of conduct or confirmed existing rules are defined, obliged customary exisitng rules or contracted of general character and also those treaties are a direct source of international law. (Gruda, 2007.56) Treaties contracts are agreements between two or more countries and have as their object the regulation of a particular matter between those states. (Gruda, 2007.57). International treaties are the primary sources of international law for the reason that at the time of signature or ratification by the states they become part of national legislation and as such are compulsory. In the

chain of written documents of international character, which contain principles and norms of international criminal law, there are statutes of international criminal tribunals and the Rome Statute of the International Criminal Court. As international criminal law has many points related to international humanitarian law, many international conventions which contain norms of international humanitarian law may be submitted to the relevant sources of international criminal law, such as: rates contained in the Convention Hague fourth of 1907, the four Geneva Conventions of 1949, two additional Protocols of 1977 Geneva, and others. (Cassese, 2003.16). Written rules contained in many legal documents of various international entities, have contributed greatly in international criminal law to take place in a proper manner the principle nullum crimen sine lege scripta, since with the existence of numerous legal documents which regulate issues of international criminal law, one can escape international criminal responsibility anymore.

The general principles of criminal law recognized by the international community

General principles of law recognized by civilized nations as a source of international law are contained in Article 38 of the Statute of the Permanent Court of international law, which is presented as additional source. (Sean D. Marphy, 2006.86). The need for the use of such a supplementary source of international law arises in the case of appearance of legal gaps, which could appear in all legal systems (MNShaw, 2008.81), much more in international criminal law which does not have a unified legislation. Whenever the resolution of a court case finds that there is no law which fully covers that point, he will try to find any relevant rule through general principles governing the legal system, no matter how such principles are based on justice , equality or respect for public policy. (M.N.Shaw, 2008.81). General legal principles present rules which were developed in state domestic law and are fundamental principles of justice, accepted by general legal awareness, such as: the principle on the issue of tried-ed judicata, the principle that no one can benefit from its own fault, the principle of prohibition of abuse of the law, the principle of the responsibility arising from illegal acts and the return of what has been gained from groundless enrichment (Gruda2007,61), the principle that no one can be judge ofpersonal case, the principle of the respect for agreements, the principle of a state of disinterest in the affairs of another state, the principle of legal equality of states, the principle of non-discrimination based on race, gender, religious affiliation (Sean D. Marphy, 2006.86 -87), and other principles that were formulated by the national rights and on the basis of an analogy can be used in international law.

Judicial decision

Judicial decisions as sources of international law, presented only as ancillary or supplemental sources. In most of the national legislations with the continental system judicial decisions have legal power only in the case to which it is deccided and the parties who are subject to such a decision, and as such cannot have any legal force for similar future cases. In Anglo-Saxon legal systems judgments system based on the so-called doctrine of judicial precedents, judicial decisions are taken into account when deciding on a similar issue. In international law, court decisions are only ancillary sources and as such they help the courts to clarify the existence of norms or the existence of implementing rules of international law. (Sean D. Marphy, 2006.88). From the practice of international courts and functioning of tribunals can be established that

in many cases decisions earlier taken into account when establishing the various issues that arise. Such practice is applied and perhaps as a result of the existence of multiple rules and regulations contained in many international conventions and other documents and a court or tribunal, not to be repeated the same work that was done by the court or other tribunal, which than can take the analysis of the recourse adoption of a decision has revised all relevant sources,than it may take such analysis and utilize it in the decision that will bring. (Sean D. Marphy, 2006.88). So the role of the courts is not to create law, but to apply in certain cases. and court decisions have an important role in the development of international law, because of legal categories. (Gruda, 2007.62).

Expert opinions or doctrines of international law

The doctrine of international law also introduces an aid in the implementation of the law by the courts. The doctrine of international criminal law is the scientific discipline that deals with the study of permanent basic institutions of international criminal law, namely the system of criminal-legal norms, national and international, which are related to international relations and supranational norms and standards (Kambovbski, 1998.48). Historically, legal doctrine has contributed greatly to the clarification of international rules. (MNShaw, & Cassese 2008.89, 2003.27) Especially it has been important the role of prominent authors in cases where there didn't existed any international treaty and when in a lack of resources it was needed to be required the safest solution ,it should have been sought in mores or practice civilized peoples. (Gruda, 2007.62).

COMPLETION

International law and international criminal law in general , from the object of study as well as the entities are branches of more specific law compared to other branches of the law. This appears as a key element of the international element which in itself interlocks many elements of different countries doing the same slightly more complicated. Even in the wake of legal resources on which it functions and is based, the public of international law is numerous and varied. Although most of them are based on domestic law, still the international element makes them more specific and hence more difficult and more complicated to be clarified and implemented by states, courts, organizations or other institutions of national or international character.

LITERATURE

- Zejnullah Gruda, E drejta ndërkombëtare publike, Prishtinë, 2007
- Vllado Kambovski, Megjunarodno krivicno pravo,Prosvetno Dello, Skopje,1998
- International Law. M.N. Show. Cambrige University Press, 2008, Translation an Macedonian, Prosvetno dello, 2009
- International Criminal Law, The Legal and Critical Analysis of International Crimes, Volume I, Fehard Malekian,Borgstroms Tryckeri AB, Motala, Upsala, 1991
- Droit penal international, Andre Huet, Renee Koering-Joulin, Depot legal-1 edition:1994 3 edition mise a jour 2005, Septembre, Presses Universitaires de France, 1994 6, avenue Reille, 75014 Paris

- Principles of International law, Sean D. Marphy, George Washington University, 2006 Thomson/West 610 Opperman Drive, P.O. Box 64526 St.Paul, Translation on Macedonian, Ars Lamina, 2011
- International criminal law, Antonio Cassese, Oxford University Press, 2003,Translation on macedonian,Ars Lamina