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Dr. Alina Ioana Szabó (née Apreotesei): The International Criminal Court: Starting with Africa

(*Origins, Development and Future of the International Criminal Court to Prosecute Gross Violations of International Humanitarian and Human Rights Laws*, Ottawa: Free World Publishing. 2010., Pp. 232. ISBN 978-0-9738848-5-2.)

Presented by Dobromir Mihajlov[1]

One of the most significant trends of international law in the last twenty íears is the outstanding development of international criminal law both by groundworking its legal rules, and also by establishing international criminal tribunals (courts) to apply them in practice. An old dream of international lawyers and international law scholars has been realised by this notable rise of international criminal justice. The creation of the ad hoc international tribunals, the definition of their jurisdiction, the reach of an agreement on the Statute of the International Criminal Court and the beginning of its functioning was a snappy answer to the long-term challenge imposed by the almost total impunity for war crimes and grave human rights violations.

All these landmarks of the evolution of international criminal justice have been analysed very comprehensively by an impressive number of scholars in an even more impressive number of their writings. Existing problems and difficulties arisen by lack of proper rules or established precedents are also a frequent topic of a lot of articles and books. I would say, perhaps the only area which still gives possibility for researches from different aspect is the practice of the International Criminal Court which started work on 1 July 2002 when the Rome Statute entered into force. Researching this topic is rendered particularly difficult taking into consideration that to date, three States Parties to the Rome Statute – Uganda, the Democratic Republic of the Congo and the Central African Republic – have referred situations occurring on their territories to the Court. In addition, the Security Council has referred the situation in Darfur, Sudan – a non-State Party. On 31 March 2010, the Prosecution was granted authorisation to open an investigation *proprio motu* in the situation of Kenya. In other words, by now the ICC's proceedings concern crimes committed in five countries – all in Africa - and proceedings are terminated in only one individual case due to the death of the accused.

My purpose with the above brief introduction was to render perceptable the real scientific values of Dr. Alina Apreotesei-Szabó's book The International Criminal Court: Starting with Africa, published in 2010 by the Free World Publishing in Ottawa. Dr. Apreotesei-Szabó is a graduate of Al. I. Cuza University in Iasi, Romania. After her Bachelors of Law she obtained degrees in International Public and Private Law and also in Philosophy. Thanks to a joint scholarship offered by both Rumanian and Hungarian Ministry of Education, Dr. Apreotesei-Szabó had an excellent and exceptional chance to continue her PhD studies and researches at the Doctor

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School of the Péter Pázmány Catholic University in Budapest, Hungary. Her consultant was Professor Dr. (Hab.) Péter Kovács, a reputed Hungarian scholar in public international law, also a judge in the Constitutional Court of the Republic of Hungary . It is to be noted that Prof. P. Kovács is very effective as a consultant of candidates for PhD. degree from abroad, e.g. in 2007 Dr. Louis-Philippe Francois Rouillard (Canada) consulted by Prof. P. Kovács was successful to get his PhD. degree with his thesis *„Precise of the Laws of Armed Conflicts".*

To begin with, the division of the book into three chapters seems to be a proper solution for a thorough presentation of the topic. One of the most interesting methodoligical issues confronting anyone who writes about international criminal justice is to determine where the phenomenon begins and where should its study end. In the case of Dr. Apreotesei-Szabó's research work the limits are pre-determinated. The First Charter details the essential stages (the military tribunals after Second World War, the ad hoc tribunals in the last '90-ies, and the 1998 Rome Conference) of the road from the "dream to the reality" in a very correct way which serves properly the examinations made by the author in the next chapters. The dream is convincingly formulated by referring to the works of Vespasian Pella (1897-1952) a former President of the International Association of Penal Law who believed in the idea of international justice. And in 2002, exactly 50 years after his death, his dream came true by entering into force of the Rome Statute.

The Second Chapter contains a very profound research on some of the really problematical issues of the Rome Statute. It starts with the principle of complementarity which is unique in comparison with the jurisdiction of the ad hoc international criminal tribunals created in 90'ies. The precedents of the unwillingness or inability to prosecute on the base of international law (the Nuremberg trials, the trial of A. Eichmann, the trial of K. Barbie, the Pinochet trial, Milosevic trial, Karadzic trial, Saddam Hussein trial) are described in chronological order in an exhaustive way, with enormous factual knowledge. The author pays special attention to the issue of the transitional justice in some former communist countries, because after radical political changes in 1989-90 they found themselves in a dilemma without middle course solution: to punish or to amnesty the crimes committed during the communist regime for political reasons? The attitude of the European Court of Human Rights is also presented by some of its relevant judgments.

The second part of Chapter II deals with the strategy of the USA concerning the ICC, which is finally defined as "strategy against ICC". The problem is analysed by itself, through the responses of the European Union and also considering the experience of Romania. All statements and conclusions of the author are correct. It is to be noted that Dr. Apreotesei-Szabó approaches and examines the problem as seen from the point of view of international law and leaves political actors and factors aside.

The third part of Chapter II is very well deliberated and precises the long-term and very contradictory legal work aimed at creating a definiton of aggression, a very sensitive problem of international law which still eis waitnig for its final solution. In the lack of it the ICC cannot exercise on its own jurisdiction over the crime of aggression and this situation as well as other rules of ICC insinuate some dependance on Security Council and possibilities for political influence. After a comprehensive research work analysing the travaux préparatoires of the Rome Statute, the case-law of the International Court of Justice, the UN GA resolutions, and scholars' approaches the author accepts that an „act of aggression" means an act referred to in United Nations General Assembly resolution 3314 (XXIX) of 14 December 1974 and responsible for it is an individual who, being in a position effectively to exercise control over or to direct the political or military action of a State, plans, prepares, initiates or executes such an act. As far as

the problematic exercise of jurisdiction of ICC the author formulates a notable modus vivendi solution which is worthy to be cited:

„a) *If a situation is referred to the Court by the Security Council, and therefore there is a determination as to the existence of an act of aggression by a state, the Court shall proceed with the case.*
b) If a situation is referred to the Court by a State-Party, the Prosecutor should first ascertain whether the International Court of Justice has made a finding in proceedings brought under Chapter II of its Statute that an act of aggression has been committed by the State concerned. If such a finding exists the Court shall proceed with the case. If the Prosecutor finds that the International Court of Justice was not seized under Chapter II of its Statute.
c) As well as when the Prosecutor proprio motu intends to proceed with an investigation, the Court should ascertain whether the Security Council has made a determination of an act of aggression committed by the State concerned. If no Security Council determination exists, the Prosecutor shall notify the Security Council of his intention so that the Security Council may take action, as appropriate. Where the Security Council does not make a determination as to the existence of an act of aggression by a state, within six month from the Prosecutor's notification, the Court shall proceed with the case." (p. 102)

The fourth part of Chapter II dealing with the issues of victimology is an excellent piece of comparative research work.

The Third Chapter contains a real novelty with very correct description of the standing of first trials and arising problems related to the growing activities of the ICC. Here the author has the possibility to draw the attention to the areas where the law application by ICC in some cases would mean also law-making with conclusions to be cited later in international law**.** The first four cases in which the ICC is involved nowadays, are correctly presented in their inherence and preliminaries by the author (the investigations on the fifth one started after concluding this book). Since the trials are still in progress any kind of comparisons would not be reliable, and Dr. Apreotesei-Szabó suitably resists such a temptation.

The last part of the book, the Conclusions correctly address the problematic issues by a very comprehensive explanation. They again illustrate the values of this book and its distinction from the big number of publications discussing the problems of international criminal justice: since the author wrote it "hand in hand" in time with the proceedings of the ICC, all of the issues presented are in fact the problems risen by cross-section trial of the Rome Statute regulations into practice. It might be very interesting to read a book on these topics after ten years – would by that time these problems be solved or rather multiplied? On my side I miss only the analyse of the causes for the too slow proceedings of ICC which does not serve its reputation as a new judicial court created to punish injustices on world-scale.

I think the most convincing proof of the thorough grounding of Ms. Apreotesei in the topic is perhaps the last sentence of the book, predicting the arrest of the Sudanese President Al Bashir as a most desiring possibility which would definitely verify the reason for the existence of the ICC and again and again refute the so called lex imperfecta character of public international law. After concluding the book on 4th March 2009 the ICC took its most important action up to now from legal point of view by issuing the Warrant of Arrest for Omar Hassan Ahmad Al Bashir[2], a legal act ordering for the first time in international criminal law history the arrest of a State Head in office.

[2] http://www.icc-cpi.int/iccdocs/doc/doc639078.pdf

My next remark would stress again that the book presented is really of current concern and interest: even its title insinuates some later reactions to the proceedings of ICC: on 17th March 2009 a statement of the UN General Assembly President, Mr. Miguel d'Escoto Brockmann (formerly a minister in the Nicaragua Sandino government until 1990) called the arrest warrant decision of ICC as "unfortunate", adding that it does a disservice to the public perception of international justice. "It helps to deepen a perception that international justice is racist because this is the third time that you have something from the ICC and for the third time it has to do with Africa," he stated[3]. On page 193 of the book Ms. Apreotesei formulates the question: „How come all the situations ICC is dealing with, are all in Africa? Why not Iraq? Why not Afghanistan?" The real answer of these questions would be if the future practice of ICC superseded them.

Dr. Apreotesei-Szabó' book takes a detailed and analitical stock of the basic problems of international criminal prosecution for serious crimes defined as such by international law and also of the elements of novelty for the international criminal order, both from a substantive and procedural perspective. On my opinion by this book she earned her capacity of a new member of the small international community of experts on international justice.

[3] http://www.un.org/apps/news/story.asp?NewsID=30216&Cr=assembly+president&Cr1=