

## 32 HOW TO PUT AN END TO IMPUNITY IN INTERNATIONAL CRIMINAL LAW? – JURISDICTION OF THE ICC

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**Ádány Tamás Vince: A nemzetközi büntetőbíróság joghatósága. Előzmények, tendenciák és előfeltételek, Budapest, Pázmány Press, 2014, p. 272. ISBN 978-963-308-182-2**

The basic of the monograph of Tamás Vince Ádány was his doctoral research and thesis. The author's main research interests are international criminal and humanitarian law, the title of his doctoral thesis is Tendencies of Accountability for Atrocities from the Perspective of the Preconditions to the Exercise of Jurisdiction of the International Criminal Court. In the work to be described in this article, the author attempted to show international legal framework for the international applicability of individual responsibility and examine issues relating to the jurisdiction of the International Criminal Court. No doubt the novelty of the topic, because there is no Hungarian study or PhD in this referent.

Behind the monograph is surely a serious research, and it is definitely a significant result for Hungarian jurisprudence also. The practical applicability of the topic is evidence, as shown by the number of relevant decisions, verdicts before the International Criminal Court, which can be found in the monograph and those which were born since the book was published.

According to the classical conception of international law, public international law subjects are States. The international criminal law is a very young field of law, which is still constantly evolving and changing.

All national criminal justice system in the world recognizes this principle is not as a consequence of the general principles of the law of nations, the principle of individual criminal responsibility. In comparison, if the individual sources of international criminal law norms underlying assume liability of the individual as an appropriate subject of criminal responsibility in this regard. The question arose, however, that he may be right rules of international law, international criminal responsibility, or can only take place within the national legal system as an intermediary. Closely related problem is that if the individuals of international crimes beheld liable as a direct result of international crimes

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be held liable directly on the basis of norms of international law, whether the conduct of due process only the national courts, or possibly judiciary superstate entitled. Specific response to these problems for a long time it was left out because the subjects of international law, traditionally the states and international organizations were, however, not the individuals you enjoyed this status for a long time.

Formed in the book since the Nuremberg judgment decades solutions exposed to each other by the author to the question of whether, that the division between the installation of the impeachment distributive various international entities does increase the effectiveness of the impeachment, or, conversely, the liability regimes inhibit one another? One of the central questions of the book so that the conditions under which the State may be held liable, international organization or individual is virtually the same offense.

As the author sets: serious relevance by the fact that different systems of liability set of different concepts for the most serious offenses – or violations of preemptory norms of international crimes – to what extent overlap.

Tamás Ádány this issue to individual responsibility in terms of approach and describes the Rome Statute and the ICC in relation to the procedure.

I absolutely agree with the writer who states that the crucial question is that the responsibility sometimes disappears (page 16 of the thesis). That is why Tamás Ádány dwells on borderlines, as for example state immunity and the immunity of heads of state and senior officials in international law.

The monograph consists of two parts and five different chapters. In the first section the author deals with individual criminal responsibility, while in the second he studies the preconditions to the exercise of jurisdiction of the International Criminal Court. In Chapter 1 the author introduces the historical antecedents of his research topic, in particular the formation of it after the II. World War and the ad hoc tribunals.

After reviews the historical background, Tamás Vince Ádány treat state responsibility and individual criminal responsibility. In Chapter 2 Ádány writes about the fragmentation of the individual criminal responsibility. The author states that there can be cases, when individual responsibility and state responsibility exist together. On the other hand on the field of the statutory law it have to be distinguished – *de lege lata* – between the two responsibility. As the Rome Statute says: No provision in this Statute relating to individual criminal responsibility shall affect the responsibility of States under international law.<sup>1</sup> Then again the contributor declares, it is imaginable that the state immunity and the individual criminal responsibility rule out each other. For example if the real perpetrator can be call to account for a crime, and the same time it cause the state's impunity, it is possible that international responsibility for crimes would be more successful (pp. 68-69 of the monograph).

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1 Rome Statute of the International Criminal Court, Art. 25.§ (4).

Ádány emphasizes that his proposals about the connection of the international individual and state responsibility, have to be interpreted *de lege ferenda*. It is clearly visible, that there are situations, when the international responsibility of states and individuals exist in the same time, such as the call of heads of state and senior officials to account for ‘international crimes’.

The second chapter of the first part comprehend the doctrinal questions of the responsibility for most serious violations in international law. In my opinion it is a very precious part of the book, because we cannot find such an extensive research of this topic, especially in hungarian international law literature.

The universal jurisdiction, and it’s role nowadays is also a relevant question in the volume. The problem with universal jurisdiction does not lie in its application: its source is the lack of application. National authorities have been reluctant to increase their case burden further, particularly so if those cases would require a huge amount of extra workload without offering apparent, if any results.<sup>2</sup>

The thesis also contains the most relevant books and scientific articles in the topic of the research. The thesis contains the most relevant cases related to the research topic: Eichmann, Pinochet, Yerodia-cases.

In the second part of the book he deals with crimes prosecuted by the International Criminal Court and the jurisdiction, and also with the substantive and procedural preconditions of Jurisdiction of the International Criminal Court. It is supported with examples and cases, that is why it is readable and easy to understand. It can be useful for the implementation of law, because of the statement of the conditions, the sentencing procedure, suspension and abandonment.

A core question to practical complementarity will be testing the genuineness of national prosecutions – by a secondary, international body. The synoptic rules on the lack of willingness and ability form an integral part of the Rome Statute, but it remains silent, along with the preparatory materials, on the conditions a national prosecution must meet, if it intends to be ‘genuine.’ One notable example mentioned by the Statute is the so-called ‘shielding’, but its actual meaning is missing from the legal tools. The solution to this problem in my opinion lies in the integration of an international public law understanding of the ICC preconditions. During my researches such an approach led to the judicial practice of various human rights courts, as these had to answer a very similar problem to this ‘genuine’ ICC issue. In the course of a joint interpretation of the right to life and the right to effective remedies both the European and the Inter-American Courts of Human Rights have developed certain standards, that can be interpreted as qualitative requirements

2 Tamás Vince Ádány: Tendencies of Accountability for Atrocities from the Perspective of the Preconditions to the Exercise of Jurisdiction of the International Criminal Court – Summary of Doctoral Theses, Budapest, 2011, p. 24.

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*vis-à-vis* state investigations in cases involving killings allegedly attributable to state officials. According to my best knowledge, the identification of these standards, let alone their application to international criminal legal problems has not been published before. These judgements may predict those conditions, that the Pre-Trial Chamber will probably evaluate in order to identify a genuine national prosecution.

I am convinced that the monograph presented by Tamás Vince Ádány reflects a thorough and well-founded research resulting in a highly important contribution related to this very current and sensitive topic in international criminal law. Although at first the reader based on the title might expect a writing about the jurisdiction of International Criminal Court, gets much more: a comprehensive material for the international individual criminal responsibility, its historical antecedents and development too.

The author of the preface to the book as possible to free the shortcomings of the book, because of flaws, but it was unnecessary to feel: a comprehensive, practical issues, both doctrinal and evasive, clear hands can guide the reader.

The work supported by numerous examples and case law may be useful for the Hungarian law enforcement, as well as a number of points discussed the division of powers between the national and international forums, and the appearance of the Hungarian international criminal law. More useful would be the only legislator to read the work, since the Statute of the International Criminal Court for 13 years cannot be published – citing various internal legal obstacles. Tamás Ádány's book, however, clearly shows that there is more from responsibility under international law based on the Hungarian government and the people living in the area.