

INTRODUCTION

The Triggering Procedure of the International Criminal Court, written by Dr. Hector Olasolo, constitutes a comprehensive and analytical presentation of the most innovative procedural aspects of the Rome Statute creating the International Criminal Court. This book illuminates those proceedings which precede the initiation of a criminal case. It appears as the first book of its kind to do so in English, constituting an updated and revised version of the work published in Spanish at the end of 2003 by Tirant lo Blanch and the International Humanitarian Law Institute of the Spanish Red Cross, thus becoming a significant contribution to the literature on the International Criminal Court. Besides, it is particularly timely as it offers needed solutions as the Court is about to initiate its first investigations on situations, in which it appears that grave crimes against humanity, crimes of war and/or genocides may have been committed, and when many communications referring to other situations have already been received by the Office of the Prosecutor.

This book starts with a historical and conceptual approach to the Rome Statute. The author elaborates on the creation of an inter-state criminal justice system equipped with a jurisdictional organ: the International Criminal Court. The ICC has the jurisdiction to investigate, prosecute, declare individual criminal responsibility derived from the commission of crimes contemplated in the Rome Statute, and enforce any sentence reflecting such responsibility, as well as the establishment of the infrastructure required effectively to carry out its jurisdictional functions, and to guarantee its independence and autonomy *vis-à-vis* other political entities such as States or the United Nations.

Particularly interesting is the author's conception of the Rome Statute as the "soul" of a legislative act of the international community incorporated in the "body" of a legislative act of the States Parties. And how, as new States continue to join the Rome Statute, the process of establishing an authentic international criminal jurisdiction will be completed.

In the second chapter of this book the procedural regulation of the triggering procedure of the International Criminal Court is analysed. This includes a suggestive systematic interpretation of arts. 15, 18 and 53 of the Rome Statute, which will surely be the source of debates on the nature and content of these provisions.

The Rome Statute, unlike the statutes of the International Criminal Tribunals for the former Yugoslavia and for Rwanda, creates a permanent

court whose potential jurisdiction covers the territory and includes the nationals of States Parties and is universal in cases in which the Security Council makes a referral. Also unlike those two “ad hoc” tribunals with jurisdiction over specific situations whose personal, territorial and temporal parameters were defined by the UN Security Council that created them, in the case of the ICC it is not possible to determine *a priori* the situations over which its jurisdiction is activated and the Court can become involved. The ICC is endowed with a latent jurisdiction which is triggered with regard to a particular situation only when the competent organ of the Court decides to exercise its investigative, prosecutorial, declarative and enforcement powers within the personal, territorial and personal parameters that define such situation.

From here, the author concludes that the power to activate the potential jurisdiction of the Court or, following the terminology of the Rome Statute, to “initiate an investigation”, amounts to an additional dimension of its jurisdiction which is also an expression of the Court’s material primacy over national jurisdictions and of its cooperative, as opposed to subordinate, relationship with the Security Council.

This additional dimension of the jurisdiction of the Court is exercised through a triggering procedure that necessarily precedes and is autonomous from any criminal procedure before the Court. It consists of three types of proceedings, depending on who makes the activation request: the Office of the Prosecutor upon receipt of reports of the crimes, the Security Council or a State Party.

The final chapter of the book focuses on the material prerequisites for the activation of the latent jurisdiction of the ICC. The author classifies them into three groups. In the first, he includes those derived from the personal, subject-matter, temporal and territorial scope of the jurisdictional powers of the ICC.

The second group includes the two material prerequisites resulting from the relationship between the Court, on the one hand, and national jurisdictions and the Security Council, on the other hand. The first is linked to the principle of complementarity, which operates in cases of inaction, unwillingness or inability of national jurisdictions to investigate and prosecute crimes allegedly committed within a crisis situation. And the second is a manifestation of the principle of cooperation between the Court and the Security Council embodied in the absence of any Security Council request not to activate the latent jurisdiction of the Court over a concrete situation so as to avoid the jurisdictional activity of the Court undermining the effect of measures taken by the Security Council under Chapter VII of the Charter of the United Nations.

In the third group are included two other material prerequisites, both of them expressions of the principle of political discretion, requiring that a situation be of sufficient gravity to activate the jurisdiction of the Court. And that there are no substantial reasons for believing that the activation of the latent jurisdiction of the ICC over such situation would not serve the interests of justice.

Finally, the book highlights several areas for possible future reforms. Some of these include detailed proposals, which deserve to be examined in the future by the Assembly of States Parties, to be held only four years from now.

Congratulations are in order for the author, for the most innovative book written on the International Criminal Court. As the triggering procedure is an innovative feature in the founding statute of the ICC, not yet applied in practice and presenting difficulties in its being understood, this book is highly recommended as a tool for interpretation for both academicians and practitioners in the field of International Criminal Law.

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Joaquin Martin Canivell

“Ad litem” Judge

International Criminal Tribunal for the former Yugoslavia