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IV. A. 1. International Criminal Court

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Hungarian Report on the International Criminal Court

Abstract. In the study the legal system is conteptualized as a meaning system which contains the text layer, the layer of the legal dogmatics, the layer of judicial precedents and in some modern legal system the layer of the constitutional tights is added to these. The study outlines the is identified as the layer of the constitutional rights first of all. Contains the text layer, the layer of the legal dogmatics, the layer of judicial precedents and in some modern legal system the layer of the constitutional tights is added to these. The study outlines the is identified as the layer of the constitutional rights first of all.

Keywords: legal system, legal theory, legal dogmatics, constitutionalization

The Rome Diplomatic Conference on the Establishment of an International Criminal Court ended on 17 July 1998 with the adoption of the Statute of the International Criminal Court (ICC Statute). The next day the treaty was opened for signature at Il Campidoglio in Rome. The purpose of the ICC Statute is to create a permanent international criminal court that will effectively investigate and prosecute the most serious violations of international human rights law: genocide, crimes against humanity, and war crimes.

The treaty containing the ICC Statute will enter into force 60 days after the sixtieth instrument of ratification is deposited at the United Nations. As of 12 February 2001, 139 States have signed and 29 States have ratified or acceded to the treaty.[1]

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[1] Progress report on the ratification and national implementing legislation of the statute for the establishment of an International Criminal Court. 7th Edition. 19 February 2001.

1. New tendencies in international criminal law[2]

1.1. Ad hoc *international criminal tribunals*

The United Nations Security Council Resolutions 827 (1993) and 955 (1994) established *ad hoc* international tribunals. Security Council Resolution 827 established an international tribunal for the prosecution of persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991. Security Council Resolution 955 established an international tribunal for the prosecution of persons responsible for acts of genocide or other serious violations of international humanitarian law committed in 1994 in the territory of Rwanda and as far as Rwandan citizens are concerned, responsible for such violations committed in the territory of neighbouring States.

According to the Statute of the international tribunal on Yugoslavia (ICTY) the tribunal and national courts have concurrent jurisdiction to prosecute persons for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1 January 1991. The international tribunal has primacy over national courts. At any stage of the procedure, the international tribunal may formally request national courts to defer to the competence of the international tribunal in accordance with the ICTY Statute and the Rules of Procedure and Evidence of the ICTY. (Art.9.)

The Prosecutor initiates investigations ex-officio or on the basis of information obtained from any source, particularly from Governments, United Nations organs, intergovernmental and non-governmental organisations. The Prosecutor assesses the information received or obtained and decide whether there is sufficient basis to proceed. (Art.18.)

1.2. The Lockerbie case

Besides establishing *ad hoc* international criminal tribunals the Security Council also interfered with international criminal jurisdiction by its decision in a concrete case. The UN International Court of Justice has confirmed such interference.

[2] This chapter intends to illustrate the changing international climate in which the Statute was adopted and which serves as a frame for the current ratification procedure For past events *see* Bassiouni, M. Ch.: Historical Survey: 1919–1998. In: *The Statute of the International Criminal Court, A Documentary History*, Complied by Bassiouni, M. Ch.: Transnational Publishers, Inc, Ardsley, New York, 1998.

In the Lockerbie case the Security Council demanded in its Resolutions 748 (1992) and 883 (1993) that Libya submit the two accused Libyan nationals for trial before a Scottish court. For the failure to comply with the resolutions the Security Council also imposed economic sanctions on Libya.

As a response Libya begun proceedings before the International Court of Justice against both the US and the UK by arguing that they had failed to meet their obligations under the 1971 Montreal Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation. Libya claimed its willingness to prosecute those accused of the bombing and by this she would have fulfilled her own obligations under the Montreal Convention.

In a provisional order of 14 April 1992 the International Court of Justice decided that the Security Council Resolution based on Article 103 of the UN Charter prevails over the obligations of the Parties under any other international agreement including those under the Montreal Convention.

Accordingly the Security Council in its Resolution 1192 (1998) of 27 August 1998 called all states to co-operate to ensure the presence of the two before a Scottish Court in the Netherlands and suspended the measures imposing economic sanctions on Libya. The help of the Secretary-General of the United Nations was decisive for the transfer of the accused. On 5 April 1999 the two accused were first surrendered to a United Nations official at the Tripoli airport in Libya and later on the same day to the Scottish authorities in the Netherlands.

1.3. Crimes under international humanitarian law

In the *Nicaragua case* the International Court of Justice observed that the laying of mines in the waters of another State without any warning or notification is not only an unlawful act but also a breach of the principles of humanitarian law underlying the Hague Convention No. VIII. of 1907. The Court considered that the rules stated in Article 3 of the four Geneva Conventions of 12 August 1949, which is common to the four Conventions, applying to armed conflicts of a non-international character should be applied. This obligation derives from the general principles of humanitarian law to which the Conventions merely give specific expression.[3]

[3] Summaries of Judgments, Advisory Opinions and Orders of the International Court of Justice. United Nations New York, 1992. 79. Case concerning the military and paramilitary activities in and against Nicaragua (Nicaragua v. United States of America) (Merits) Judgment of 22 December 1986 166.

In the *Pinochet case* Law Lords emphasised that the immunity of the Head of State would simply be incompatible with the provisions of the Torture Convention which clearly indicates the official or governmental character of torture as a constituent element of the crime. Under customary international law there can be no immunity for crimes of international law. The exercise of extraterritorial jurisdiction over certain grave offences is permitted on the basis of the universality principle. However, if one accepts the prohibition of torture as a *ius cogens* norm such immunity can not co-exist with that norm. Since *ius cogens* norms enjoy the highest status within international law they prevail over and invalidate other rules of international law.

John Hopkins commented on the above cases as follows: "The cases show remarkable and, as it appears, unprecedented willingness to rely upon provisions of international law, both conventional and customary, in domestic proceedings. The relationship between international and municipal law will be viewed very differently henceforth. In particular, the apparently ready acceptance by the majorities of the notion of *ius cogens* and of the provisions of the Torture Convention (and of certain other treaties) as instances of the *ius cogens* is perhaps surprising."[4]

1.4. The opinion of the Hungarian Constitutional Court

The Hungarian Constitutional Court made the following elaboration in relation to crimes under international humanitarian law:

The first sentence of Art. 7 (1) of the Constitution, according to which the legal system of the Republic of Hungary accepts the generally recognised rules of international law, states that these "generally recognised rules" are part of Hungarian law, even without separate (further) transformation. An act of general transformation—one without a definition or enumeration of the rules—was performed by the Constitution itself. According to it, the generally recognised rules of international law are not part of the Constitution but are "assumed obligations". The fact that the assumption and transformation are contained in the Constitution does not affect the hierarchical relationship of the Constitution, international and domestic law. This general internalisation of assumed obligations absolutely does not preclude certain "generally recognised rules" from being defined by specific international agreements (as well), and that regarding those a separate act of

[4] Hopkins, J.: Case and Comment—Former head of foreign state—extradition—immunity. *The Cambridge Law Journal,* Volume 58 Part 3 November 1999. 465.

transformation takes place. The United Nations Charter and the Geneva Conventions, for instance, may contain such rules.

Articles 7 (1) of the Constitution also means that by the Constitution's command, the Republic of Hungary participates in the community of nations: this participation, therefore, is a constitutional command for domestic law. It follows therefrom that the Constitution and domestic law must be interpreted in a manner whereby the generally recognised international rules are truly given effect.

The second sentence of Art. 7 (1)—the harmonisation of the obligations assumed under international law and domestic law—applies to every "assumed" international obligation, including the generally recognised rules. In addition, harmony must be achieved for the whole of domestic law, the Constitution included. Thus, Art. 7 (1) of the Constitution requires the harmony of the Constitution and the obligations derived from international law—assumed directly under the Constitution or undertaken in treaties—as well as domestic law: is ensuring their harmonisation, attention must be paid to their particular characteristics.

Historically, the distinction has been applied with respect of war crimes and crimes against humanity committed during the Second World War. But the development of international law has continuously separated the sphere of "international humanitarian law" from the war context and made the prosecution and punishment of these crimes independent of the requirements and conditions of the domestic criminal law system, also with regard to statutory limitations, inasmuch as two conventions on the non-applicability of statutory limitations for war crimes against humanity have been concluded.

The rules on the punishment of war crimes and crimes against humanity—since these crimes threaten the foundations of humanity and international coexistence—constitute peremptory norms of general international law (*ius cogens*). Those States which refuse to assume these obligations cannot participate in the community of nations.

The norms on war crimes and crimes against humanity are undoubtedly part of customary international law: they are general principles recognised by the community of nations in the parlance of the Hungarian Constitution, they belong to "the generally recognised rules of international law". The Hungarian legal system accepts these rules, according to the first clause of Art. 7 (1) of the Constitution, therefore they fall, without separate transformation or adoption, within those "assumed obligations under international

law" whose harmony with domestic law is required by the second clause of the aforementioned Article of the Constitution.[5]

1.5. The universality principle

According to Feller the universality principle reflects the special quality of the class of offences known as *delicta iuris gentium*, crimes under international law. These crimes threaten to undermine the very foundations of the enlightened international community as a whole, and it is this quality that gives each one of the members of that community the right to extend the incidence of its criminal law to them, even though they are committed outside the state's boundaries and the offender has no special connection with the state. One essential prerequisite for the application of the municipal criminal law of a certain state in a particular case is that the offender be in its territory. The link between the offender and the *lex loci deprehensionis* is the injury which the offence causes to the foundations and security of the entire international community. This is what endows every state with the power to establish by law the incidence of its own municipal criminal law on *delicta iuris gentium* if the offender is actually in custody in its territory.

The universality principle must necessarily be of a general nature, i.e., the personal status of the offender cannot affect the incidence of the municipal criminal law by virtue of that principle. The offender may be the national of another state, he may be domiciled elsewhere, stateless or with no permanent domicile, nevertheless, in each of these cases he will fall within the scope of that law, provided that two basic conditions are satisfied, namely, he is within the territory of the state that seeks to apply its municipal law and the offence is one of those embraced by the universality principle.

There is no point here in demanding, as a prerequisite of its applicability, the double criminality of the conduct in question, too. The principle holds good even when the conduct does not constitute an offence in the place where it occurred, that is also the position when the offence is committed in a place over which no state has sovereignty.[6]

[5] Detailed in: *Constitutional Judiciary in a New Democracy*. The Hungarian Constitutional Court László Sólyom and Georg Brunner with a Foreword by Justice Stephen G. Breyer (The University of Michigan Press 2000), 273–283.

[6] Feller, S. Z.: Theories and Jurisdiction in: *A Treatise on International Criminal Law*, Volume II Jurisdiction and Cooperation (Charles C Thomas Publisher Springfield Illinois USA, 1973), 32–34.

By virtue of the universality principle, some legal systems (e.g. in Hungary) provide that proceedings are to be initiated only in cases of this kind by the head of prosecutions himself. The reason for this is that in addition to all the other considerations to be taken into account in weighing the initiation of proceedings in the case of extraterritorial offences, special legal problems arise when the offence is an international crime.

It is necessary to pay attention to the Belgian Congo case, which is pending right now and which may also substantially affect the interpretation of the *universality principle*.

An international arrest warrant was issued on 11 April 2000 by a Belgian investigation judge against the Minister for Foreign Affairs in office of the Democratic Republic of the Congo. The warrant also sought his provisional detention as long as a request for extradition to Belgium for alleged crimes constituting serious violations of international humanitarian law are pending. Under the very terms of the arrest warrant, the investigating judge claims jurisdiction in respect of offences purportedly committed on the territory of the Democratic Republic of the Congo by a national of that State *without* an allegation that the victims were of Belgian nationality or that these acts constituted violations of the security or dignity of the Kingdom or Belgium.

Congo pointed out in her reply that such universal jurisdiction is conditional on the perpetrators' presence on the territory of the prosecuting State, and these are exceptional heads of jurisdiction, which derive their compliance with international law solely from the treaties which provide for them and which are not part of general international law.

In her declaration, the Belgian Judge Van den Wyngaert emphasised the importance of the case for the development of modern international criminal law. According to Van den Wyngaert international community undoubtedly agrees in principle with the proposition that the core crimes of international criminal law (war crimes, genocide and crimes against humanity) should not remain unpunished. How this should be realised in practice is still the subject of much discussion and debate. Ideally, such crimes should be prosecuted before international criminal courts. However, not all cases will be justifiable before such courts and in the meanwhile national criminal prosecution before domestic courts is the only means to enforce international criminal law. States have not only a moral but also a legal obligation under international law to ensure that they are able to prosecute international core crimes domestically.

Judge Van den Wyngaert draws the attention to the growing support for the idea that traditional limitations on criminal prosecution (territorial

jurisdiction, immunities) cannot be applied to international core crimes. This idea is gaining support, not only in legal doctrine but also in national courts' decisions such as the judgement of the House of Lords in the *Pinochet case.*

In contrast to the above opinion the International Court of Justice rejected the request of the Kingdom of Belgium that the case be removed from the List and found that the circumstances, as they presented themselves in the Court, were not such as to require the exercise of its power under Article 41 of the Statute to indicate provisional measures.[7]

The arrest warrant issued by the Belgian investigating judge is based on the universality principle and not on the priciple of forum deprehensionis. This is an important novelty of the case.

2. The jurisdiction of the ICC

One should examine the truth of the opinion according to which the Statute of the ICC is a step backwards from the position that had been taken for the courts of the former Yugoslavia and Rwanda, and the concept of complementarity provides a major and unnecessary restriction on the jurisdiction of the court. Once it had been accepted that these core crimes were damaging to the international community and could be tried by an international court, the pride of national sovereignty should not have been allowed to obstruct the effectiveness of that court.[8]

The Preamble and Art. 1 of the Statute laid down that ICC's jurisdiction shall be complementary to the national criminal jurisdictions. The jurisdiction of the ICC under Article 5[9] extends, to three well-established international crimes: genocide, war crimes, and crimes against humanity. They conform to existing international criminal law and fall within the meaning of *ius*

[7] Case Concerning the Arrest Warrant of 11 April 2000 (International Court of Justice, 8 December 2000, General List No. 121).

[8] Elliott, C.: A Permanent International Criminal Court: 'A Giant Step Towards Universal Human Rights' or 'Dead on Arrival'? *The Journal of Criminal Law*, 2000. 401. Quotations in the title are taken from the comment of Kofi Annan, Secretary-General of the UN, The Times, Monday 20 July 1998. And from the comment of the American Senator Jesse Helms before the Rome conference (quoted by the Lawyers Committee for Human Rights at www.lchr.org/lchr/icc/rome/senate.htm).

[9] The jurisdiction of the Court shall be limited to the most serious crimes of concern to the international community as a whole. The Court has jurisdiction in accordance with this Statute with respect to the following crimes:

(a) The crimes of genocide, (b) Crimes against humanity, (c) War crimes, (d) The crime of aggression.

cogens which is binding upon all states and which contains norms that carry obligations from which a state may not derogate. The Statute also lists the crime of aggression, which has yet to be defined and is therefore not subject to the ICC's jurisdiction.[10] Furthermore, the Court has jurisdiction also over crimes against the administration of justice and may impose sanctions (Article 70, 71).

Bassiouni states that "the ICC is a treaty-based institution which is binding only on its states parties. It is not a supra-national body, but an international body similar to other existing ones. The ICC is not a substitute for national criminal jurisdiction and does not supplant national criminal justice systems, but rather is "complementary" to them. The ICC does no more than what each and every state in the international community can do under existing international law.[11] It is the expression of collective action by states parties to a treaty that established an institution to carry out collective justice for certain international crimes. The ICC is, therefore, an extension of national criminal jurisdiction as established by a treaty whose ratification under national parliamentary authority makes it part of national law. Consequently, the ICC neither infringes upon national sovereignty nor overrides national legal systems capable of and willing to carry out their international legal obligations.[12]

The Court can exercise jurisdiction over crimes that have been committed on the territory of a state party or by one of its nationals[13]. In addition, the ICC may exercise its jurisdiction when a state which is not a state party consents to the Court's jurisdiction and the crime has been committed on that state's territory or the accused is one of its nationals.

Jurisdiction of the ICC is based on the principle of territorial criminal jurisdiction, and not on a theory of universality of criminal jurisdiction. While the reach of the Court's jurisdiction is universal, it does not represent the theory of universality, except for "referrals" from the Security Council, which are not linked to the territoriality of any state, whether they are Parties or non-States-Parties. It is clearly established in international law that whenever a crime is committed on the territory of a given state, it can prosecute the perpetrator even when that person is a non-national. Accordingly, every state has the right, in accordance with its constitutional norms, to transfer

[10] Bassiouni, M. Ch.: Explanatory Note on the ICC Statute, in*: Revue Internationale de Droit Pénal* 71eme année, 1er et 2eme trimestres, 1–39.

[11] Compare with conclusions of this chapter.

[12] Bassiouni: *op. cit.* point 6.

[13] Bassiouni: *ibid.* point 15.

jurisdiction to another state which has jurisdiction over an individual accused of committing a crime, or to an international adjudicating body.[14]

On the basis of the above Bassiouni argues that since the ICC is not a foreign legal system (such as that of a sovereign state), after ratification of the treaty, it becomes an extension of a state's national criminal jurisdiction. This is not to be confused with the idea that the ICC is an extension of national criminal justice systems. The ICC is neither part of national criminal justice systems nor an extension thereof. It is an extension of national criminal jurisdiction established by treaty and implemented by national legislation. The closest analogy is that of transfer of criminal proceedings. Thus, an individual is "surrendered" to the ICC and not extradited.[15] A consequence of that concept is that states parties could not invoke, in opposition to surrender, their domestic laws that prohibit extradition of nationals, or other defences.[16]

In order to evaluate Bassiouni's opinion it is necessary to know Article 12, 13 and 17 of the ICC Statute. The Court may exercise its jurisdiction if one or more State Parties have accepted the jurisdiction of the Court or a State which is not a Party to the Statute accept the exercise of jurisdiction by the Court (Art. 12). The Court may exercise its jurisdiction if: crimes appear to have been committed is referred to the Prosecutor by a State, or by the Security Council acting under Chapter VII of the Charter of the United Nations, or the Prosecutor has initiated an investigation. (Art. 13.) The Court shall determine that a case is admissible if the State is unwilling or unable genuinely to carry out the investigation or prosecution. In order to determine unwillingness, the Court shall consider that the national decision was made for the purpose of shielding the person concerned from criminal responsibility for crimes within the jurisdiction of the Court or there has been an unjustified delay in the proceedings, the proceedings were not conducted independently or impartially (Art. 17).

Bassiouni acknowledges that it is up to the Court to determine that a state is unwilling to genuinely investigate or prosecute, the proceedings are not conducted independently or impartially, national judicial system is totally or substantially collapsed.[17]

[14] Bassiouni: *ibid*. point 16.

[15] Article 102: For the purposes of this Statute: (a) "surrender" means the delivering up of a person by a State to the Court, pursuant to this Statute. (b) "extradition" means the delivering up of a person by on a State to another as provided by treaty, convention or national legislation.

[16] Bassiouni: *op. cit.* point 94.

[17] Bassiouni: *ibid.* point 58.

A conviction or acquittal by a national jurisdiction will not bar subsequent prosecution by the ICC if: (a) the purposes of the state proceedings were to "shield the person concerned form criminal responsibility" or the domestic proceedings were not conducted independently or impartially.[18]

According to Art. 13 the Court may not only then exercise its jurisdiction if a States Party or a non-State Party initiates proceedings at the public prosecutor. The Security Council enjoys the same right, too. Next to those exists the public prosecutor's independent right to initiate proceedings. Although the public prosecutor's right of initiative is dependent on the support of one of the councils of the Court, it nevertheless removes the initiating of the procedure from the exercise of national jurisdiction.

The Security Council besides its independent right of initiative may exercise further influence on the functioning of the Court according to the terms of Art. 16. The activity of the Security Council interferes with national jurisdiction as it happened in the Lockerbie case, when with its Resolutions 748/1992 and 883/1993 interfered into a concrete cases and ordered economic sanctions against Libya.

The Statute itself declares in Art. 17 when does the jurisdiction of the ICC overrides national jurisdiction. The principles of the primacy of national legal systems and the ICC's "complementarity" are evident in other provisions of the Statute. Article 15(4) requires the authorisation of the Pre-Trial Chamber before the Prosecutor commences an investigation *proprio motu* as opposed to when it is referred by a state party or the Security Council /Article 15/.[19] Contrary to Bassiouni's opinion, Art. 15 does not restrict the Court, it restricts only the prosecutor.

Furthermore Art. 27 fundamentally restricts the exercise of national jurisdiction by prohibiting any immunities provided for in the national law in the course of the Court's proceedings.

On the basis of the above one may conclude that it is the sovereignty of those states which did not ratify the convention that "obstruct the effectiveness of that court". On the other hand, for the states parties the ICC represent a restriction of their national jurisdiction. Moreover, the ICC does less than "what each and every state in the international community can do under existing international law",[20] since according to international law states may prosecute hard core crimes on the basis of the universality principle regardless who committed those crimes and where. It is unclear,

[18] Bassiouni: *ibid.* point 63.
[19] Bassiouni: *ibid.* point 9.
[20] See: *supra* note 12.

however, whether this is obligatory for the ICC upon prosecution initiated by the Security Council. This would be only then the case, if the Security Council is not bound by the complementary principle.

Answers to the questionnaire

3.1. Hungary has not yet ratified the ICC Statute. The ratification procedure is currently under preparation.

3.2. There is no objection in Hungary against establishing the ICC. Nevertheless the ICC represents a brand new type of institution, therefore its implementation into the domestic law requires thorough preparation. One possible way of ratifying the Statute would be, if the Hungarian Parliament first ratified it with a special law and provided for the necessary modification of several Hungarian laws only then when the 60 ratifications are deposited and the Statute enters into force. There is so far no decision in Hungary about the method of ratification.

3.3. Since the ICC interferes also with the exclusionary domestic jurisdiction based on the territoriality principle, the chapter of the Hungarian Constitution dealing with the court system needs to be modified accordingly.

At present the Hungarian Constitution provides as follows:
Article 45.

(1) In the Republic of Hungary justice is administered by the Supreme Court of the Republic of Hungary, the Court of the Capital, the county ourts and the local courts.
(2) Special courts for specific groups of cases may be established by law.

Article 47.

The Supreme Court of the Republic of Hungary determines the guidelines for the operation and administration of justice in all courts. The guidelines and principles established by the Supreme Court are of binding nature for all courts.

3.4. Upon ratification the responsibility of the head of state as set out at present in Art. 31/A and 32 of the Hungarian Constitution requires modification. The Hungarian Constitution does not contain further provisions in respect of the responsibility of other leading politicians.

The responsibility of the head of state is regulated as follows:

Article 31/A.

(1) The person of the President of the Republic is inviolable; protection from criminal prosecution shall be granted by a separate law.
(2) Should the President of the Republic violate the Constitution or any other law while in office, a motion supported by one-fifth of the Members of Parliament may propose that impeachment proceedings be initiated against the President of the Republic.
(3) A majority of two-thirds of the votes of the Members of Parliament is required to initiate impeachment proceedings. Voting shall be held by secret ballot.
(4) From passage of this resolution by the Parliament until the conclusion of the impeachment proceedings, the President of the Republic may not attend to any of the duties of his office.
(5) The Constitutional Court shall have jurisdiction in such cases.
(6) Should the Constitutional Court determine that the law was violated, it shall have the authority to remove the President of the Republic from office.

Article 32.

(1) If impeachment proceedings are initiated against the President of the Republic on the basis of an indictable offence committed in connection with official activities while in office, then the Constitutional Court shall also apply the basic provisions of criminal prosecution in its proceedings. The prosecution shall be represented by a Special Prosecutor elected from among the Members of Parliament.
(2) In other cases, criminal proceedings against the President of the Republic may only be initiated subsequent to the end of his term of office.
(3) Should the Constitutional Court find the President of the Republic guilty of an intentional criminal offence, it may remove the President of the Republic from office and simultaneously apply any punishment and measures prescribed for such offence in the Penal Code.

3.5. Further immunities are not contained in the Constitution, but in special laws. Immunity means in those cases not the exemption from criminal responsibility. It contains special procedural rules for waiver of immunity. Such waiver is a prerequisite of commencing criminal proceedings.

The following special laws need to be modified:
— Act No. 1972/V on the Public Prosecution Office
— Act No. 1989/XXXII on the Constitutional court
— Act No. 1993/LIX on the Legal Status of Members of Parliament
— Act No. 1993/CX on National Defence
— Act No. 1977/LXVI on the Structure and Functioning of the Courts
— Act No. 1989/XXXVIII on the Hungarian Court of Auditors
— Act No. 1978/IV on the Hungarian Criminal Code
— Act No. 1996/XXXVIII on International Cooperation in Criminal Matters

3.6. Once the ICC is implemented into domestic law, it would be a contradiction within the national legal system, if different rules applied to proceedings before the ICC and proceedings before a domestic court.

3.7. Upon ratification of the ICC Art. 102 of the Statute becomes part of Hungarian law. Art. 102 distinguishes between extradition and surrender. The Hungarian Constitution does not prohibit the extradition of own nationals. Surrender is, however, a new institution also within the Hungarian legal system. It was first introduced by the ICTY Statute that Hungary ratified. Nevertheless no surrender of Hungarian nationals has taken place so far on the basis of that provision.

3.8. Hungarian law contains provisions on lifetime imprisonment and Hungarian courts may decide that the sentenced person can be on conditional release only after a period of 30 years. Consequently, the ratification of the ICC Statute would not pose any problems in that respect.

The part 10 of Statute the Enforcement. According to Art. 103 a sentence of imprisonment shall be served in a State designated by the Court from a list of States which have indicated to the Court their willingness to accept sentenced persons. Rule 199: Unless provided otherwise in the Rules, the functions of the Court under Part 10 shall be exercised by the Presidency. Rule 200/2: The Presidency shall not include a State on the list provided for in article 103, paragraph (1), if it does not agree with the conditions that such a State attaches to its acceptance. The Presidency may request any additional information from that State prior taking a decision. The Rules 200–225 regulate the enforcement.[21]

[21] In: Revue Internationale de Droit Pénal, 71eme année, 1er et 2eme trimestres 2000 203–215.

3.9. According to section 3.3. of the present report, the proceedings of the prosecutor of the ICC may only serve as the preparation for the functioning of the previously accepted jurisdiction.

3.10. Both Art. 29 of the ICC Statute and Art. 33(2)b of the Hungarian Criminal Code prohibit any statutory limitation in connection with the crimes that fall under the jurisdiction of the ICC. It is rather unlikely that the perpetrator of such crimes may receive pardon. Should this be the case, however, in our view Art. 17(1)a of the Statute could then be applicable according to which it could be classified as if "the State is unwilling to carry out the investigation or the prosecution."