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INTERNATIONAL CRIMINAL COURT: A LEGAL AND POLITICAL COMPROMISE WHICH RENDERS ITS EFFECTIVE FUNCTIONS A RATHER COMPLICATE MATTER

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ABSTRACT

The Rome Statute of the International Criminal Court is - almost seven years since its entering into force and more than ten years since its adoption - still a matter of debates.

The assertive application of a universality principle to the ICC for the heinous crimes under its jurisdiction, though discussed during the drafting phases, has been abandoned at its final approval. Any attempt to justify its application as a necessary intervention for guaranteeing the functionality of the ICC was turned down in favour of its complementary role. In other words, only when Member States to the Rome Statute or anyhow adherents to it are unwilling or unlikely to carry on allegations and trials before their domestic courts, then the ICC may intervene.

Yet, universality principle as a compulsory source of exercise of jurisdiction has been encouraged by some States participating to the drafting phases, which were worried of the potential 'danger of oblivion for its secondary role' whether the ICC would have endorsed any other form of jurisdiction. Besides the extremist positions dictated by universality, it may be seen as a potential alternative a softer analysis of the relationship between the concerned State and the ICC on the basis of the aut dedere aut judicare principle (to try or to release).

In this Article, the exercise of the ICC jurisdiction will be extensively treated starting from the drafting phases of it. However, it may be here anticipated that up to now the expectancies of having a performing Court have been rather disappointing. This because its own inner exercise of jurisdiction depends on a judicial compromise that renders the ICC functioning phases difficult to elucidate with the risks of not satisfying anybody.

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