Kobayashi Maru: Arduous Effort and Scant Incorporation of the Yamashita Standard to the Hellenic Law

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1. Introduction and Facts

The commentary of a legal draft bears an *ipso facto* fluidity, which derives from the certainty that the content of any text introduced to any Parliamentary Committee is to be further discussed, (re-)formed and (re-)forged by the political parties before its final adoption by the Plenum. Nevertheless, this fluidity also constitutes an invitation to the academic and professional community to contribute in a creative and positive way to the amelioration of the text, whether this contribution is focused on the field of legal theory, or the breathing of pragmatism into the text that aims to the successful application of the final legal product.

In fact, the period that lies between the final draft of the ministries and the first session of the Parliamentary Committees is the *momentum* for fruitful contribution, genuinely benevolent and free from ends, which will unavoidably infiltrate any discussion inside the national parliaments at the later stages.

The description of the problematic in Greece serves also a dual purpose before an international audience: the first part is the promotion of the fertile procedure established by the recent Law 3168/2010 in which every legal document that is to be discussed in the parliamentary committees is exposed to the public in a

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governmental internet site and the public can express their opinion in this electronic application freely; the second is the illustration of the problematic that was met by all the nations in their effort to absorb the principles of the Statute of Rome into their national Law, and the lessons learnt from this effort in Greece.

The draft, under the provisional title “Adaptation of the provisions of the national law to the provisions of the [S]tatute of the International Criminal Court, ratified with the Law 3003/2002...”¹ (hereinafter “the Draft”), was publicly announced at the official site of the Hellenic Government² and provided a link for comments (even anonymous ones) for anyone interested, according to the standard procedure of the present administration.³ It stayed open for comments for one week, from 20 October 2010 until the 27th of that month, a particularly brief period judging from the average announcement time for drafts submitted by the Government. This fact narrowed the reaction time of every commentator, since a serious and accurate study for this kind of legal initiatives cannot apparently pass all the levels of academic writing in a week. Indeed, the announcement managed to attract but four comments, two of which were dealing with jurisdiction issues and two of broader interest related to the penal part of the law.⁴

This somewhat limited duration of the announcement of the – future – bill is practically justified with at least three reasons, which are stated here not as a part of personal knowledge of the writer, but rather as a product of a guess, based on personal professional experience:

The first one has to do with the subject of the Draft per se, namely the war crimes, whose legal content is more often than not a part of the Public International Law exams and only exceptionally an issue of jurisprudence, especially in Greece. Furthermore, the interest for active commenting – we assume that it – was even lesser, since the Draft is not in fact a pure initiative but it comes to implement the already existing Law 3003/2002, which ratifies, translates and codifies the Statute of Rome (hereinafter “the Statute”).

¹) Every title that lacks an official translation to English, such as the title of the draft, is translated by the author and the author is responsible for the accuracy of the translation. For that reason, it was considered preferable to translate mot-à-mot, even if the final product may seem somewhat rough for the native English speaker. In several cases of ratification, the official translation used is “Adaptation of the [G]reek legislation to ...” instead. See for example <www.eie.gr/nhrf/news/fek190/Official%20Greek%20Gazette%201990.pdf> [accessed 12 November 2010].
²) <www.opengov.gr/ministryofjustice/?p=713> [in Greek] [accessed 2 December 2010].
⁴) <www.opengov.gr/ministryofjustice/?p=713#consnav> [in Greek] [accessed 2 December 2010].