INTRODUCTION

The idea of the establishment of an international criminal court is in fact not a very new one. Nearly during the whole 20th Century there have been discussions among politicians, jurists and legal writers. These discussions have always been intensified when bloody atrocities and wars all over the world shattered the common consciousness. The first thoughts about an international criminal court could maybe be said to have begun in 1899 with the First Hague Convention for the Pacific Settlement of International Disputes. After the two World Wars it became evident that there had to be a responsibility for acts of war, especially for crimes against the "laws of humanity". After the end of the Second World War and the unconditional surrender of the German army on May 8th 1945 the Americans suggested to their allies the establishment of an international military tribunal for the prosecution of the major war criminals in Europe. The London Charter established the International Military Tribunal (IMT) at Nuremberg that was followed by several follow-up trials. Whatever else the Nuremberg trials did, they strongly established in the legal consciousness the proposition that there are certain crimes under international law or crimes of international concern. During the following years the matters were broadly discussed, but it took more than fifty years after the Nuremberg Trials to establish a permanent International Criminal Court. On July 17th 1998 the Statute of an International Criminal Court was passed in Rome after difficult negotiations of the permanent members of the UN Security Council USA, China, Russia, Great Britain and France. The so-called Rome Statute

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1 ROGGEMANN, INT. STRAFGERICHTSHOEFE, p. 60.
3 ROGGEMANN, INT. STRAFGERICHTSHOEFE, p. 171.
consists of a preamble and thirteen parts that comprise 128 articles altogether.\(^5\) Although UN Secretary General Kofi Annan praised the establishment of the Court as a „gift of hope to future generations, and a giant step forward in the march towards universal human rights and the rule of law,\(^6\)\(^,\) the question arises if the International Criminal Court is really able to provide efficient prosecution of war crimes and crimes against humanity or if the unsolved problems and disagreements of the different states and legal sciences make it impossible for the Court to function properly. The broad international consensus concerning the punishableness of war crimes and crimes against humanity does not change the big obstacles in particular questions.\(^7\) In the following pages I will try to find out if the International Criminal Court can work successfully for the benefit of all. Therefore I will have a close look at the key articles of the Rome Statute.

1 EXPECTATIONS TO THE INTERNATIONAL CRIMINAL COURT

Of course there are a lot of expectations and hopes regarding the International Criminal Court, especially because it became possible to establish that court that was desired for such a long time. Although the Rome Statute might still have some flaws, it represents a luminous page in world history.\(^8\) One could have a look at the problems the hitherto existing ad hoc-tribunals had to face and that were impossible to solve to find some of the solutions expected by the International Criminal Court. For example, the International Criminal Tribunal for the Former Yugoslavia (ICTFY) of 1993 had to face the fact that the Republic of Yugoslavia and the so-called Republica Serpska refused to recognise the Tribunal’s competence and did not surrender anyone accused by it.\(^9\) Besides, the legal foundations and procedural regulations of ad hoc-tribunals have always been discussed very controversial.

The uniformity and the most possible objectivity is regarded as the big advantage of the International Criminal Court compared to the universal penal sovereignty of the states. Therefore, the International Law Commission did not find any sympathy for an ad hoc-tribunal, special international

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\(^7\) ROGGEMANN, INT. STRAFGERICHTSHOFE, p. 18.

\(^8\) Cassese, EUROPEAN JOURN. OF INT. LAW, Vol. 10, Nr. 1, 1999, p. 171.

\(^9\) HARPER, GLOBAL LAW IN PRACTICE, p. 117.