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## JURISDICTION OF THE INTERNATIONAL CRIMINAL COURT OVER CRIMES COMMITTED ON THE TERRITORY OF AFGHANISTAN\*\*

**ABSTRACT:** The subject of this paper is the territorial and personal aspects of the jurisdiction of the International Criminal Court regarding crimes committed on the territory or in connection with the armed conflict on the territory of Afghanistan. In 2020, the International Criminal Court determined that the conditions had been met for initiating an investigation into crimes committed in Afghanistan, or in connection with the armed conflict in Afghanistan. The paper is based on the analysis of positive regulations in the field of public international law and international criminal law, as well as linking the relevant provisions with the circumstances under which crimes were committed on the territory of Afghanistan and drawing conclusions about the fulfillment of necessary conditions for initiating criminal proceedings before the International Criminal Court. The result of the analysis leads to the conclusion that the conditions have been met for initiating an investigation into crimes committed in Afghanistan or in connection with the armed conflict on the territory of Afghanistan. The initiation of an investigation is particularly

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important in the context of the withdrawal of US military forces and the Taliban's takeover of power in Afghanistan. Namely, there is a real possibility that the newly formed government in Afghanistan will not be willing to cooperate with the prosecution and provide the necessary evidence related to the crimes in question, which directly affects the importance of conducting proceedings before the International Criminal Court.

**Keywords:** International Criminal Court, Afghanistan, jurisdiction, territorial jurisdiction, personal jurisdiction

## INTRODUCTION

Although at certain moments it seemed that the conclusion of the proceedings before the International Criminal Court concerning crimes predominantly committed on the territory of African countries would lead to a decline in the importance, influence, and reputation of the International Criminal Court, the initiation of the investigation into the so-called "Situation in Afghanistan" has restored belief in the supremacy of the supranational judiciary. The investigation raises a number of issues that the International Criminal Court has not had the opportunity to address so far. For example, the investigation includes citizens of countries that are not party to the Rome Statute, particularly the United States of America, whose animosity towards the International Criminal Court has been a long-standing subject of debate in the international expert community. On the other hand, we have also had the opportunity to see conflicting decisions of the Court itself, which have raised questions about discretionary powers, both on the part of the Judicial Divisions and the Office of the Prosecutor, which acts under the auspices of the International Criminal Court.

The most significant and contentious issue that arose regarding the investigation into the crimes committed in Afghanistan concerns the jurisdiction of the International Criminal Court. Although Afghanistan is party to the Rome Statute, the problem essentially lies in the fact that the perpetrators of the crimes that are to be the subject of the new investigation before the International Criminal Court in most cases are not citizens of states that are party to the Statute. This situation has sparked a heated debate in the international expert community, which primarily deals with the International Criminal Court's ability to exercise its jurisdiction and conduct proceedings against individuals who are not only citizens of countries that have not acceded to the Rome Statute but are also often completely beyond the reach of the Court. New developments in 2021, prompted by the withdrawal of US military forces from Afghanistan, have once again brought up the issue of conducting criminal

proceedings before the International Criminal Court. Although temporally and factually independent of the events that were the initial motive for initiating the investigation, the events that followed and will follow after the withdrawal of US military forces from Afghanistan and the Taliban taking control have the potential to be covered by the investigation.

## GENERAL ISSUES OF THE JURISDICTION OF THE INTERNATIONAL CRIMINAL COURT

The International Criminal Court, as the only permanent institution of international criminal justice, was established by the Rome Statute on July 17, 1998,<sup>1</sup> which came into force on July 1, 2002.<sup>2</sup> Today, there are 123 states parties to the Rome Statute, the last of which, Kiribati, acceded on November 26, 2019.<sup>3</sup>

The process of establishing the International Criminal Court was neither simple nor quick. As far back as 1992, the United Nations General Assembly requested that the International Law Commission prepare a draft statute for the future International Criminal Court through Resolution 47/33.<sup>4</sup> By Resolution 50/46 of 11 December 1995, the General Assembly established the so-called *PrepCom*, or Preparatory Committee, to continue and expand the work of the *Ad Hoc* committee.<sup>5</sup> The Preparatory Committee held six sessions from March 25, 1996, to April 3, 1998,<sup>6</sup> after which the text of the Rome Statute was discussed and subsequently adopted.<sup>7</sup>

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<sup>1</sup> UN General Assembly, Rome Statute of the International Criminal Court (last amended 2010), July 17, 1998, ISBN No. 92-9227-227-6, available at: <https://www.ref-world.org/docid/3ae6b3a84.html>, accessed: September 30, 2021.

<sup>2</sup> Cryer, R., Freeman, H., Robinson, D., Wilmshurst, E. (2010). *An Introduction to International Criminal Law and Procedure*. New York: Cambridge University Press, 149.

<sup>3</sup> Schabas WA (2007). *An Introduction to The International Criminal Court*. New York: Cambridge University Press, 23; States Parties – Chronological list, available at: [https://asp.icc-cpi.int/en\\_menus/asp/states%20parties/pages/states%20parties%20\\_%20chronological%20list.aspx](https://asp.icc-cpi.int/en_menus/asp/states%20parties/pages/states%20parties%20_%20chronological%20list.aspx), accessed: September 30, 2021.

<sup>4</sup> UN General Assembly, Resolution 47/33 on The Report of the Sixth Committee A/47/584, 77th Plenary Meeting, A/RES/47/33, November 25, 1992, available at: <https://undocs.org/en/A/RES/47/33>, accessed: September 30, 2021.

<sup>5</sup> UN General Assembly, Resolution 50/46 on The Report of the Sixth Committee A/50/639 and Corr.1, 87th Plenary Meeting, A/RES/50/46, December 11, 1995, available at: <https://undocs.org/en/A/RES/50/46>, accessed: September 30, 2021.

<sup>6</sup> Ambos, K. (2013). *Treatise on International Criminal Law*, Volume I: Foundations and General Part. Oxford: Oxford University Press, 24.

<sup>7</sup> Cryer, R., Freeman, H., Robinson, D., Wilmshurst, E. (2010). *Op. cit.*, 149.

There was a significant divergence between groups of states regarding the provisions that would determine the jurisdictional boundaries of the newly formed International Criminal Court. When it comes to the crime of genocide, which by its very nature represents the most serious crime characterized by a number of elements when compared to crimes against humanity and war crimes, the position was somewhat similar: the majority of states believed that the prosecution and punishment of perpetrators of the crime of genocide represents *the ius puniendi* of the international community.<sup>8</sup> However, when it comes to the remaining crimes under the jurisdiction of the International Criminal Court, views were varied.<sup>9</sup> States that supported the idea of introducing the principle of universal jurisdiction into the Rome Statute, led by Germany,<sup>10</sup> defended their position by asserting that there is no need for a direct link between the state and the crime,<sup>11</sup> but that the jurisdiction over the perpetrator stems from the jurisdiction over the crime itself.<sup>12</sup> Among the countries that supported Germany's proposal were the Czech Republic,<sup>13</sup> Latvia,<sup>14</sup> Costa

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<sup>8</sup> Schabas, WA, Pecorella, G., Article 12 – Preconditions to the exercise of jurisdiction published in: eds. Triffterer O., Ambos, K. (2016). *The Rome Statute of the International Criminal Court – A Commentary*. Baden: Beck/Hart, 672–689, 674.

<sup>9</sup> *Ibid.*

<sup>10</sup> Germany called its proposal "the German version of universal jurisdiction", which was further discussed by the leader of the German delegation at the Conference, Hans Peter Kaul.

<sup>11</sup> Ambos, K. (2007). International Core Crimes, Universal Jurisdiction And § 153 et seq. The German Criminal Procedure Code: A Commentary On The Decisions Of The Federal Prosecutor General And The Stuttgart Higher Regional Court In The Abu Ghraib/Rumsfeld Case. *Criminal Law Forum*, Vol. 18, 43–56, 46–54; Ambos, K. (2009). Prosecuting Guantanamo in Europe: Can and Shall the Masterminds of the "Torture Memos " be Held Criminally Responsible on the Basis of Universal Jurisdiction?. *Case W. Res. J. Int'l L.*, Vol. 42, 405–448, 443–444; Joyner, C. (1996). Arresting Impunity: The Case for Universal Jurisdiction in Bringing War Criminals to Accountability. *Law and Contemporary Problems*, Vol. 59, 153–172, 167.

<sup>12</sup> Lauterpacht, H. (1944). Law of nations and the punishment of war crimes. *Brit. YB Int'l L.*, Vol. 21, 61.

<sup>13</sup> UN Diplomatic Conference of Plenipotentiaries on the Establishment of the International Criminal Court, Summary Record of the 3rd Plenary Meeting, A/CONF.183/SR.3, June 16, 1998, paragraph 21, available at: <https://www.legal-tools.org/doc/313a47/pdf/>, accessed: September 30, 2021.

<sup>14</sup> *Ibid.*, paragraph 42.

Rica,<sup>15</sup> Belgium,<sup>16</sup> Luxembourg,<sup>17</sup> and Bosnia and Herzegovina.<sup>18</sup> If Germany's proposal to implement the principle of universal jurisdiction into the Rome Statute had been adopted in Rome, Article 12 of the Rome Statute would have had to be removed. The provisions of Article 12 regulating territorial jurisdiction would have become redundant by accepting the principle of universal jurisdiction. In that case, the conditions for initiating criminal proceedings before the International Criminal Court would have been limited to examining whether the conditions of complementarity from Article 17 of the Statute have been met, that is, whether criminal proceedings regarding specific crimes have already been concluded or are ongoing before a national court.<sup>19</sup>

Due to the obvious opposition to Germany's proposal, the Korean delegation proposed the establishment of so-called automatic jurisdiction. According to this proposal, the jurisdiction of the International Criminal Court would be established with the consent of at least one of four states: the state on whose territory the crime was committed or attempted, the state whose citizen is the accused, the state whose citizen is the victim of the crime, and the state in which the accused is located.<sup>20</sup> Although Korea's proposal received considerable approval, there were a number of states, including the United States,<sup>21</sup> that believed it was necessary to require the consent of the states concerned.

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<sup>15</sup> *Ibid.*, paragraph 76.

<sup>16</sup> UN Diplomatic Conference of Plenipotentiaries on the Establishment of the International Criminal Court, Summary Record of the 6th Plenary Meeting, A/CONF.183/SR.6, June 17, 1998, paragraph 4, available at: <https://www.legal-tools.org/doc/542549/pdf/>, accessed: September 30, 2021.

<sup>17</sup> UN Diplomatic Conference of Plenipotentiaries on the Establishment of the International Criminal Court, Summary Record of the 6th Plenary Meeting, A/CONF.183/SR.6, June 17, 1998, paragraph 69, available at: <https://www.legal-tools.org/doc/542549/pdf/>, accessed: September 30, 2021.

<sup>18</sup> UN Diplomatic Conference of Plenipotentiaries on the Establishment of the International Criminal Court, Summary Record of the 8th Plenary Meeting, A/CONF.183/SR.8, June 18, 1998, paragraph 18, available at: [https://legal.un.org/diplomaticconferences/1998\\_icc/docs/english/vol\\_2/a\\_conf183\\_sr8.pdf](https://legal.un.org/diplomaticconferences/1998_icc/docs/english/vol_2/a_conf183_sr8.pdf), accessed: September 30, 2021.

<sup>19</sup> Williams, S.A. (2000). The Rome Statute on the International Criminal Court – Universal Jurisdiction or State Consent - To Make or Break the Package Deal. *International Law Studies*, Vol. 75, 539–563, 546.

<sup>20</sup> UN Diplomatic Conference of Plenipotentiaries on the Establishment of the International Criminal Court, Official Records, Volume III, Republic of Korea: proposal regarding articles 6 [9], 7 [6] and 8[7], A/CONF.183/C.1/L.6, June 18, 1998, para. 4(b), available at: [https://legal.un.org/icc/rome/proceedings/E/Rome%20Proceedings\\_v3\\_e.pdf](https://legal.un.org/icc/rome/proceedings/E/Rome%20Proceedings_v3_e.pdf), accessed: September 30, 2021.

<sup>21</sup> Schabas, W.A., Pecorella, G., Article 12 – Preconditions to the exercise of jurisdiction published in: eds. Triffterer O., Ambos, K. (2016). *The Rome Statute of the International Criminal Court – A Commentary*. Baden: Beck/Hart, 677.

The proposal of the United States was aimed at introducing mandatory consent of the states whose citizen is the accused, as well as the states on whose territory the crime was committed.<sup>22</sup> At the very least, this consent would have to be given by the country of the accused.<sup>23</sup> The United States was of the opinion that the International Criminal Court should not have jurisdiction over citizens of non-party states, which was based on the provisions of the Vienna Convention on the Law of Treaties. The Convention in Article 34 that “a treaty does not create obligations or rights for a third state without its consent.”<sup>24</sup> The purpose of the proposal was precisely to ensure impunity, that is, that the citizens of the United States could not be accused before the International Criminal Court. This proposal did not receive approval by the vast majority of states because such a provision would most certainly lead to a sort of paralysis of the court.<sup>25</sup>

### **Territorial jurisdiction of the International Criminal Court**

The first rules of territorial jurisdiction in the field of international law were laid down by the Permanent Court of International Justice in the Lotus case of 1927.<sup>26</sup> Namely, the Court established that jurisdiction is an integral part of state sovereignty and that it can be established when there is a strong enough connection between the state and the crime.<sup>27</sup>

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<sup>22</sup> See: Ambassador David Scheffer, Head of the United States Delegation in Rome, before the Senate Foreign Relations Committee, July 23, 1998, available at: [https://1997-2001.state.gov/policy\\_remarks/1998/980723\\_scheffer\\_icc.html](https://1997-2001.state.gov/policy_remarks/1998/980723_scheffer_icc.html), accessed: September 30, 2021.

<sup>23</sup> Williams, S.A. (2000). The Rome Statute on the International Criminal Court – Universal Jurisdiction or State Consent – To Make or Break the Package Deal. *International Law Studies*, Vol. 75, 539–563, 547.

<sup>24</sup> United Nations, Vienna Convention on the Law of Treaties, May 23, 1969, United Nations, Treaty Series, vol. 1155, 331, available at: <https://www.refworld.org/docid/3ae6b3a10.html>, accessed: September 30, 2021.

<sup>25</sup> Schabas, W.A., Pecorella, G., Article 12 – Preconditions to the exercise of jurisdiction published in: eds. Triffterer O., Ambos, K. (2016). *The Rome Statute of the International Criminal Court – A Commentary*. Baden: Beck/Hart, 678.

<sup>26</sup> PCIJ, The Case of the S.S. Lotus, France v. Turkey, Res Ser. A, No. 10 (1927), available at: [http://www.worldcourts.com/pcij/eng/decisions/1927.09.07\\_lotus.htm](http://www.worldcourts.com/pcij/eng/decisions/1927.09.07_lotus.htm), accessed: September 30, 2021.

<sup>27</sup> *Ibid.*, para. 20; Ryngaert C. (2008). Jurisdiction in International Law. Oxford Monographs in International Law, Oxford: Oxford University Press, 29; Schwarzenberger, G. (1957). *International Law as Applied by International Courts and Tribunals*. London: Stevens and Sons Ltd., vol. I, 184; Sahović, M. The Authority of the State: Its Range with Respect to Persons and Places published in: Sørensen, M. (1968), *Manual of Public International Law*. London: Melbourne Macmillan, 314.

The territorial jurisdiction of the International Criminal Court is regulated by the provisions of Article 12, paragraph 2, point a) of the Rome Statute. This provision stipulates that in the cases referred to in Article 13, paragraphs a. and c. The Court can exercise its jurisdiction if one or more interested states are party to the Rome Statute, or have accepted the jurisdiction of the International Criminal Court in accordance with paragraph 3. of the same article.<sup>28</sup> The condition for the International Criminal Court to have territorial jurisdiction is that the conduct occurred on the territory of a state party, or that the crime was committed on board a vessel or aircraft registered with a state party.<sup>29</sup> It is a generally accepted position in positive international law that every state has the right to exercise jurisdiction over crimes committed on its territory, regardless of the nationality of the perpetrator.<sup>30</sup>

The problem of interpreting and applying the provisions of Article 12, paragraph 2, point a) of the Rome Statute arises in connection with crimes committed on the territory of several states, some of which are non-party states. Namely, the aforementioned provision in its original form links the establishment of the jurisdiction of the International Criminal Court to the provision “*the State on the territory of which the conduct in question occurred*”. Thus, possible problems arise in situations where the crime can be divided into several separate crimes with respect to the actions performed by each individual perpetrator,<sup>31</sup> problems related to the question of whether it is a crime of action or consequence,<sup>32</sup> and problems with continuing crimes.<sup>33</sup> Namely, the question remains unanswered as to whether the term *conduct*, which primarily denotes action, should include both the act of execution and the consequence

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<sup>28</sup> UN General Assembly, Rome Statute of the International Criminal Court (last amended 2010), July 17, 1998, ISBN No. 92-9227-227-6, available at: <https://www.ref-world.org/docid/3ae6b3a84.html>, accessed: September 30, 2021, Article 12, paragraph 2.

<sup>29</sup> *Ibid.*

<sup>30</sup> Vagias, M. (2014). *The Territorial Jurisdiction of the International Criminal Court*. Cambridge: Cambridge University Press, 13–14.

<sup>31</sup> ICC, Prosecutor v. Jean-Pierre Bemba Gombo, Decision Adjourning the Hearing pursuant to Article 67(7)(c)(ii) of the Rome Statute, ICC-01/05–01/08, Pre-Trial Chamber III, March 3, 2009, available at : [https://www.icc-cpi.int/CourtRecords/CR2009\\_01500.PDF](https://www.icc-cpi.int/CourtRecords/CR2009_01500.PDF), accessed: December 28, 2020, para. 26–27; ICC, Prosecutor v. Omar Hassan Ahmad Al-Bashir, Decision on the Prosecution's Application for a Warrant of Arrest against Omar Hassan Ahmad Al-Bashir, ICC-02/05–01/09–3, Pre-Trial Chamber I, March 4, 2009, available at: [https://www.icc-cpi.int/CourtRecords/CR2009\\_01517.PDF](https://www.icc-cpi.int/CourtRecords/CR2009_01517.PDF), accessed: September 30, 2021, para. 27.

<sup>32</sup> See: Jovanović, D., Petrović, B. (2006), Pojam krivičnog dela u svetlu „učenja o nepravu“ Jovana Sterije Popovića. *Zbornik Pravnog fakulteta u Nišu*, XLVII, 53–75, 65.

<sup>33</sup> Higgins, R. (1997). Time and the Law: International Perspectives on an Old Problem. *International and Comparative Law Quarterly*, Vol. 46, No. 3, 501–520, 506–507.

in the sense of the provisions of the Statute.<sup>34</sup> This would mean that the International Criminal Court could exercise its jurisdiction even in situations where only the consequence of the crime occurred on the territory of a state party. At the meeting of the Working Group for Amendments to the Rome Statute in February 2009, several proposals were presented regarding how the Statute should be amended, in order to clarify the situation regarding Article 12, paragraph 2, point a).<sup>35</sup>

The International Criminal Court has taken the position in its practice that the term “conduct in question” must be interpreted in a way that includes both the act of commission or omission and the consequences of the crime. In the Lubanga case, for example, when defining the criteria to be considered when deciding on jurisdiction, the phrase “the crime must have been committed” was used.<sup>36</sup> A similar choice of terminology can be found in the Barushimana<sup>37</sup> and Al-Bashir,<sup>38</sup> as well as in the pre-trial proceedings regarding crimes committed on the territory of Kenya.<sup>39</sup>

Although the views are significantly divided, especially those expressed by representatives of individual states, Vagias’ interpretation of the phrase “conduct in question” as “crimes in question” is interesting. Vagias relies on the principle of *ne bis in idem* from Article 20 of the Rome Statute. Namely, Vagias believes that Article 20(1), which designates “conduct” as the basis of every offense under the Statute, supports the argument that the disputed term should be broadly interpreted, referring to the entire crime rather than just the act of execution.<sup>40</sup> If “conduct” were viewed only as the act of commission, rather than the entirety of the crime, and were tied exclusively to the

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<sup>34</sup> Vagias, M. (2014). *Op. cit.*, 82.

<sup>35</sup> ICC, Assembly of States Parties, Report of the Special Working Group on the Crime of Aggression, ICC-ASP/7/SWGCA/2, 7th Session of the Assembly of States Parties (Second Resumption), February 9–13, 2009, para. 38–39.

<sup>36</sup> ICC, Situation in the Democratic Republic of the Congo, Decision on the Application for Participation in the Proceedings of VPRS-1, VPRS-2, VPRS-3, VPRS-4, VPRS-5 and VPRS-6, ICC-01/04, Pre-Trial Chamber I, January 17, 2006, available at: [https://www.icc-cpi.int/CourtRecords/CR2006\\_01689.PDF](https://www.icc-cpi.int/CourtRecords/CR2006_01689.PDF), accessed: September 30, 2021, para. 85.

<sup>37</sup> ICC, Prosecutor v. Callixte Mbarushimana, Decision on the 'Defence Challenge to the Jurisdiction of the Court', ICC 01/04–01/10–451, Pre-Trial Chamber I, October 26, 2011, available at: [https://www.icc-cpi.int/CourtRecords/CR2011\\_17842.PDF](https://www.icc-cpi.int/CourtRecords/CR2011_17842.PDF), accessed: September 30, 2021, para. 16–17.

<sup>38</sup> Al-Bashir, *Op. cit.*, para. 36.

<sup>39</sup> ICC, Situation in the Republic of Kenya, Decision pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Kenya, ICC-01/09–19, Pre-Trial Chamber II, March 31, 2010, available at: <https://www.refworld.org/cases,ICC,4bc2fe372.html>, accessed: September 30, 2021, para. 178.

<sup>40</sup> Vagias, M. (2014). *The Territorial Jurisdiction of the International Criminal Court*. Cambridge: Cambridge University Press, 99.



territory of one state, there would be a possibility that another state, on whose territory the consequence of the crime occurred, could initiate new criminal proceedings, even though proceedings before the International Criminal Court have already been legally concluded. This would undoubtedly undermine the essence of the *ne bis in idem* principle, one of the fundamental principles of positive criminal law.

On the other hand, there is a possibility that the choice of the term “conduct” was an oversight made during the adoption of the Rome Statute. According to Bassiouni, this “material error” occurred when the draft of Article 12, paragraph 3. was referred to the Committee of the Whole instead of the Drafting Committee of the Rome Statute.<sup>41</sup> Even the International Criminal Court itself has acknowledged, in proceedings regarding crimes committed in Kenya, that the deficiencies in the final version of the Statute are the result of specific circumstances when the draft Statute was being prepared.<sup>42</sup> This situation is, therefore, also possible when it comes to Article 12, paragraph 2, point a) of the Statute, as the available preparatory work and drafts do not provide an explanation for why the term “conduct” was chosen when regulating the territorial jurisdiction of the International Criminal Court.<sup>43</sup>

### **Personal jurisdiction of the International Criminal Court**

The personal basis of jurisdiction can be active and passive. According to the principle of active personal jurisdiction, which is also incorporated in the Rome Statute, the Court may exercise jurisdiction when the perpetrator is a citizen of a state whose court has jurisdiction or a state that has accepted the jurisdiction of a specific international court. On the other hand, the principle of passive personal jurisdiction ties the jurisdiction to the citizenship of the victim of a crime. The principle of personal jurisdiction, which is also recognized in the Rome Statute, is present in a number of national legal systems, including in the United States of America, where it was confirmed in the *Bowman* case.<sup>44</sup> Recent case law in the United States has been inconsistent when applying the

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<sup>41</sup> Bassiouni M.C. (2012). *Introduction to International Criminal Law*. Leiden: Martinus Nijhoff Publishers, 681; Bassiouni MC (1999). *Negotiating the Treaty of Rome on the Establishment of an International Criminal Court*, *Cornell International Law Journal*, Vol. 32, 457–458, 503–504.

<sup>42</sup> Kenya, *Op. cit.*, para. 67.

<sup>43</sup> Vagias, M. (2014). *The Territorial Jurisdiction of the International Criminal Court*. Cambridge: Cambridge University Press, 100.

<sup>44</sup> *United States v. Bowman*, U.S. Supreme Court, 260 U.S. 94, November 13, 1922, available at: <https://supreme.justia.com/cases/federal/us/260/94/#102>, accessed: September 30, 2021.

personal principle establishing extraterritorial jurisdiction. However, in light of the terrorist attack of September 11, 2001, it seems that the practice began to move in the direction of expanding the jurisdiction of national courts based on the personal principle.<sup>45</sup>

We must also note that the principle of active personal jurisdiction has been accepted by international tribunals. As mentioned earlier, the Statute of the International Criminal Tribunal for Rwanda stipulates that it has jurisdiction over crimes committed on the territory of Rwanda, as well as those committed by the citizens of Rwanda on the territory of neighboring states.<sup>46</sup>

The personal jurisdiction of the Court is very clearly defined in the provisions of Article 12, paragraph 2, point b) of the Rome Statute. This provision provides that the Court has jurisdiction over persons who are citizens of a state party to the Statute or a state that has accepted the jurisdiction of the International Criminal Court in accordance with Article 12, paragraph 3 of the Statute.<sup>47</sup> The issue of personal jurisdiction of the International Criminal Court has rarely been discussed in case law. It was relevant in the preliminary investigation procedure regarding crimes committed on the territory of Iraq.<sup>48</sup>

The possibility of exercising jurisdiction by the International Criminal Court on the basis of the territorial or personal principle is established alternatively.<sup>49</sup> While there is no explicit basis on which the Court would have to demand the fulfillment of the conditions as referred to in Article 12, paragraph

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<sup>45</sup> *United States v. Yousef*, 327 F.3d 56, 91, United States Court of Appeals, Second Circuit, 2003, available at: <https://law.resource.org/pub/us/case/reporter/F3/327/327.F3d.56.98-1041.98-1355.98-1197.99-1554.99-1544.html>, accessed: September 30, 2021; *United States v. Reumayr*, 530 F. Supp. 2d 1210, 1221, United States District Court, D. New Mexico, 2008, available at: <https://www.leagle.com/decision/20071730530fsupp2d120011621>, accessed: September 30, 2021; *United States v. Bin Laden*, 92 F. Supp. 2d 189, 222, District Court, SD New York, 2000, available at: <https://www.courtlistener.com/opinion/2529760/united-states-v-bin-laden/> ?, accessed: September 30, 2021. \_

<sup>46</sup> UN Security Council, Statute of the International Criminal Tribunal for Rwanda (as last amended on 13 October 2006), November 8, 1994, available at: <https://www.refworld.org/docid/3ae6b3952c.html>, accessed: September 30, 2021, Art. 1 and 7;

<sup>47</sup> UN General Assembly, Rome Statute of the International Criminal Court (last amended 2010), July 17, 1998, ISBN No. 92-9227-227-6, available at: <https://www.refworld.org/docid/3ae6b3a84.html>, accessed: September 30, 2021, Article 12, paragraph 2, point b).

<sup>48</sup> ICC, Office of the Prosecutor, Letter of 9 February 2006, available at: [https://www.icc-cpi.int/nr/rdonlyres/04d143c8-19fb-466c-ab77-4cdb2fdebef7\\_143\\_682/otp\\_letter\\_to\\_senders\\_re\\_iraq\\_9\\_february\\_2006.pdf](https://www.icc-cpi.int/nr/rdonlyres/04d143c8-19fb-466c-ab77-4cdb2fdebef7_143_682/otp_letter_to_senders_re_iraq_9_february_2006.pdf), accessed: September 30, 2021.

<sup>49</sup> ICC, Situation in the Republic of Kenya, Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Kenya, ICC-01/09, Pre-Trial Chamber II, March 31, 2010, available at: <https://www.refworld.org/cases,ICC,4bc2fe372.html>, accessed: September 30, 2021, Separate Opinion, para. 18.

2, point a) of the Rome Statute, which establishes the basis for the exercise of jurisdiction according to the territorial principle, as well as Article 12, paragraph 2, point b) which regulates the issue of personal jurisdiction, such a situation is not unknown in the Statute. Namely, Article 15*bis*, the application of which is limited to the crime of aggression, provides that the International Criminal Court cannot exercise jurisdiction when the accused is a citizen of a state that is not party to the Rome Statute.<sup>50</sup> Taking this into account, it can be concluded that the authors of the Statute deliberately omitted such a provision when it comes to genocide, crimes against humanity, and war crimes.

The Rome Statute does not set a precedent when it comes to the possibility of exercising the jurisdiction of an international court in proceedings for crimes committed by persons who are not citizens of countries that have acceded to a specific international treaty.<sup>51</sup> International treaties regulating slavery, piracy, genocide, apartheid, violations of the Geneva Conventions, narcotics trafficking, crimes committed on board ships or aircraft, kidnapping, or torture also provide the opportunity to conduct proceedings before international courts, thereby implementing the principle of universal jurisdiction.<sup>52</sup>

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<sup>50</sup> UN General Assembly, Rome Statute of the International Criminal Court (last amended 2010), July 17, 1998, ISBN No. 92-9227-227-6, available at: <https://www.refworld.org/docid/3ae6b3a84.html>, accessed: September 30, 2021, Article 12, 15 *bis*.

<sup>51</sup> Request for authorization, *Op.cit.*, para. 45.

<sup>52</sup> See: League of Nations, Convention to Suppress the Slave Trade and Slavery, 25 September 1926, 60 LNTS 253, Registered No. 1414, available at: <https://www.refworld.org/docid/3ae6b36fb.html>, accessed: September 30, 2021, Article 3; United Nations, Convention on the High Seas, Geneva, 29 April 1958, available at: <https://www.legal-tools.org/doc/7b4abc-1/pdf/>, accessed: September 30, 2021, Art. 14–22; United Nations General Assembly, Convention on the Law of the Sea, 10 December 1982, available at: <https://www.refworld.org/docid/3dd8fd1b4.html>, accessed: September 30, 2021, Article 100–107; UN General Assembly, Convention on the Prevention and Punishment of the Crime of Genocide, 9 December 1948, United Nations, Treaty Series, vol. 78, 277, available at: <https://www.refworld.org/docid/3ae6b3ac0.html>, accessed: September 30, 2021, Article 6; UN General Assembly, International Convention on the Suppression and Punishment of the Crime of Apartheid, 30 November 1973, A/RES/3068(XXVIII), available at: <https://www.refworld.org/docid/3ae6b3c00.html>, accessed: 30 September 2021, Article 4; September 30, 2021, Article 49; International Committee of the Red Cross (ICRC), Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (Second Geneva Convention), 12 August 1949, 75 UNTS 85, available at: <https://www.refworld.org/docid/3ae6b37927.html>, accessed: September 30, 2021, Article 50; International Committee of the Red Cross (ICRC), Geneva Convention Relative to the Treatment of Prisoners of War (Third Geneva Convention), 12 August 1949, 75 UNTS 135, available at: <https://www.refworld.org/docid/3ae6b36c8.html>, accessed: September 30, 2021, Article 129; International Committee of the Red Cross (ICRC), Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention), 12 August 1949, 75 UNTS 287, available at: <https://www.refworld.org/docid/3ae6b36d2.html>, accessed: September 30, 2021, Article 146; United Nations

Such crimes have always attracted the attention of the entire international community due to their extreme cruelty and degree of social dangerousness.<sup>53</sup> Accordingly, and especially with the Preamble of the Rome Statute in mind, it is clear that the crimes under the jurisdiction of the International Criminal Court are of such significance that they justify the conduct of criminal proceedings even when the crimes were committed by citizens of countries that have not acceded to the Rome Statute.

## **JURISDICTION OF THE INTERNATIONAL CRIMINAL COURT IN AFGHANISTAN**

When it comes to the issue of the jurisdiction of the International Criminal Court regarding crimes committed on the territory of Afghanistan, the main dilemma arises with regard to territorial and closely related personal aspects of jurisdiction. The main objection raised, both in terms of the provisions of the Rome Statute itself and especially with regard to the crimes committed in Afghanistan, concerns the jurisdiction of the International Criminal Court in situations where the perpetrators of the crimes are persons who are citizens of countries that have not ratified the Rome Statute, since they are generally also the main opponents of the Statute and the Court itself. In such cases, it is up to the Court itself to determine whether any of the alternatively set conditions

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Single Convention on Narcotic Drugs, adopted 30 March 1961, entered into force 13 December 1964, 520 UNTS 151, available at: [https://www.hr-dp.org/files/2013/11/12/drug\\_control\\_convention\\_1961\\_en.pdf](https://www.hr-dp.org/files/2013/11/12/drug_control_convention_1961_en.pdf), accessed: September 30, 2021, Article 36, paragraph 2, point IV ; United Nations, Convention for the Suppression of Unlawful Seizure of Aircraft, 16 December 1970, UN Treaty Series 1973, available at: <https://www.refworld.org/docid/3ddcaa774.html>, accessed: September 30, 2021, Article 4; UN General Assembly, Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, 14 December 1973, A/RES/3166, available at: <https://www.refworld.org/docid/3b00f19d4.html>, accessed: September 30, 2021, Article 3; UN General Assembly, International Convention against the Taking of Hostages, 17 December 1979, A/RES/34/146, available at: <https://www.refworld.org/docid/3b00f2303c.html>, accessed: September 30, 2021, Article 5; UN General Assembly, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 10 December 1984, United Nations, Treaty Series, vol. 1465, 85, available at: <https://www.refworld.org/docid/3ae6b3a94.html>, accessed: September 30, 2021, Article 5; UN General Assembly, United Nations Convention against Transnational Organized Crime: resolution / adopted by the General Assembly, 8 January 2001, A/RES/55/25, available at: <https://www.refworld.org/docid/3b00f55b0.html>, accessed: September 30, 2021, Article 2, 15.

<sup>53</sup> United States v List (Wilhelm) and ors, Hostage Case, Judgment, 19 February 1948, Trials of War Criminals Before the Nuremberg Military Tribunals Under Control Council Law No. 10, Volume XI/2, para. 1241.

have been met in order for the Court to have jurisdiction in a specific case so that an investigation could be initiated, and then an indictment could be filed and thereby criminal proceedings would be formally initiated before the International Criminal Court.

The situation is particularly specific when it comes to Afghanistan given that the preliminary investigation was primarily aimed at the perpetrators of crimes who are not citizens of Afghanistan. They are mostly citizens of states that have not acceded to the Rome Statute, among which the United States, naturally, stood out the most. However, due to the fact that the crimes were committed in such a way that the possibility of expanding the jurisdiction of the Court in a way that certain parts of the crimes were indeed committed on the territory of states party to the Statute, a formal decision was made in 2020, in which the Court determined that the conditions for exercising its jurisdiction over these crimes had been met and approved the Prosecutor's request to initiate an investigation. Since this is a precedent in international criminal law, this decision has had a significant impact on the international expert community, and we will address its most significant aspects in the following parts, especially the aforementioned issues of territorial and personal jurisdiction of the International Criminal Court.

### **Territorial jurisdiction of the International Criminal Court in Afghanistan**

Since Afghanistan is party to the Rome Statute, the International Criminal Court can exercise its jurisdiction over crimes committed on its territory, regardless of the nationality of the perpetrators.<sup>54</sup> However, there are numerous authors and official state documents that deny this right to the Court, arguing that the jurisdiction of the International Criminal Court should not extend to

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<sup>54</sup> ICC, Office of the Prosecutor, Situation in the Republic of Korea, Article 5 Report, June 2014, available at: <https://www.icc-cpi.int/iccdocs/otp/sas-kor-article-5-public-report-eng-05jun2014.pdf>, accessed: September 30, 2021, para. 40–41; ICC, Prosecutor v. Omar Hassan Ahmad Al Bashir, Prosecutor's Response to Arbour's observation of the United Nations High Commissioner for Human Rights invited in Application of Rule 103 of the Rules of Procedure and Evidence, ICC-02/05-21, Pre-Trial Chamber I, 19 October 2006, available at: [https://www.icc-cpi.int/CourtRecords/CR2007\\_02018.PDF](https://www.icc-cpi.int/CourtRecords/CR2007_02018.PDF), accessed: September 30, 2021, para. 36; Paust, JJ (2000). The Reach of the ICC Jurisdiction over Non-Signatory Nationals. *Vanderbilt Journal of Transnational Law*, Vol. 33 No. 1, 6; Shattuck, J., Epps, V., Hannon, H. (2003). *Human Rights & the International Criminal Court*. *New England Journal of Public Policy*, Vol. 19, 154; Danilenko, GM (2000). The Statute of the International Criminal Court and Third States. *Michigan Journal of International Law*, Vol. 21, No. 445, 453.

citizens of states who are not party to the Statute, and who have refused to accept the Court's jurisdiction in any way by not acceding to the Statute.<sup>55</sup> The territorial jurisdiction of the International Criminal Court over crimes committed on the territory of Afghanistan is established in accordance with the provisions of Article 12, paragraph 2, point a) of the Rome Statute. As defined in the Request for Authorization of an Investigation dated November 20, 2017, the crimes covered by the Request were committed on the territory of Afghanistan, specifically in each of the thirty-four Afghan provinces, with Kandahar and Helmand being the most affected.<sup>56</sup> Between 2003 and 2008, the conflicts were largely confined to the southern and southeastern areas of Afghanistan, but from 2009 the influence of anti-government groups spread to certain provinces in the vicinity of Kabul, namely Wardak and Logar, as well as to certain provinces in the north, including Kunduz, Baghlan, Badakhshan, Balkh, Faryab, and Jowzjan.<sup>57</sup>

In addition to the crimes committed directly on the territory of Afghanistan, the Office of the Prosecutor of the International Criminal Court has identified a certain number of crimes that were committed on the territories of Poland, Romania, and Lithuania, which are also party to the Rome Statute.<sup>58</sup> In these countries, members of the Taliban, Al Qaeda, and other armed groups were detained in detention facilities operated by the US Central Intelligence Agency (CIA).<sup>59</sup>

Essentially, the location of the crimes covered by the Request for Authorization of an Investigation is not in dispute. However, there is debate over whether the International Criminal Court can prosecute individuals who are not Afghan citizens, but citizens of states that have not acceded to the Rome Statute.

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<sup>55</sup> Scheffer, D. (1999). The United States and the International Criminal Court. *American Journal of International Law*, Vol. 93, No. 1, 12–22; Wedgwood, R. (1999). The International Criminal Court: An American View. *European Journal of International Law*, Vol. 10, 93–107; Morris, M. (2001). High Crimes and Misconceptions: The ICC and Non-Party States. *Law & Contemporary Problems*, Vol. 64, 13–66; US Congressional finding 22 US Code § 7421, 2 August 2002, AFG-OTP-0007-2197, para. 11; Office of General Counsel, United States Department of Defense, Law of War Manual, Sec. 118.20.3.1, 2015, 1110.

<sup>56</sup> Request for Authorization, *Op.cit.*, para. 43.

<sup>57</sup> *Ibid.*

<sup>58</sup> Request for Authorization, *Op.cit.*, para. 49.

<sup>59</sup> *Ibid.*

## **Personal Jurisdiction of the International Criminal Court in Afghanistan**

The Request for Authorization of an Investigation dated November 20, 2017, included several groups of individuals for whom there were reasonable grounds to believe that they had committed crimes within the jurisdiction of the International Criminal Court. The first group consists of anti-government armed groups, including the Taliban and armed groups associated with them,<sup>60</sup> as well as Al Qaeda and the so-called HIG (“Hezb-e-Islami Gulbuddin”).<sup>61</sup> The Taliban and their affiliated Haqqani Network are considered responsible for the majority of the serious crimes committed by anti-government armed groups. They are the largest such group, estimated to employ between sixty and seventy thousand individuals, including soldiers, clergy, recruiters, judges, tax collectors, and other political representatives.<sup>62</sup> The second largest armed group is the Haqqani Network, which is believed to have between ten and fifteen thousand members.<sup>63</sup> The connection between the Taliban and the Haqqani Network is reflected in the mutual cooperation of the leadership of both these groups, indicating their shared ideology and politics, as well as joint planning and execution of military operations, which is why they are viewed as connected groups. When it comes to Al Qaeda and HIG, these groups must be considered separately from the Taliban and the Haqqani Network. HIG, as the third largest anti-government armed group, includes several thousand fighters.<sup>64</sup> Although they cooperated between 2001 and 2007,<sup>65</sup> the relationship between the Taliban and the HIG has historically been hostile.<sup>66</sup> Although there are known cases of cooperation between the two groups at the local level, due

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<sup>60</sup> Request for Authorization, *Op.cit.*, para. 30.

<sup>61</sup> *Ibid.*, para. 59.

<sup>62</sup> Giustozzi A. (2010). Negotiating with the Taliban: Issues and Prospects. New York: The Century Foundation, 5; Dawi A., Despite Massive Taliban Death Toll No Drop in Insurgency, Voice of America, 06 March 2014, available at: <https://www.voanews.com/east-asia/despite-massive-taliban-death-toll-no-drop-insurgency>, accessed: September 30, 2021.

<sup>63</sup> Lurie, D. (2020). The Haqqani Network: The Shadow Group Supporting the Taliban's Operations. American Security Project, 6.

<sup>64</sup> Roggio, B., Taliban, HIG infighting leads to split in Afghan insurgency in the North, *FDD's Long War Journal*, 8 March 2010, available at: [https://www.longwarjournal.org/archives/2010/03/taliban\\_hig\\_infighti.php](https://www.longwarjournal.org/archives/2010/03/taliban_hig_infighti.php), accessed: September 30, 2021.

<sup>65</sup> International Crisis Group, The Insurgency in Afghanistan's Heartland, Crisis Group Asia Report No. 207, 27 June 2011, 19.

<sup>66</sup> Giustozzi, A., Reuter, C., The Insurgents of the Afghan North, Afghanistan Analysts Network, April 2011, available at: <https://www.afghanistan-analysts.org/en/special-reports/the-insurgents-of-the-afghan-north/>, accessed: September 30, 2021.

to the difficulty of proving a connection between them, members of HIG will not be included in the investigation as suspects for crimes within the jurisdiction of the International Criminal Court.<sup>67</sup> Ultimately, the connection between the Taliban and Al Qaeda remains largely unknown. While there is undoubtedly tactical cooperation between members of these groups, since 2001 there has been a divergence in the goals of the two groups, with Al Qaeda focusing on conducting a “pan-Islamic jihad”, while the Taliban have limited their activities to the territory of Afghanistan.<sup>68</sup> Due to the relatively small number of members in Al Qaeda and the difficulty of attributing crimes committed to the organization, members of Al Qaeda are not included in the Request for Authorization of an Investigation.<sup>69</sup>

The next group covered by the Request for Authorization of an Investigation is the Afghan National Defense and Security Forces. These armed forces include the army and the police, which are under the control of the government, that is, of certain ministers.<sup>70</sup>

The last group covered by the Request for Authorization of an Investigation, which has been at the center of numerous controversies, are the armed forces of the United States and the Central Intelligence Agency. Until 2014, two international combat missions – ISAF and OEF – operated in parallel on the territory of Afghanistan.<sup>71</sup> Due to their “international” character, there is often a problem with identifying the nationality of individuals who have taken individual actions, but it is undisputed that the United States has taken the leading role in carrying out these missions.<sup>72</sup> In this sense, the most significant contribution is that of the United States Central Command and the Central Intelligence Agency.<sup>73</sup>

It is precisely the fact that individuals who are citizens of the United States were included in the investigation initiated before the International Criminal Court that has led to the reaction and measures taken against the International Criminal Court, that is, the Office of the Prosecutor. According to the United States, all necessary investigations had already been carried

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<sup>67</sup> Request for Authorization, *Op. cit.*, para. 60.

<sup>68</sup> International Crisis Group, *Op. cit.*, para. 20.

<sup>69</sup> Request for Authorization, *Op. cit.*, para. 62.

<sup>70</sup> Institute for the Study of War, Afghanistan National Army (ANA), available at : <http://www.understandingwar.org/afghanistan-national-army-ana>, accessed: September 30, 2021.

<sup>71</sup> NATO, ISAF's mission in Afghanistan (2001–2014), 1 September 2015, available at : [https://www.nato.int/cps/ru/natohq/topics\\_69366.htm?selected\\_Locale=en](https://www.nato.int/cps/ru/natohq/topics_69366.htm?selected_Locale=en), accessed: September 30, 2021.

<sup>72</sup> Request for Authorization, *Op. cit.*, para. 69.

<sup>73</sup> *Ibid.*, para. 69–71.



out against US citizens who would be suspects in the proceedings before the International Criminal Court prior to the initiation of an investigation, and therefore the Court would not be able to prosecute them in accordance with the principle of complementarity under Article 17 of the Rome Statute.<sup>74</sup> Despite strong opposition from the United States, the Court decided on March 5, 2020, to approve the investigation of crimes committed in Afghanistan and those in connection with the armed conflict in Afghanistan. On September 2, 2020, the then US administration announced its decision to impose sanctions against the Prosecutor of the International Criminal Court, Fatou Bensouda, and the Head of the Jurisdiction, Complementarity and Cooperation Division, Phakiso Mochochoko.<sup>75</sup> The envisaged sanctions include the “freezing of the assets” of the mentioned individuals, as well as their family members, and a ban on entry into the United States, thus confirming the Executive Order of June 11, 2020.<sup>76</sup> With the inauguration of Joe Biden as President of the United States, there have been changes in US policy towards the International Criminal Court. On April 1, 2021, the newly elected president repealed Executive Order No. 13928 of June 11, 2020, lifting all sanctions against the individuals covered by this Order.<sup>77</sup>

However, even the proceedings before the International Criminal Court itself went through turbulent phases after the formal initiation of the investigation. Shortly after the Decision of March 5, 2020, the Afghan government requested a deferral of the investigation, claiming that national authorities were conducting proceedings to gather evidence regarding the crimes covered by the investigation before the International Criminal Court, and this request was granted.<sup>78</sup> However, with the Taliban taking over power in Afghanistan, it became clear that any further national investigation was called into ques-

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<sup>74</sup> International Criminal Court: US Sanctions in Response to Investigation of War Crimes in Afghanistan, Congressional Research Service, no. IN11428, 19 June 2020, 2.

<sup>75</sup> US Sanctions International Criminal Court Prosecutor: Trump Administration's Action Tries to Block Justice for World's Worst Crimes, 2 September 2020, available at: <https://www.hrw.org/news/2020/09/02/us-sanctions-international-criminal-court-prosecutor>, accessed: December 16, 2021.

<sup>76</sup> United States, Executive Order 13928 on Blocking Property of Certain Persons Associated with the International Criminal Court, June 11, 2020.

<sup>77</sup> United States, Executive Order 14022 on the Termination of Emergency With Respect to the International Criminal Court, April 1, 2021, available at: <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/04/01/executive-order-on-the-termination-of-emergency-with-respect-to-the-international-criminal-court/>, accessed: December 16, 2021.

<sup>78</sup> ICC Office of the Prosecutor, Situation in The Islamic Republic of Afghanistan, Notification on status of the Islamic Republic of Afghanistan's article 18(2) request, ICC-02/17-142, 16 April 2020, para. 1–2.

tion, which is why the Prosecutor informed the Court of the need to continue the investigation before the International Criminal Court.<sup>79</sup> What particularly drew the attention of the international community was the statement of the new Prosecutor before the International Criminal Court, Karim Khan, that the future focus of the initiated investigation will be directed towards crimes suspected to have been committed by members of the Taliban and the Islamic State - Khorasan Province.<sup>80</sup> Various non-governmental organizations dealing with relevant issues have expressed their concern that the Prosecutor's position is intended to please the authorities of the United States and that the interests of a significant group of victims will be overlooked by such limitations of the investigation.<sup>81</sup> However, how effectively the proceedings will be conducted regarding all crimes covered by the investigation in Afghanistan cannot be answered with certainty in the foreseeable future. The international community, and especially Afghan victims, are left only to closely monitor further proceedings before the International Criminal Court in the hope that the outcome will provide them with fair satisfaction.

## CONCLUSION

As we have seen, the investigation into the crimes committed on the territory of Afghanistan, as well as in connection with the armed conflict in this country, was officially launched by the decision of the appeals chamber on March 5, 2020, thus setting a precedent in international criminal justice. This decision caused a series of repercussions directed against the International Criminal Court, especially against the then-prosecutor Fatu Bensouda.

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<sup>79</sup> ICC Office of the Prosecutor, Situation in The Islamic Republic of Afghanistan, Request to authorize resumption of investigation under article 18(2) of the Statute, ICC-02/17-161, 27 September 2021.

<sup>80</sup> ICC Office of the Prosecutor, Statement of the Prosecutor of the International Criminal Court, Karim AA Khan QC, following the application for an expedited order under article 18(2) seeking authorization to resume investigations in the Situation in Afghanistan, 27. 9, 2021, available at: <https://www.icc-cpi.int/Pages/item.aspx?name=2021-09-27-otp-statement-afghanistan>, accessed: December 16, 2021.

<sup>81</sup> Amnesty International, Afghanistan: ICC Prosecutor's Statement on Afghanistan jeopardizes his Office's legitimacy and future, October 5, 2021, available at: <https://www.amnesty.org/en/wp-content/uploads/2021/10/IOR5348422021ENGLISH.pdf>, accessed: December 16, 2021; Justice Info, Afghanistan: A war of positions at the ICC, 21 October 2021, available at: <https://www.justiceinfo.net/en/83498-afghanistan-war-of-position-icc.html>, accessed: December 16, 2021.

Prompted by this decision, the United States of America imposed sanctions in June 2020 against a whole range of individuals involved with the International Criminal Court, including a ban on entry into the country and the freezing of their assets located within the United States. However, this is not the first time that the United States has taken such measures. On the contrary, the campaign of the United States of America, which seeks to challenge the credibility and authority of the International Criminal Court, has been going on for many years, only to intensify after the historic decision to launch an investigation that will, *inter alia*, encompass citizens of the United States.

This action by the United States brought with it the reaction of the international community, including the United Nations itself, whose members strongly disagreed with the actions of the United States officials and condemned this type of attack on the International Criminal Court, as the only judicial body whose goal is the prosecution of perpetrators of crimes of the utmost importance for the international community as a whole.

Although the legally binding decision of the International Criminal Court unequivocally established the conditions for an investigation before this Court regarding crimes committed in Afghanistan or related to the armed conflict on the territory of Afghanistan, the latter statements of the newly appointed prosecutor raise concerns that the International Criminal Court will not be able to conduct a comprehensive and independent proceeding. Prosecutor Karim Khan's statement on limiting the investigation to crimes committed by members of the Taliban and the Islamic State gives the impression that the pressures of the United States of America have yielded results and that the interests of the most influential took precedence over the interests of those who suffered unimaginable damage during decades of armed conflicts in Afghanistan. In the author's view, it is essential to prevent any further impunity for the perpetrators of the most serious crimes, not only to provide compensation to the victims but also for the sake of preventing future actions that are in conflict with the most important principles and regulations in the field of international law and which violate the most civilized values.

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