**Contemporary Problems of International Criminal Law**

Prof. Christos Mylonopoulos, University of Athens

**Introduction**

It is beyond any doubt that criminal law is one of the faster developing branches of law. This is due to the spectacular expansion of international criminal law, which already, in the 1920s, Professor *Vespacien Pella* called “*the criminal law of the future*”.[[1]](#footnote-1) The establishment of the International Criminal Court and of other special international criminal tribunals, the development of European Criminal Law, the efforts to fight transnational criminality, in particular in the fields of terrorism, organized crime, money laundering and corruption, have created many new possibilities but also many problems. The rational treatment of these problems is therefore of great importance if we want the internationalization of criminal law to constitute progress, and not regress, in the fight against criminality.

**Ι. Issues related to the International Criminal Court**

**1. The so-called “complementarity principle”**

In the field of the Statute of the International Criminal Court many problems arise. One controversial issue is that of the *complementarity principle*, which is mentioned, directly or indirectly, not only in the preamble, but also in several provisions (Art. 1, 12-15, 17-18 and 20). As “*complementarity*” is defined by the majority of the commentators, the Court can intervene only if the state of origin of the offender or the state of the perpetration of the international offence are unable or unwilling to prosecute the crime.[[2]](#footnote-2) The most important consequence of this interpretation is that the ICC has no right to exercise jurisdiction if a private person, society or NGO denunciates an international crime before the Court, and the Prosecutor has to wait for evidence of the inability or unwillingness of the member state to prosecute the crime.[[3]](#footnote-3) The “complementarity” interpretation, however, is not self-evident, because the content given to the word “complementarity” expresses in fact not a case of complementarity but a case of subsidiarity. More specifically:

The Statute declares in the preamble (para. 10), that the Court “*shall be complementary to the national criminal legislations*” of the member states. On this basis, a case has to be dismissed as inadmissible if it is already being “*investigated or prosecuted*” by a member state, unless the state is unwilling or unable genuinely to carry out the investigation or prosecution. It is also inadmissible if it “*has been investigated by a State which has jurisdiction over it, and the State has decided not to prosecute the person concerned , unless the decision resulted from the unwillingness or inability of the State genuinely to prosecute*”. Inadmissible is finally a case if “it is not of sufficient gravity to justify further action by the Court” or if the prosecution would violate the *nebis in idem* principle.

A kind of “*complementarity*”,in the sense of the prevailing opinion, appears also in art. 18 of the Statute, according to which the Prosecutor, before proceeding with the investigation of a crime, “*shall notify all State Parties and all States which would normally exercise jurisdiction over the crimes concerned*”, to give them the opportunity to exercise their own jurisdiction. But this presupposes precisely that the Prosecutor takes for granted the pre-existing jurisdiction of the Court.

We can see, consequently, that these cases are cases of subsidiarity and not of complementarity. The interpretation of the prevailing opinion is therefore not justified with regard of the wording of Art. 17 of the Statute. That interpretation further disregards the fact that the prosecution is in principle admissible and only exceptionally inadmissible[[4]](#footnote-4) and it amounts to the ineffectiveness of the ICC. Complementarity, therefore, cannot be interpreted as subsidiarity.

**2. Complementarity as completion principle**

Nevertheless, in the frame of the Statute of the ICC, complementarity does exist and is recognized by the Statute, but it has a totally different meaning. It means that in cases not explicitly regulated by the Statute, the general principles deriving from the law systems of the signatory states may be applied, on the condition that they are not incompatible with the Statute itself.

More specifically: According to art. 21 of the Statute, “*the Court shall apply: (a) In the first place, this Statute, Elements of Crimes and its Rules of Procedure and Evidence; (b) In the second place, where appropriate, applicable treaties and the principles and rules of international law, including the established principles of the international law of armed conflict; (c) Failing that, general principles of law derived by the Court from national laws of legal systems of the world including, as appropriate, the national laws of States that would normally exercise jurisdiction over the crime, provided that those principles are not inconsistent with this Statute and with international law and internationally recognized norms and standards*”.

At this point the contribution of the general theory of criminal law is decisive. Complementarity in this sense allows an exhaustive and theoretically correct treatment of a case, since it allows the Statute to apply further rules and principles of law which have already been object of long and fruitful evolution by the signatory states.[[5]](#footnote-5)

If, for example, a citizen of a non-signatory State commits an international offence in a State which is not a member to the Statute, but he has acted as co-principal with a citizen of a signatory State, or with a person acting from a signatory State, we can come to the conclusion, in application of the complementarity principle, that the Court has jurisdiction over his conduct. The steps are the following: First, criminal prosecution is exercised *in rem* and not *in personam* (i.e., against the act and not against a person).[[6]](#footnote-6) Second, the place of the perpetration of an act may be determined with the help of the ubiquity principle, according to which the place of perpetration is not only the place of the criminal conduct but also the place of the criminal result. Third, complicity is a corollary assault on a legal interest, consequently it is a result-constituted offence (“*Erfolgsdelikt*”). Fourth, the result of the main offence is consequently also the result of the complicity.

**3. The subjective side of the offence in the ICC Statute**

Another field of difficulties at the level of the Statute of the ICC is the regulation of the *mens rea*, that is, the treatment of the *subjective side* of the offence. Here we can see an ample use of the *presumption of intent* (*presumtiodoli*) on the one hand and of constructive malice on the other. So art. 28 provides, for example, that “*a military commander or person effectively acting as a military commander shall be criminally responsible for crimes … committed by forces under his or her effective command and control… where: (i) That military commander or person either knew or, owing to the circumstances at the time,* ***should have known*** *that the forces were committing or about to commit such crimes…*”. This is, however, a case called in the English and American legal order “*constructive malice*”, and is consequently a judicial fiction. According to the *constructive malice doctrine*, if the defendant obtains knowledge of certain facts he has the legal obligation to come to certain conclusions and if those facts are suspicious, he must order an investigation of them.[[7]](#footnote-7) But even on the ground of the constructive knowledge theory, this kind of *mens rea* is only then in accordance with the culpability principle if the information was reliable, accurate and reasonable, allowing the defendant to know with certainty about the perpetration or the planning of the respective offence. The legal *obligation* to obtain a certain knowledge is, therefore, by no means equivalent to the *existence* of the knowledge. This approach to the Statute is consequently incompatible with the culpability principle. In this case, of course, the liability of the commander for negligence remains intact.[[8]](#footnote-8) The clear explanation of such questions is therefore an indispensable condition for the effective function of the ICC, since its Statute constitutes an obvious case of conceptual and political compromises.

**II. Problems of the European Criminal Law**

**1. The discrepancy between the jurisprudence of the European Court of Justice (today: Court of the European Union) and the European Court of Human Rights with regard to the concept of the criminal offence**

In European Criminal Law the need for approximation of the different criminal legislations of the member States, the diversities existing among them and the effort to unify them under common principles has created several problems. First of all, there is a clear discrepancy between the jurisprudence of the European Court of Justice (today: Court of the European Union) and the European Court of Human Rights with regard to the conception and definition of a *criminal offence* (“*accusation enmatièrepénale*”) and the distinction between a criminal and an administrative offence. The question is crucial, because on its answer depends the application of the fundamental guarantees of the rights of the accused provided for in Art. 6 ECHR. Although the ECHR recognizes quality of criminal offence and consequently provides for the protection of the fundamental guarantees even for minor offences (s. cases Oztürk, Engel, Campbell & Fell etc.) the ECJ goes in the opposite direction, and refuses the penal character of very severe sanctions, expressing the opinion that they are mere administrative offences. This problem can clearly be seen in the decision of 27.10. 1993, where the ECJ judged the appeal of the Federal Republic of Germany against the European Commission, (Rs C-240/90, NJW 1993, 47), according to which the pecuniary sanctions imposed in case of subventions unduly received are not criminal sanctions, as one would presume, on the basis of the jurisprudence of the European Court of Human Rights, but a mere administrative sanction, which indisputably belongs to the competence/responsibilities of the Commission.

This issue is more complicated today because (with the Lisbon Treaty) the European Union has acceded to the European Convention of Human Rights. Therefore, the fundamental rights of the accused are part of the general principles of the European Law and the European Union submits to the jurisprudence of European Court of Human Rights. Αccording to Art. 6 para. 2 of the Lisbon Treaty, the European Union

“*shall accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Such accession shall not affect the Union's competences as defined in the Treaties.*

*“3. Fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union's law*”.

Thus, the problem of the distinction between genuine and covered criminal sanctions arises already at the level of the European Criminal Law.

**2. The progressive abandonment of the double criminality principle**

Another complex problem at the level of the European Criminal Law is that of the legality principle in connection with the progressive abandonment of the double criminality principle. The double criminality principle is not a product of arbitrariness but a consequence of the principle of non-intervention and, therefore, of the prohibition of abuse of rights in international law.[[9]](#footnote-9) Its derogation or restriction must take place with extreme care and caution. This is, unfortunately, not observed in the case of the European Arrest Warrant, where some *categories* (not even offences!) of offences (32 all told) have been exempted from the principle of double criminality. This means that a European state is obliged to surrender an offender (that is, to execute a European arrest warrant) even if the latter has committed the act in its territory where the perpetration of this act is not penalized. In this way the executing state violates the *nullum-crimen* principle, sentencing someonefor an act which, according to its legislation, may be committed without any criminal sanction.

Ιn this context the Decision of the ECJ (of 3.5.2007, case C-303/2005) is quiet important. The Court judged an appeal of a Belgian Lawyers society (*Advocatenvoor de Wereld*), submitted with the reasoning that the frame decision on the European Warrant of Arrest violates the legality principle, precisely because the description of the 32 categories of offences was too imprecise and vague. In this case, although the prevalence of the legality principle was affirmed in the wording of the Court, it nevertheless has not been applied. The decisive weakness of the decision consists in the fact that it overlooked the following crucial circumstance: namely that the requested state, if it executes the warrant independently of the principle of double criminality, directly violates the legality principle. Because in this case it surrenders the accused even if he would remain unpunished if he had committed the same act in the executing state.

As we have seen, the double criminality principle is based on the ground of the prohibition of abuse in international law. Prohibition of abuse has the purpose of preventing states from arbitrary and egoistic legislation, by restricting the excessive extension of domestic penal jurisdiction. That is why it is said that the prohibition of abuse defines the outer limits of state power. Therefore, the abandonment of the principle of double criminality not only renders possible the violation of the legality principle, but also leads states to a value contradiction, since it contributes to the suppression of a conduct which can be freely committed under its own law. That is why the Constitutional Court of Germany stated that the abandonment of the condition of the double criminality in these cases of the European Warrant of Arrest means the factual validity of the foreign criminal law in the forum (BVERF G, 2236/04 of 18. July 2005).

**3. Problems of democratic deficit and substantive legitimacy**

At the level of the European Criminal Law the problem of the so-called democratic deficit also arises. This was linked with the fact, that in the past, that is, before the Lisbon Treaty of 2007 (in force since 1.12. 2009), many primary criminal rules (=rules describing just the prohibited or required behavior) were dictated to the member States by so-called frame decisions, issued by the Council of the EU, that is, by administrative officials, whilst the power to establish the sanction was reserved to the member states. This lack of formal legitimation of criminal legislation was obvious and triggered numerous protests. Nowadays, after the Lisbon Treaty, this kind of democratic deficit is no longer very important, since the European Parliament also participates in the formulation of primary rules.[[10]](#footnote-10)

According to art. 83 of the Treaty on the functioning of the EU:

“*the European Parliament and the Council may, by means of directives adopted in accordance with the ordinary legislative procedure, establish minimum rules concerning the definition of criminal offences and sanctions in the areas of particularly serious crime with a cross-border dimension resulting from the nature or impact of such offences or from a special need to combat them on a common basis.*

*“These areas of crime are the following: terrorism, trafficking in human beings and sexual exploitation of women and children, illicit drug trafficking, illicit arms trafficking, money laundering, corruption, counterfeiting of means of payment, computer crime and organized crime.*

*“On the basis of developments in crime, the Council may adopt a decision identifying other areas of crime that meet the criteria specified in this paragraph. It shall act unanimously after obtaining the consent of the European Parliament*.”

As we can see, the European Union has the right to formulate itself through Directives the minimum criminal provisions in all their extent, that is, both with regard to the primary rules and the criminal sanctions. In the case of the protection of the financial interests of the European Union, in particular, the criminal provisions are imposed by Regulations with direct effect which makes the problem of substantive legitimation of the democratic deficit even more intense.

**III. Participation from the forum state in an offence committed abroad**

The provisions of international criminal law in the narrow sense (*strictosensu*) specify, as we know, the space limits of the criminal law and consequently the extent of application of the rules of domestic criminal law. Nevertheless, the following problem arises already here: which rules? The fact that criminal provisions are contained in criminal laws does not give any satisfactory answer. This is due to the fact that criminal provisions not only express a rule, but also presuppose and therefore contain two further kinds of rules. They are secondary sanctioning-rules (for example, murder shall be punished by life imprisonment), but they also presuppose respective so-called primary rules (“*Bestimmungsnormen*”; for example: don’t kill), which, in turn, rely upon evaluative rules (“*Bewertungsnormen*”; for example: the legal order considers murder negatively). Of the many opinions expressed on this point, two are noteworthy.

According to the first[[11]](#footnote-11), the provisions of the space limits of criminal law specify only the secondary, or sanctioning, rule, defining and designing the limits of the state’s reaction against crime, since these rules are addressed to the judicial authorities, that is, to the organs of the state. This point of view has, however, the consequence that domestic law taken as a whole of primary prohibiting, or commanding rules, has universal validity. It follows that the criminal provisions of a state literally prohibit the respective offences in every other state, they just cannot punish them. In this case the state doesn’t punish, although it can prohibit.

This opinion can nevertheless not be adopted, because it extends the ruling power of states to an unacceptable degree, since it creates unnecessary and unjustified law violations all over the world.

According to a second,[[12]](#footnote-12) and predominant, opinion, the rules of international criminal law in a narrow sense depict the extent of the primary (prohibiting and commanding) rules, providing for the extent of criminal prohibitions and obligations and not merely for the extent of the state’s right to react by criminal prosecution. In this case the state doesn’t punish, because it doesn’t prohibit.

But what happens with the evaluative rules? The question is: do these rules have a wider range of validity than the primary ones? Is there any legal ground for the answer? And, if yes, what is the practical importance of such a finding?

If we consider the legal system of many countries, we will see that the evaluative rules that form the foundations of the penal system have in fact a much wider range of validity than the primary ones. In other words: domestic criminal rules are entitled to evaluate (under condition of reciprocity) acts or types of conduct which they are nevertheless not entitled to prohibit or to command, that is, acts uncovered by the system of primary rules. That means that the validity of evaluative rules surpasses the space limits of the primary and, consequently, of the secondary rules. Of course, this position would be arbitrary if it was not based on legal regulations adopted by a large number of states.[[13]](#footnote-13)

Thus, in the field of the law of extradition, according to the principle of the identical rule (“*Prinzip der identischen Norm*”), many countries prohibit extradition if the conduct the extradition is required for, is not also an offence under the law of the requested state. That means, therefore, that according to this principle, the requested state has the right to evaluate conduct which it has not the right to prohibit, to prosecute and to punish. Consequently, in this case the criminal norm of a state functions only as the evaluating rule and has a wider, quasi-universal range of validity than the domestic primary rules.

Further, there are also international conventions providing for a wider range of evaluative rules. This is the case, for example, with regard to the European Convention for the Transfer of Prisoners, according to which a foreign prisoner in a state member of the Council of Europe has the right to serve his sentence in his own country, if he is citizen of another member state of the Council of Europe. So, when such a transfer takes place through another member state, the latter has the right to deny the transfer, if the act the prisoner was convicted for is not an offence according to the laws of this, third state. It has therefore the right to evaluate an offence, over which it has no jurisdiction.The same applies with regard to penal decisions of other countries. They are usually registered in the criminal records of the state of origin of the offender only if the act the latter has been sentenced for is an offence according to the laws of the offender’s state.

The practical significance of this issue is not negligible. It appears in two major fields: First, with regard to the criminal prosecution of money laundering and, second, with regard to the treatment of complicity from the adjudicating state, in a main act perpetrated abroad with no links to the forum. Money laundering is, as we know, a connected offence, depending on the perpetration of a previous offence. Now, if this latter is committed abroad and the forum where the laundering was committed has no jurisdiction over the previous offence, the culprit can be punished for money laundering only on the condition that the adjudicating state has the right to apply its own evaluating norms on the previous offence, even it has not the right to punish it.

The second case is much more complicated and serious. In the case of complicity in an offence committed abroad, with no link to the forum, the issue of jurisdiction over the participant is controversial. The question arose in connection with a famous case of maritime fraud, the so-called “*Salem case*”, but also in connection with the case of the “*Greek maize*”, which gave rise to the spectacular evolution of European Criminal Law with the Amsterdam Treaty and the so-called Convention for the Protection of the Financial Interests of the European Communities.

In the Salem case, the captain and the crew of the tanker “Salem” embezzled enormous amount of oil and sold it to South Africa, violating the embargo existing at that time against this country because of apartheid. The Greek legal system had no jurisdiction over the main offence, since it was committed abroad by foreigners and there was no connecting link with Greece. However, a person acting from Greece offered aid to the offenders. The question was, therefore, whether the forum (Greece) had jurisdiction over the participant, although it had no jurisdiction over the offence (the “main act”). The crucial point is, on the basis of the continental European system, that the prosecution of aiding and abetting requires a main act which is unlawful. Therefore, the question was: has the forum the right to examine whether the main act is unlawful according to its own legal system, although it has no jurisdiction over it? The prevailing opinion in the past – not only in Greece but also in other European countries, for example, in France – was the following: since aiding and abetting depends on the existence of an offence (“main act”) and the forum has no jurisdiction over the latter, it consequently has no jurisdiction over the act of the participant. This point of view, however, cannot be adopted. Because, as we have seen, the fact that primary rules do not apply to an offence does not exclude the possibility that the main act can be assessed under the evaluative rules of the forum which enjoy a much wider range of validity. The forum is therefore entitled to evaluate the main act as unlawful and contrary to its system of criminal law, even though it has not the right to prohibit or to punish it. Consequently, it has jurisdiction over the participant who acted from its soil.

**IV. The need for a comprehensive theory of International Criminal Law**

This short overview of the problems of International and European Criminal Law shows the need for coherence and consistency not only within the European Criminal System but also with regard to international penal legislation. In the framework of a legal order, coherence provides to the legal provisions convincing power and seriousness, so that citizens may be sure that these rules are not products of arbitrariness or opportunism and that they are in accordance with the general principles of the legal system which is the foundation of the society. Coherence therefore strengthens the confidence in the reliability of the penal system and in the authority of the legal order and facilitates the law’s functioning as a tool of positive general prevention.

We see that the main characteristic of the process of the internationalization of criminal law is a legitimacy deficit. This deficit is due exactly to the lack of a theory of criminal law.[[14]](#footnote-14) Without a theory of criminal law,legislative processes become uncontrolledand arbitrary and can lead to an unbearable expansion of criminalization, to the detriment of the fragmentary and democratic character of the criminal law. We could explain this procedure on the basis of the structural (new) realism of Kenneth *Waltz*, elaborated in Public International Law, according to which the primary aim of the state consists in the maintenance of its security.[[15]](#footnote-15) This theory is based on the old realism of *Hobbes*, according to which the relation among states is a kind of anarchy, a kind of moral egoism, a natural situation analogous to the situation of individuals before the establishment of the social contract.[[16]](#footnote-16)

From this perspective, at the level of the globalization of the criminal law the same anarchy is given: The rules of the Statute of the ICC, the criminal law rules of the European Unionand also many rulesemanating from international treaties rely upon no theory but they have a unique purpose, to assure security and to suppress transnational criminality at all costs. As Professor *Sieber* observed, this point of view leads towards a new Security Architecture of the Legal system.[[17]](#footnote-17)

So we are now at the core of our problem: What are the criteria for a satisfactory theory of criminalization at the international level? These criteria are the following: Clarity, Coherence, Completeness and Comprehensiveness, Simplicity, Explanatory Power, Justificatory Power, Output Power and Practicability.[[18]](#footnote-18)

However, in the course of the internationalization of criminal law no theory has been taken into consideration. On the contrary, its rules are exclusively based on the idea of the security. In the framework of international criminal rules none of the criteria set out above is satisfied. We can see, for example, that there is no Coherence, since the concept of criminal accusation is differently interpreted by the European Court of Justice and the European Court of Human Rights. Further, there is no Completeness, since the offences provided for by the Statute of the ICC cannot be totally combined with the rules of the General Part, so that they neither belong to a complete system, nor can be integrated into a national penal system. There is no Comprehensiveness, since, for example, the Convention for the Protection of the Financial Interests of the EU (Convention PIF of 26.7.1995) combines in one and only provision (s. Art. 1) rules concerning fraud, forgery and customs offences, confusing, in this way, internal and common legal interests. There is no Explanatory Power, because the vagueness and variety of meanings (polysemy) of the criminal law terms used in international law texts is so extensive that they generate insecurity about their meaning. Finally, there is no Practicability, since even the best theory cannot be useful and effective if its implementation prerequisites are so demanding that the social cost of its application is unacceptably high. This is the case in many international provisions, especially with regard to the suppression of terrorism and organized crime. Effectiveness against these forms of criminality requires a totally new orientation of our society, towards rather to security than to a balance between freedom and protection of legal interests, We could say, consequently, that the anarchy dominating international relations has been transferred to international criminal legislation. But this means an unbearable burden for the whole Criminal Law System, and it makes it less persuasive and therefore less efficient. The confidence of people in the criminal law system, that is, the systemic confidence (“*Systemvertrauen*”) is being weakened and the ultimate aim of this procedure, namely, total security, is not achieved. Security-oriented provisions create more insecurity than security.[[19]](#footnote-19)

A theory of International Criminal Justice must therefore observe the above- mentioned criteria. It must alsobe a law theory, namely, a theory based on the principles of proportionality, of human dignity, of culpability and of legality. A law system aiming to assure security at any cost is no law system anymore. And, since it creates no confidence, it cannot assure greater security, either.

1. Pella, *La Criminalité collective des États et le droit pénal de l’ avenir*, 1925. [↑](#footnote-ref-1)
2. Jaques, *Vers la Cour Criminelle Internationale. Examen du Projet de Statut de la Cour , in:* Le Tribunal Pénal international de la Haye, Paris 2000, 283 ff. [↑](#footnote-ref-2)
3. Triffterer, *Commentary of the Rome Statute of the International Criminal Court,* Baden Baden 1999, pp. 59/60. [↑](#footnote-ref-3)
4. In this sense Meissner, *Die Zusammenarbeit mit dem internationalen Strafgerichtshof nach dem römischen Statut,* 2003, 70 ff., Jones &Powles, *International Criminal Practice*, 3. Aufl. Oxford 2003, 392: if only the ICC deals with a case, so the seriousness of the case is the sole condition for the establishment of its jurisdiction. [↑](#footnote-ref-4)
5. Mylonopoulos, *Strafrechtsdogmatik und Internationalisierung der Strafrechtspflege. Vorschritt oder Rückgang?* (in Greek), Poinika Chronika 2004, 867. [↑](#footnote-ref-5)
6. S. Art. 13, 14: a State party may refer to the prosecutor a “situation”, Art. 5, 11, § 2, 12 § 1, 2: [the jurisdiction of the Court shall be limited to the most serious]“crimes“, Art. 15, 17: „the case is being investigated“. [↑](#footnote-ref-6)
7. Hessler, *Yale L. R. 1973*, 1278, Ambos, *Der Allgemeine Teil des Völkerstrafrechts,* Berlin 2002, 699. [↑](#footnote-ref-7)
8. In this sense Ambos, op.cit. To consider recklessness as equivalent with *doluseventualis* (in this sense however Cassese, *International Criminal Law,* Oxford 2003, 168) is on the contrary not convincing [↑](#footnote-ref-8)
9. Jescheck-Weigend, *Lehrbuch*, 165, Mylonopoulos, *Internationales Strafrecht (1993),* 103 ff. (inGreek), cp. Lauterpacht, *The Function of Law in the International Community,* Oxford 1933, 286, Politis, *Le problème des limitations de la souveraineté et la théorie de l’ abus des droits dans les rapports internationaux, in:* Receuil de Cours, 1925, vol. I, 1, 77. [↑](#footnote-ref-9)
10. Sieber, *Die Zukunft des Europäischen Strafrechts, -Ein neuer Ansatz zu den Zielen und Modellen des europäischen Strafrechtssystems,* ZStW 121 (2009), 1, the same, *Rechtliche Ordnung in einer globalen Welt,* Rechtstheorie 151, 185: „Die EU hat dieses Problem mit dem Lissabonner Vertrag nunmehr durch eine erweiterte Mitwirkung des Europäischen Parlaments gelöst, die zusätzlich zu qualifizierten Mehrheitsentscheidungen im Rat erforderlich ist…Die Legitimation der Europäischen Gesetzgebung beruht damit heute vor allem auf der Zustimmung des Europäischen Parlaments und der gewählten nationalen Regierungen im Rat zu den einzelnen europäischen Regelungen sowie auf der Zustimmung der nationalen Parlamente zu den Ermächtigungsgrundlagen im europäischen Primärrecht“. [↑](#footnote-ref-10)
11. Baumann -Arzt- Weber, *Strafrecht AT 11 Aufl* , p. Nowakowski JZ 71, 637 [↑](#footnote-ref-11)
12. Oehler, *in:* Grützner- Festschrift, 1970, p.86, Krey, *Zum innerdeutschen Strafanwendungsrecht de lege lata und de lege ferenda,* 1969, 86. [↑](#footnote-ref-12)
13. Jung, *Die Inlandsteilnahme an ausländischer Hauptat,* JZ 1979, 327, Mylonopoulos, *International Criminal Law,* 2nd ed., 194. [↑](#footnote-ref-13)
14. Cp. Mylonopoulos*,* *Internationalisierung des Strafrechts und Strafrechtsdogmatik*, ZStW 121 (2009), 68 ff. [↑](#footnote-ref-14)
15. S. Waltz, *Realist Thought and Neorealist Theory,* JournIntAff 1990, 36. [↑](#footnote-ref-15)
16. Hobbes, *Leviathan,* Cambridge1991, 90, Voutsakis, *Der Realismus der Realisten*, (in Greek= *in: Terrorism and Human Rights,* Αthens 1998, 94. [↑](#footnote-ref-16)
17. Sieber, *Grenzen des Strafrechts,* ZStW 119 (2007) 36. [↑](#footnote-ref-17)
18. Beauchamp-Childress, *Principles of Biomedical Ethics,* 4rth ed. Oxford 1994, Kagan, *The Limits of Morality,* Oxford 1989, 11. The necessity of a „theory on the functional limits of the Criminal Law” is underlined by Sieber, op. cit., 43. [↑](#footnote-ref-18)
19. Kühne, *Sicherheitsterrorismus*, NJW 2005, Heft 19 (editorial). [↑](#footnote-ref-19)