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European and International Law

The Principle of Proportionality in International Criminal Law

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Abstract: The principle of proportionality indicated to, are that the criminal codes should contain specific maximums for crime or category of crimes. As to the applicable penalty, should be made distinctive not only between types of crimes but also between completed crimes and inchoate crimes. Unfortunately, the principle of proportionality is not obvious in substantive international law. Although the 1993 draft statute allowed for right of appeal against sentences where there was obvious disproportion between the crime and the sentence. The Tribunals' Rules of Procedure and Evidence has been given additional directives on sentencing but The ICC Statute, does not provide precise penalties for specific crimes, despite the wide range of offenses and forms of participation that the court is called upon to judge.

Keywords: proportionality; grave offence; circumstance; consistency; criteria of proportionality

1. Introduction

The principle of proportionality creates balance between the crime and its punishment for establishing criminal justice, instance of the nature of the homicide is altered from murder to manslaughter because the homicide was committed by a person with reduced capacity not fully responsible for his or her action. Proportionality between crime and punishment should be transferable to international law for considering to criminal justice. In particular categories of international crimes should be existed in a hierarchy based on gravity of the crimes.

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Some support for such as hierarchy of international crimes is found, including the core offense crimes against humanity, genocide, and war crimes the first is distinct from, each other[1].

But it is not clear, which one more serious than another application of this proposition is found in the opinion of judge McDonald and Vohrah in the international criminal tribunal Yugoslavia appeals chamber judgment in Erdemovic, in the context of determining that the accused of a crime against humanity would result in a more straighten punishment than would a guilty plea to a war crime, the two judges advanced in a hierarchy based on moral gravity[2]. However it should be noted that the concept of lesser crimes has not received universal acceptance.[3]

In order to constituting of proportionality the degrees of punishment is specific, definite and clear (Haveman, Kavran & Nicholls, 2003). It also requires the law to differentiate between the specific maximum punishments to different crimes. Second reason for considering to principal of proportionality is that an individual is entitled to know the nature of the charges against him.

Finally, it would mean that the law of penalties should also distinguish between different forms of participation in criminal conducts such as omission, attempt, aiding and abetting, and the applicable penalty should be distinguished not only between types of crimes but also between complete and inchoate crimes. The aim of distinguished and codification of crime and punishment is to make sure that a defendant is sentenced to neither more nor less than what he deserves.

As well as, the sentence accorded to a crime should reflect the serious of the offences. Thus It would clearly be wrong if murder carried a less serious sentence than assault, but there are more complex argument over whether one offence is more or less serious than another. For example, is rap more or less serious than hand cut off? "*It should be notice, proportionate not only to the crime itself but also to those sentence impose for similar offences in similar cases. By doing so, the unequal treatment of similar cases may be avoided*". (Shahram, 2009)[4]

2. Proportionality in the French and German Criminal Law

In the legal systems proportionality indicated to vary ways. Proportionality in French was determinate by 1810 Penal Code France and new 1994 Code classify offences into three groups:

[1] Prosecutor Jean Kambanda in case No. ICTR 97-23-5 trail chamber I, judgment and sentence of 4 sept. 1998 – para no. 3.
[2] *Ibidem*, para no.4.
[3] *Ibidem*, para 9b.
[4] Available at: http://works.bepress.com/shahram_dana/1

- *"contraventions"*: very petty offences punished only by fines (minor road offences, breach of bylaws, minor assaults, noise offences etc.);
- *"délits"*: offences of greater importance subjected to a sentence of a maximum of 10 years. *Délits* include theft, manslaughter, indecent assault, drug offences, fraud and deception, drunken driving, serious unintentional bodily damages etc.;
- *"crimes":* offences subjected to custodial sentences from 10 years to a life term (murder, rape, robbery, abduction).

The constitutional basis of German, the sentencing structure can be drawn from the notion of the *Rechtsstaat*, which can be translated with the term "rule of law." This principle, which is laid down in Article 20 1 *Grundgesetz*[1]encompasses the culpability-principle, under which the punishment must be proportionate to the individual guilt of the offender. Thus, section 46 I of the Criminal Code stats "*the guilt of the perpetrator is the foundation for determining punishment*." The culpability-principle is a specific expression of the proportionality principle, which is also a constitutional requirement of the "rule of law." (Streng, 2007, pp. 153-172)[2]

In the German criminal law, research has shown that the sentence is usually based on four factors: The circumstances of the offense, the damage caused, the defendant's prior convictions, and the defendant's behavior in court. In recent years, the bargaining position of the defendant has become probably the most important factor in the determination of the sentence in more serious cases. (Streng, 2007, pp. 153-172)

3. Proportionality in International Substantive Law

Unfortunately, the principle of proportionality is not obvious in substantive international law. The penalty provision proposed by the International Law Commission in its draft statute for an international criminal court was nearly the same to the penalty provisions of the ad hoc tribunals (ICTY Article 24 and ICTR Article 23), and relied upon the same general criteria as found in the sentencing provisions of the ICC Statute[3]. Article 77 sets out the ICC's powers regarding the sanction of imprisonment. It gives the court two alternatives: judges must make choice between imprisonment of not more than thirty years[4] and life imprisonment. This structure indicated to the maximum sentence. Under the statutes of the IMT,

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[1] German Constitution.

[2] Available at: http://www.germanlawjournal.com/pdfs/Vol08No02/PDF_Vol_08_No_02_153-172_Articles_Streng.pdf

[3] See Report of the International Law Commission to the General Assembly on the Work of Its Forty-Sixth Session, U.N. GAOR Supp. (No. 10) at 60, U.N. Doc. A/49/10(1994), reprinted in [1994] 2 Y.B. Int'l L. Comm.'s 287, U.N. Doc.
A/CN.4/SER.A/1994/Add.1 (providing that "[i]n imposing sentence, the Trial Chamber should take into account such factors as the gravity of the crime and the individual circumstances of the convicted person.").

[4] Proposals on the maximum years for a specific term of imprisonment ranged from twenty to forty.

IMTFE, ICTR and ICTY, a person could be sentenced to forty years or fifty years or any other period of time.

The ICC Statute, however, does not provide precise penalties for specific crimes, despite the wide range of offenses and forms of participation that the court is called upon to judge. Thus, the sentencing scheme in Article 77 applies to all crimes within the ICC jurisdiction.

By the way, determining a sentence within structure, judges must take into account two factors: "gravity of the crime" and "the individual circumstances of the convicted person"[1]. "Gravity of the crime" appears as the key criterion in two places in the Statute of Rome. Under Article 77(1) (b), "gravity of the crime" is relied on to determine the appropriateness of life imprisonment. At least, the "gravity of the crime" must be highest in order to justify life imprisonment. So Life imprisonment should only be imposed "when justified by the extreme gravity of the crime and the individual circumstances of the convicted person." Both criteria must be met before an individual can be sentenced to life presentment. As result, proportionality in tribunal's statute is unspecific and The Trial Chambers keep broad sentencing discretion. Although the Tribunals' Statutes exclude the death penalty as allowable sanction,[2] but the range of potential terms of imprisonment is in remarkable manner, wide. The Rules of Procedure and Evidence provide that "a convicted person may be sentenced to imprisonment for a term up to and including the remainder of the convicted person's life."[3] In theory, then, sentences can range from one day to life imprisonment for any crime over which the Tribunals have jurisdiction. The ICTY and the ICTR statues contain sentencing provisions providing that the penalty imposed by the trial chamber shall be limited to imprisonment.[4]

The 1993 draft statute allowed for right of appeal against sentences where there was obvious disproportion between the crime and the sentence. The Tribunals' Rules of Procedure and Evidence has been given additional directives on sentencing

In the Rule 101 of the ICTY for governing penalties states:

(A) A convicted person may be sentenced to imprisonment for a term up to and including the remainder of his life.

(B) In determining the sentence, the Trial Chamber shall take into account the factors mentioned in Article 24, paragraph 2 of the Statute, as well as such factors as: (i) any aggravating circumstances; (ii) any mitigating circumstances including the substantial cooperation with the Prosecutor by the convicted person before or

[1] ICC Statute art. 78 (1).

[2] ICTR Statute, art. 23 (1); ICTY Statute, art. 24 (1). See also (Morris & Scharf, 1995).

[3] ICTY RPE, R. 101(A), U.N. Doc. IT/32/Rev/39 (Sept. 22, 2006); *see also* Int'l Crim. Tribunal for Rwanda Rules of Procedure & Evidence, Rule 101(A) (Nov. 10, 2006) [hereinafter ICTR RPE].

[4] The Security Council found it conflicting with human rights.

after conviction; (iii) the general practice regarding prison sentences in the courts of the former Yugoslavia; (iv) the extent to which any penalty imposed by a court of any State on the convicted person for the same act has already been served, as referred to in Article 10(3) of the Statute.

(C) Credit shall be given to the convicted person for the period, if any, during which the convicted person was detained in custody pending his surrender to the Tribunal or pending trial or appeal.

4. Criteria of Proportionality

Criteria of proportionality depended on aim of criminal law as well as therefore whether punishment is meant to deter offenders, the higher sentence should be imposed for those crimes that are more a threat to the international community.

In according to article 10 (3) of international convention on civil and political rights states that the penitentiary system shall comprise treatment of prisoners the essential aim of which be their reformation and social retribution. Also in the trail chamber Arusha, noted that retribution and deterrence are the main principle in sentencing for international criminal law.[1] The international criminal law recognized principle of punishment –deterrence and retribution that are originally derived from criminal law and criminal tribunal have conformed these objectives as well as [2]

4.1. Grave Offence

The gravity of the offence deserved special attention; the gravity of the offense includes two elements, the magnitude of the harm caused by the offender and the offender's capability with respect to that harm. These elements caution different interpretation in criminal tribunal. For solving this difficult, the grave offfence should be codified and fit punishment or constituting a judicial institution with authoring making law for making uniform between difference sentence. [3]

However, in order to obtain a uniform approach in the imposition of penalties in different cases, The evaluation of the gravity of the offence should be completed by a more general analyses placing a grave offence into a wider form, where it's

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[1] Prosecuter V. Stevan Todorvic, case No IT _95-9 /I-S, Sentencing Judgment 31 July 2001.

[2] Prosecutor V. Tadic, supra note 75, para. 61.

[3] However, international tribunals regarding the concept of gravity of the offence and the issue of the comparative seriousness of crimes. First of all on the IMI judgment exist the legal distinction between different crimes and the law relating to war crimes and crimes against humanity. The study of the grave offence may be approach from two angles, one may be termed gravity in *personam,* subjective gravity or gravity *in concreto*. In this connection, the ICTY chamber in the Aleksovski case, has noted that the gravity of on offence is the result of circumstance of the case and degree of the accused participation in the crime.

gravity can be assessed in relation to that of other offence Like that In the common law countries of the concept of gravity of the offence is widely adopted and is used often under the label seriousness of the offence. As the benchmark for offence scale prepared by interpreters or sentencing commission, so international law is close with this approach. In some countries belong to the civil law tradition such as the criminal code in order to help judges to assess the appropriate penalties.

Grave offence in the tribunal jurisprudence

The idea that there is a hierarchy of crimes in international humanity law has been the subject of debate since the ICTY hand down its first sentence Drazen Erdemovic was the first defendant to be sentenced by either tribunal. He pleaded guilty to murder as a crime against humanity and was sentenced to ten years in prison but the appeal chamber argued that, since a crime against humanity is a more serious charge than a war crime and thus carried a heavier penalty, Erdemovic would not have pleaded guilty to a crime against humanity and he understood the difference between the two offence. Judge express disagreement on this point. Consequently, Erdemovic pleaded guilty to murder as a violation of the laws or customs of war and the trail chamber resented him to five years in prison and the second defendant ICTY was declared that crimes against humanity should attract a higher sentence than war crimes.

But there is confront about hierarchy between crimes in tribunal jurisprudence because of an ICTY trail chamber convicted a third defendant ‘Anto Furundzija, of one count of rape and one count of torture, both as violations of the laws or customs of war.[1] The trial chamber sentenced Furundzija to ten years imprisonment. He appealed against his sentence that it was overly harsh. The appeals chamber rejected his appeal and affirmed its decision that there is no inherent difference in gravity between a crime against humanity and a war crime again, one judge dissented on this point. Subsequent ICTY trial chambers have followed the holding of the appeals chamber and have rejected the hierarchy of crimes. [2]

By contrast, the ICTR has frequently referred to genocide as the crime of crimes it has also stated that war crimes are considered a lesser crimes than genocide or crimes against humanity[3].

According to the trial chamber, there were no doubts that violations of article 3 common to the 1949 Geneva conventions were less serious offence than genocide or crimes against humanity at the same time, the trial chamber observed that it was more difficult to rank genocide and crimes against humanity in items of their

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[1] Prosecutor Jean Kambanda case No. ICTR 97-23-5 trail chamber I, judgment and sentence of 4 sept. 1998 – para no 3.
[2] *Ibidem* para no 4.
[3] *Ibidem* para 9b.

respective gravity. Furthermore, until recently, there was no clear jurisprudence relating to lesser included offenses in International Criminal Law.

4.2. Victim interest

The recent call for more respect for the victim's interests, rights, and perspective within the criminal justice system is sympathetic to the victims. There really is a consensus that crime victims should occupy an important role in the administration of criminal law, and then we are faced with an amazing inconsistency between this view and the absence of the victim in traditional penal theory. (Coughlin, 1998)[1]

Joel Fienberg suggests focusing on the victim's loss of opportunity or range of choices. Professor Shworth state: the retributive theory is based on the concept of proportionality. That punishment system shall be guided by such a theory.

4.3. Circumstances

The element of circumstance has grave place to determine fair practice of the ICTY and ICTR. Thus the means employed to execute the crime the degree of participation of the convicted person, the degree of intent, time and location and age, education, social and economic condition of the convicted person, but some criteria of the above are uncertain in tribunal statutes.

Gravity Circumstance. The circumstance factors developed by the ICTY and ICTR in the jurisprudence include scale of the crime, the length of time during which it continued, the age, number and suffering of the victim, the nature of perpetrators involvement, premeditation and discriminatory intent, abuse of power and position as a superior.[2] Criminal participation, in determining a sentence ICTY and ICTR have mentioned in three most direct forms of participation, planning, ordering, instigating as possible aggravating circumstance in the case of a highly placed accused[3].

Mitigating Circumstance. The only mitigating circumstance expressed in the ICTY and ICTR RPE is substantial cooperation with the prosecution before or after conviction. Extent of a guilty plea should be a mitigating factor and expression of remorse, voluntary surrender, assistance to detainer s or victims and personal circumstance such as good character age comportment in detention and family circumstance and poor health the role of the accused may have an impact on the penalty.

[1] Unpublished manuscript, on file with the Buffalo Criminal Law Review.
[2] Cetebictic judgment para 1268 and Jelsic judgment, para 132.
[3] Kambanda judgment, para. 44.

5. Difficulties of the Proportionality

5.1. Legal System

Historical events indicate that legal system deem appropriate to these convention into their domestic legislation and enforce international crime in accordance with their domestic law also they have challenge for determining of penalties some country favor of abolishes of death penalty, several countries also expressed their reservation about sentence of life imprisonment, which they said were also a form of cruel, inhuman and degrading punishment and some Islamic country argue imposing death penalty so the legal system no uniform in the capital sentence.

Therefore some international criminal tribunal have included in their charter or statute a provision of penalties, through never in specific terms enough to satisfy a positivist legal interpretation of the requirement *nulla poena sine lege*.[1] Then the respective charter and statute of the international criminal tribunal delegate to the judge to determination of penalties as well as the sentencing.[2] And the statute of Rome also do not refer to any limitation on penalties and complimentary in the ICC have been admitted to state for determining punishment.

5.2. Nature of International Crimes

The complex nature of international criminal cases, sentences often must respond to multiple crimes committed over an extended time and involving numerous victims. In the vast majority of cases, the Trial Chambers have dealt with this complexity by imposing a single, global sentence encompassing all the convictions rather than sentencing the defendant separately for each individual crime.[3]

The principle of uniformity and proportionality, widely accepted for sentencing in domestic jurisdictions (Frase, 2001, pp. 259-261), is arguably even more compelling in the international criminal law context. International criminal tribunals operate in an ethnically charged context, often trying defendants from all sides of a conflict.[4] Unlike most domestic trials, international criminal trials attract global attention and speak to multiple audiences: not only the victims, victors and defeated.

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[1] Statute of ICTY art. 24.

[2] See prosecutor V. Ruggiu, case No ICTR-97-32-I. judgment and sentence (june 2000).

[3] See, e.g., Prosecutor V. Blagojevich & Jokic, Case No. IT-02-60-T, Judgment, X. Disposition (Jan 17, 2005) (sentencing Blagojevich to a single sentence of eighteen years for complicity to commit genocide, the crimes against humanity of murder, persecution, and inhumane acts, and the war crime of murder).

[4] See Office of the High Representative BiH Media Roundup (July 4, 2006), http://www.ohr.int/ohrdept/presso/bh-media-rep/round-ups/default.asp?content_id_37592 (last visited Jan. 14, 2008) (summarizing the strong reactions in Serb and Bosnian Serb media to the ICTY's two-year sentence for Bosnian Muslim defendant Naser Oric, calling the sentence "shameful" and accusing the ICTY of employing double standards based on ethnicity).

6. Consistency in Proportionality

The Trial Chambers, then, have remarkably wide discretion to fix the sentence for each individual. The Ad Hoc Tribunals embrace this discretion repeatedly emphasizing the central importance of individualized sentences.[1] At the same time, the Appeals Chamber has acknowledged that the Tribunals' legitimacy depends on consistency in punishment: "*Public confidence in the integrity of the administration of criminal justice (whether international or domestic) is a matter of abiding importance to the survival of the institutions which are responsible for that administration. One of the fundamental elements in any rational and fair system of criminal justice is consistency in punishment. This is an important reflection of the notion of equal justice. The experience of many domestic jurisdictions over the years has been that such public confidence may be eroded if these institutions give an appearance of injustice by permitting substantial inconsistencies in the punishment of different offenders, where the circumstances of the different offences and of the offenders being punished are sufficiently similar that the punishments imposed would, in justice, be expected to be also generally similar.*[2]"

The ICTY Trial Chamber separately convicted two high-ranking Bosnian Croat officials, Generals Tihomir Blaskic and Dario Kordic, for crimes in the Lasva Valley region of Bosnia (Shahram, 2004, p. 321). Both convictions covered "substantially similar conduct,"[3] including the crimes against humanity of persecution, murder and inhumane acts.[4] Despite the similarities in the cases, the Trial Chambers sentenced Blaskic to forty-five years, but Kordic to only twenty-five years.[5]

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[1] See, e.g., Prosecutor v. Babic, Case No. IT-03-72-A, Judgment on Sentencing Appeal, ¶7 (July 18, 2005) ("Trial Chambers are vested with broad discretion in determining an appropriate sentence, due to their obligation to individualise the penalties to fit the circumstances of the accused and the gravity of the crime.").

[2] Prosecutor v. Delalic, Mucic, Delic & Landzo (*Celebici II*), Case No. IT-96-21-A, Judgment, ¶ 756 (Feb. 20, 2001); *see also* Prosecutor v. Jelisic, Case No. IT-95-10-A, Judgment, ¶ 96 (July 5, 2001) ("The Appeals Chamber agrees that a sentence should not be capricious or excessive, and that, in principle, it may be thought to be capricious or excessive if it is out of reasonable proportion with a line of sentences passed in similar circumstances for the same offences. Where there is such disparity, the Appeals Chamber may infer that there was disregard of the standard criteria by which sentence should be assessed, as prescribed by the Statute and set out in the Rules."); Allison Marston Danner, *Constructing a Hierarchy of Crimes in International Criminal Law Sentencing*, 87 VA. L. REV. 415, 440–42 (2001) (noting the Appeals Chamber's recognition in the *Celebici II* case of the importance of consistent sentencing practices).

[3] Prosecutor v. Kordic & Cerkez, Case No. IT-95-14/2-A, Judgment, ¶ 1058 (Dec. 17, 2004).

[4] *Ibidem* at XI disposition.

[5] *Ibidem.*

6.1. Role of Appeals Chamber

The role of appeal camber for uniform sentences is common in domestic jurisdiction but the Ad Hoc Tribunals are not like domestic systems. By their very nature, they must blend different legal systems The first time the appeal Chamber had to consider whether to exercise review over sentencing, it based its affirmative decision in part on appellate review of sentences in several domestic systems;

The question then arises whether the Appeals Chamber should review the sentence. Appellate review of sentencing is available in the major legal systems but it is usually exercised sparingly. For example, the New South Wales Court of Criminal Appeal in Australia has stated that "an appellate court will only interfere if it is demonstrated that the sentencing judge fell into material error of fact or law. Such error may appear in the reasons given by the sentencing judge, or the sentence itself may be manifestly excessive or inadequate, and thus disclose error." In civil legal systems such as Germany and Italy the relevant Criminal Codes set out what factors a judge must take into consideration in imposing a sentence. The appellate courts may interfere with the discretion of the lower court if its considerations went outside these factors or if it breached a prescribed minimum or maximum limit on sentence. So, for making uniform sentence in international criminal law, should be constituted judicial institution for law making that it create obligation for lower court.

6.2. Constitutionality of Proportionality

Constitutionality proportionality is means that not only the individual crimes are laid down in the Criminal Code, but also the general principles concerning sentencing are contained there in proportionality same as most domestic law must be codification for consistency in sentence so same domestic criminal cod should be set up precise e and detail range of sentencing option and each offence should be companied by the applicable penalty, including references to maximum and minim term. So codification would make limitation for determining the appropriate sentence, by the judge that provide difference sentence for same case.

But none of the international conventions that formed the bases of the crimes within the Tribunals' jurisdictions, however, include sentencing provisions, and customary law does not set down specific penalties for violations of international humanitarian law.

In England and Wales in recent decades the sentencing process has been reformed with the aim of reducing disparities, promoting consistency, and reassuring the public about the purpose of sentencing. In England and Wales as common law the general sentencing framework is determined by the maximum sentences set out in statutes, a few mandatory sentences (such as life imprisonment for murder), and statutory criteria such as those related to the use of custody. A major influence on

judges in the Crown Court are the decisions made by the Court of Appeal and particularly the Court of Appeal Sentencing Guideline Cases.

In the German, the relationship between t he legislature and the persons who are responsible for sentencing in practice—the public prosecutor and the trial courts—is structured by provisions on sentencing. The basis is constituted by the authorized sentences on which the penal codes have individual indications for each offense.

7. The Role of Judge in Determining of Proportionality

However Article 23 of statute of Rome, limits the form and imposing of the punishment to those penalties were enumerated in the Statute, it cannot be said that it likewise limits the factors, especially aggravating circumstances, that judges may rely on to increase the severity of a sentence. ICC imposes limitation imprisonment up to 30 years for accused.

Its effectiveness to limit judicial discretion to the factors enumerated in the Rome Statute or the ICC RPE is weakened by open-ended language in other articles and rules. For example, Article 78 instructs judges to "take into account such factors a*s* the *gravity of the crime and the individual circumstances* of the convicted person."[1] As well as article 145 RPE, contains a non-exhaustive list of aggravating factors.[2] Thus, in determining a sentence, judges may take into account "other circumstances" not found in the Statute or ICC RPE.[3] Prior to the adoption of Rule 145, the potential scope of Article 23 was a matter of interpretation for the judges. The threshold issue would have been whether the language "in accordance with this Statute" requires that the factors impacting the sentence be enumerated in the Statute or the RPE, or whether it is permissible for the Statute or ICC RPE to allow consideration of factors not enumerated.

Even in the civil law still significant room for judge for determining sentence, for instance It should be pointed out that the French criminal system still relies on the investigation system with an instructing judge (*"le juge d'instruction"*)whenever a major crime is committed (murder, for example).

All cases of crimes and major *"délits"* are brought by the public prosecutor's office to the instructing judge prior to the court hearings. Seven percent of all criminal cases are processed by instructing judges.[4]

The new penal code of 1994 reiterates the principle of "strict interpretation. More power is also given to the judge in correctional mater. The incorporation of the individualization of the penalty [5]is concept as it gives much more discretionary

[1] ICC Statute,, art. 78(1)
[2] International Criminal Court Rules of Procedure and Evidence, ICC-ASP/1/3, Rule145(2)(b)(vi).
[3] *Ibidem.*
[4] *Ibidem.*
[5] Code de Procedure Criminelle.

powers to the judge. Gives the judge the possibility to choose among the existing pre-defined penalties, which one is the most appropriate and efficient. Hoverer extenuating circumstances increase the discretionary power of judges but extenuating circumstance are taken out of the law[1].

In the German, Statutory penalty ranges tend to b e fairly broad, thus allowing significant room f or judicial sentencing discretion. But Mandatory sentencing guidelines would contradict this self-conception of the judges and under sec. 6 of the International Criminal Law Code also points to the necessity to open up a leeway for the judges in determining the punishment.

8. Conclusion

There is no consensus about grave crime in ICL as above mention the ICTY's rejection of the hierarchy of crimes has serious implications for the fairness of sentencing standards in international criminal law the ICTY and the ICTR have taken different position on the question and the radical difference between the sentencing methodologies used by the two tribunals lessons the coherency of international justice and provide conflicting precedent for the ICC. The provision deals with international criminal law no specific penalties and how they is to be determined as well as they don't identify criteria for aggravating and mitigating factor. So grave offence as criteria of proportionality Providing that differentiate interpretation in criminal tribunal for avoiding as possible as it should be codified grave criminal law and fit punishment or should be constituent a judicial institution authoring making law for making uniform between difference sentence.

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[1] Nouveau Code Pénal, art. 132-24.