OPEN ACCESS

Scholars International Journal of Law, Crime and Justice
Abbreviated Key Title: Sch Int J Law Crime Justice
ISSN 2616-7956 (Print) | ISSN 2617-3484 (Online)
Scholars Middle East Publishers, Dubai, United Arab Emirates
Journal homepage: https://saudijournals.com

Original Research Article

The Provisions of International Crime in International Criminal Law the Rome Statute as a Model

Dr. Bushra Salman Husain Al-Obaidi[1*]

[1]Assistant Prof. Al-Rafidain College – Law Department, Iraq

DOI: 10.36348/sijlcj.2024.v07i01.004 | **Received:** 07.12.2023 | **Accepted:** 15.01.2024 | **Published:** 20.01.2024

***Corresponding author:** Dr. Bushra Salman Husain Al-Obaidi
Assistant Prof. Al-Rafidain College – Law Department, Iraq

Abstract

With the emergence of organized societies, the norms that controlled the management of these societies arose with them and later developed into laws, regulations, and provisions regulating the relations of people in these societies and later in states, but without becoming a law that governs relations of these countries, with the development of states and the development of human perception, many practices in international relations have become rejected, and it has become necessary to place restrictions on the actions of states, whether in wartime or peacetime, in a way that guarantees human dignity. Justice was and will remain the prayer of humanity and its perpetual sanctification, which philosophers and thinkers have sought since ancient times until Socrates said: "There is no adornment more beautiful than justice because it is one of the best powers of the mind.", so justice needed effective systems and working institutions. The judiciary was the most important and trusted institution of it, and there was no authority over it except the law. The world needs an effective international criminal court that enjoys widespread support. Conflicts, wars, violence, and human rights violations have taken many forms during the various stages of human history, as recent events have shown the continuation of this development, perhaps the seriousness of the crimes committed and the harm that they result from man and his surroundings, as well as the international nature of the crimes committed and public opinion, condemning them, and the desire to reduce these crimes by not leaving the perpetrators unpunished, are the most important factors and foundations for punishing international crimes.

Keywords: International Criminal, Humanity, Societies, Human rights.

Copyright © 2024 The Author(s): This is an open-access article distributed under the terms of the Creative Commons Attribution **4.0 International License (CC BY-NC 4.0)** which permits unrestricted use, distribution, and reproduction in any medium for non-commercial use provided the original author and source are credited.

INTRODUCTION

With the emergence of organized societies, the norms that controlled the management of these societies arose with them and later developed into laws, regulations and provisions regulating the relations of people in these societies and later in states, but without becoming a law that governs relations of these countries, with the development of states and the development of human perception, many practices in international relations have become rejected, and it has become necessary to place restrictions on the actions of states, whether in wartime or peacetime, in a way that guarantees human dignity.

Since humanity emerged from the abyss of World War I and World War II, the world is still living in a phase of imbalance that has led to an increase in international crimes that extend beyond the borders of the state.

Since justice was and will remain the prayer of humanity and its perpetual sanctification, which philosophers and thinkers have sought since ancient times until Socrates said: "There is no adornment more beautiful than justice, because it is one of the best powers of the mind." (Dhari Khalil and Basil, 2003), so justice needed effective systems and working institutions. The judiciary was the most important and trusted institution of it, and there was no authority over it except the law.

Just as the idea of establishing fair and independent judicial institutions was the necessary condition for establishing justice between people in society and the state. The idea of establishing a just and independent judicial institution was the necessary condition for establishing justice between societies and states as well, because the legal and philosophical logic affirms that the just law has no practical value unless a just and independent judicial institution ensures its implementation.

And if the international criminal justice is part of the international judiciary, then the interest in it is recent. We do not need to delve much into the depths of history to make sure of this. The twentieth century witnessed the establishment of the (Permanent International Court of Justice 1921) in accordance with the era of the League of Nations, and its successor (the Court of Justice). International Convention 1946) in accordance with the Charter of the United Nations. It also witnessed the establishment of specialized international and regional courts (human rights, the administrative judiciary of international organizations, the Law of the Sea Court, the European Court of Justice), but the establishment of international criminal courts was only a temporary exception, the international community did not reach the approval of the statute of a permanent international criminal court until 1998, whose nucleus had begun in 1948. The date that accompanied the adoption of the International Treaty against the Crime of Genocide, in that year the Assembly requested a study of the possibility of establishing an international court to try the perpetrators of the crime of genocide (Walid Al-Saadi, 2002).

The world needs an effective international criminal court that enjoys widespread support. Conflicts, wars, violence and human rights violations have taken many forms during the various stages of human history, as recent events have shown the continuation of this development, perhaps the seriousness of the crimes committed and the harm that they result from to man and his surroundings, as well as the international nature of the crimes committed and public opinion condemning them, and the desire to reduce these crimes by not leaving the perpetrators unpunished, are the most important factors and foundations for punishing international crimes.

The Research Problem

Revolves around determining the nature of international crime from the perspective of the International Criminal Court and what is meant by the legal basis of international crime, which distinguishes it from other crimes, and what are its pillars, characteristics and provisions according to the Rome Statute of the International Criminal Court.

The Research Importance

The importance of the study lies in the extent of the seriousness of international crime and its negative impact on peaceful coexistence between peoples. World peace is the goal and dream of people, and it is one of the most important interests necessary for the continuation of life in the international community to achieve security and tranquility.

What are the provisions of international crime, and what is the organization of the Rome Statute of the International Criminal Court for them, and this is what we will address in the merits of this research to identify international crime and its pillars and the position of the International Criminal Court in dealing with it.

The research plan will be as follows:

- **The first topic:** What is international crime?
  The first requirement - definition of international crime
  The second requirement is the characteristics of international crime.
- **The second topic** / Elements of international crime
  The first requirement - the material pillar
  The second requirement - the moral pillar.
- **The third topic:** International Criminal Responsibility
  The first requirement - the responsibility of the international criminal state the second requirement - the international criminal responsibility of the individual.

* Conclusion.

The first topic: The Nature of International Crime

International crime is a crime of public international law, threatens the entire international system, aims to violate the interests protected under the rules of this law, and the penalty is applied to the perpetrator. We will explain through the first requirement the definition of international crime, while the second requirement will explain the characteristics of international crime, which distinguishes it from national crime.

The first requirement / definition of international crime

International crime is generally defined as an aggression against an interest protected by law (Ibrahim Darraji). It is a violation contrary to the conventions and protocols and may lead to administrative, disciplinary or penal procedures by the contracting states (Amer Al-Zamali, 1997).

An act is internationally illegal if it violates a rule of international law (Omar Muhammad, 1986). In Anglo-Saxon jurisprudence, violating the provisions of international law is a crime according to international law itself. Therefore, the perpetrator of the international crime must be punished with the punishment estimated by the court[1].

[1]Article 450 of the English Military Code states that all war crimes can be punished with the death penalty, and the penalty can be lighter than that, and the court is the one who chooses the punishment that is commensurate with the degree of the criminal act, and this is the direction taken by the Nuremberg Arbitrators Convention of 1945 It is also the same trend adopted by the International Law Commission when drafting a law on crimes against peace and human security - pointed out by Dr. Abdel Wahed Al-Far - International crimes and

Specialized courts have been established in many countries, especially European countries, for the purpose of following up on the issue of respect for human rights and because of the egregious violations and waste of them by various political regimes, especially tyrannical ones, as people who suffer from these violations have become more than (25) million people as a result of wars and tyranny And the injustice of dictatorial regimes that did not respect their legal obligations (Munther Al-Fadl)

Numerous jurisprudential attempts have been made to define international crime, according to the concept of each jurist (Amal Al-Murshidi). As the jurist "Spirobulus", the rapporteur of the International Law Commission, defines it in his report on the draft legalization of crimes against peace and the security of humanity on the grounds that this report includes "acts committed or permitted by the state that are considered grave breaches of international law and require international responsibility" and that "the idea of an international crime does not It applies only to acts of particular gravity which are likely to cause a disturbance in the security and public order of the international community (Muhammad Mohieldin, 1966)..

The jurist “Jalassieh” defined it as “a criminal incident in violation of the rules of international law that harms the interests of the countries that are protected by this law, while legally recognizing it as a crime and the perpetrator deserves punishment (Muhammad Mohieldin, 1966).

Through the many definitions of international crime, we can derive from its concept, and in the light of contemporary developments in this concept, the following definition: “It is every behavior that violates an international interest protected by international law and violates the commitment to its rules and provisions, issued by a person of international law and punishable”.

The behavior must be subject to the rules of criminalization and punishment for it to be considered an international crime. The international criminal rule means “those originally established by international custom and included in international agreements (Hassanein Ibrahim, 1979).

The second requirement /characteristics of international crime:

International crime is characterized by several characteristics, the most important of which are:

1- The International Law Commission stated that international crime affects the very foundation of human society, and its seriousness can be deduced from the character of the act characterized by cruelty and brutality, or from the breadth of its harmful effects, or from the motive to commit it, such as the crime of genocide, or from the combination of some or all of these factors.
2- The provisions of the passage of time do not apply to international crime, so responsibility for it remains, no matter how much time has passed since its commission.
3- Special or general amnesty systems do not apply to international crimes as they are serious crimes and contradict the competencies of the constitutional authority that is entitled to this right such as the head of state or the legislature, as its provisions are limited to ordinary crimes within the state.
4- Excluding the immunities usually enjoyed by heads of state, officials and diplomatic missions if they committed an international crime (in application of this, the Treaty of Versailles recognized the responsibility of Guillaume II, Emperor of Germany for his crimes during the First World War, and this principle was established in the Nuremberg trials (M7) and Tokyo (M6).
5- The victim in international crimes may be some of the groups or some interests that are protected by international law.
6- Endorsing cooperation between states in the fields of international crimes in order to arrest, extradite, and punish individuals who commit international crimes. Such crimes may be the subject of investigation so that the space bodies can pass a fair judgment in the case. Therefore, the state is usually obligated to seek to present all the evidence available to it to reach this goal (Ali Muhammad).

The second topic / Elements of international crime:

We got acquainted with the concept of international crime and the great danger that it entails, a serious attack and a serious violation of a right or interest protected by international criminal law. Therefore, it is necessary to identify the pillars of international crime in order to ensure that international custom and international covenants define the legal model to the extent that the nature of international criminal law allows. These pillars are embodied in the material pillar and the moral pillar.

The first requirement / the material pillar:

For the commission of any crime, it is required - in general - that it appears in a material way to the outside world, and without it there is no disturbance or destabilization in the society and no violation or aggression of the protected rights. The causal relationship between behavior and effect.

the authority to punish them - Arab Renaissance House - Cairo - 1995 - p. 237.

1-Behavior is the external activity that constitutes the crime, and the cause of its public and private harm, if any, and whether either of them was intended for its own sake or came accidentally without the offender's intent, the crime does not have its material element unless it is available to it.

Behavior is of two types, one is positive behavior: represented by committing, and the second is negative, represented by abstinence. The rule is that international crime requires positive behavior to be realized, so two elements must be present: The first is the issuance of a movement that causes an external effect prohibited by law. The second requires the control of the will over this organic movement. Although preparatory work is not punishable in domestic legislation - as a general rule - international crime may, in many of its forms, deviate from that by expanding the meaning of its material pillar. For example, Article (6) of the Nuremberg Trial Regulations and Article (5) of the Tokyo Trial Regulations criminalize acts of preparation and organization for war, which are in themselves preparatory work. The reason for extending the scope of criminalization to preparatory work in international criminal law, these actions reveal an imminent threat to the right that international law seeks to protect. The second is negative behavior: or abstinence, its essence in international law does not differ from internal law, as it means that the offender deliberately takes a negative attitude towards certain circumstances and limits, from doing an act that international law imposes on him the duty to do to achieve the result prohibited by law (Ibrahim Darraji). This type of behavior has been recognized in international criminal law for quite some time, but it only triggered civil responsibility, and then soon became clear its importance and became equivalent to positive behavior in terms of legal importance. The development, according to the advancement of international criminal law, has tended to recognize the international responsibility of individuals if one of them refrains from an act that is obligatory upon him and to recognize this responsibility in its criminal capacity. Examples of crimes committed in this form of behavior are Denial of justice that has become recognized throughout the world and stipulated in the regulations of the Fourth Convention of the 1907 La Hague Conventions in Article (23-C) on the obligation of the occupier to allow the citizens of the occupied territory to resort to the national judiciary and is considered a perpetrator of the crime of denial of justice. Also, the crime of refraining from achieving consistency between national and international legislation in the application of the principle of the supremacy of international law over domestic law, and this is what Article 29 of the 1921 Geneva Convention stipulates, as well as the Geneva Humanitarian Conventions of 1949 in articles (49 of the first convention, 50 of the second convention, 129 of the third convention, 146 of the fourth convention). As well as what was mentioned in the Convention on the Rights of the Child in several articles, including (2-2, 2-3, 4, 11, 18-3, 19 and 20-2).

Either a positive crime committed in a negative way does not differ from a purely positive crime. In order for this type of behavior to take place: A- There must be a prohibition of an act that causes a specific result B- There must be an order to take an action that prevents such an outcome from occurring, an example of this type of behavior: the failure of the commander-in-chief in the army to prevent his subordinate soldiers from committing war crimes with his knowledge of their intention to commit them. And realizing the responsibility of the superior when it is based on intentional error or at least on negligence, and then the superior cannot be held responsible for the actions If he is aware of their intent to commit the crime, it must also be proven that he could have prevented the crime and did not prevent it ((Muhammad Mohieldin, 1966)). Article (28) of the Rome Statute of the International Criminal Court stipulates the responsibility of the military commander or the person actually acting as a military commander for the actions of the forces under his effective command and control. Likewise, the chief's criminal responsibility for the acts of his subordinates under his effective authority and control in the event that they are not prevented by those under his control. their control and authority to commit crimes.

2- As for the result, its concept in international criminal law does not differ from that in national law. The result may appear separate from the behavior that led to it, which is the case of material crime, such as the crime of aggression and crimes against humanity. The result may appear embodied in behavior and not separate from it, which is the matter of formal crimes such as the crime stipulated in the Eighth Convention of the Hague Conventions of 1907 on placing automatic mines under the surface of the water, which explode automatically upon contact. The law criminalizes placing a mine without waiting for the result to occur to achieve a certain damage (Hassanein Ibrahim, 1979).

The idea of danger plays an important role in the field of international criminal law, as it is - the danger - a consequence of criminal behavior because it causes a situation in the outside world that did not exist before its perpetration. The law criminalizes these acts, taking into account the serious result that is likely to lead to them, but it does not consider this result an element of the crime that constitutes the violation. The eyes of the law and this danger is the possibility of achieving the most serious consequences, so the necessity of preventing the danger is the reason for the criminalization (Ramses Bahnam, 1971).

As for the causal relationship, it is the link between the behavior and the result, and it determines the availability of one of the conditions of criminal responsibility, so it is limited to crimes that have a

consequence, that is, crimes of harm. There is no difference between causation in international criminal law and in domestic law. However, the issue of determining the officer who determines the existence of a causal relationship remains when several factors or causes are involved in the investigation of an international crime. There are several theories demonstrated by the internal criminal law jurisprudence in this regard, including the theory of equivalent causes, the theory of appropriate cause, and the theory of direct cause (Raouf Obeid, 1959). Which of these theories is suitable in determining the existence of a causal relationship in international crime between the offender's behavior and the achieved result? Since there is no specification of this issue in international criminal law, we believe that the best criterion to be taken in connection with determining this relationship in international crime is the criterion of the theory of appropriate cause as it is more just and most appropriate in the field of international crime due to its nature. This is what we find application in a number of international crimes, for example, what was stated in the final version of the text of the Elements of Crimes drafted by the Preparatory Committee for the International Criminal Court, as it is in the process of enumerating the elements of the crime of genocide, which constitute one of the forms of crimes against humanity contained in Article (7-1/b) of the Rome Statute of the International Criminal Court, it stated that one of the elements of this crime is "that the accused kills one or more persons, including forcing the victims to live in conditions that will inevitably lead to the death of a part of the population. The imposition of these conditions may include the denial of access to food and medicine". This means that the offender's behavior, represented by subjecting the population to live in harsh conditions such as deprivation of food and medicine, led to the death, i.e. the normal course of things related to the offender's behavior led to the occurrence of the result, which is death. They continue to be subject to these conditions. The causal relationship between the offender's behavior and the result will be broken. * There is an issue that we find it necessary to refer to, which is the attempt to commit international crime and the criminal contribution to the commission of international crime. The criminalization of initiation has been mentioned in many international laws. Article (2-3/d) of the draft codification of crimes against the peace and security of mankind stipulates that the attempt shall be criminalized and counted among the crimes committed against the peace and security of mankind if the offender attempts to commit one of the crimes prepared against the peace of mankind (Abdul Wahed, 1995). As well as what was stated in Article (25-3/f) of the Rome Statute of the International Criminal Court, which states: "According to this Statute, a person is criminally responsible and liable to punishment for any crime within the jurisdiction of the Court if that person does the following: and- Attempting to commit a crime by taking an action that begins the execution of the crime with a concrete step, but the crime did not occur due to circumstances unrelated to the person's intentions, however, a person who desists from making any effort to commit the crime or by other means prevents the completion of the crime shall not be liable to punishment under this Statute for attempting to commit the crime if he completely and voluntarily renounced the criminal purpose".

As for the criminal contribution to the commission of international crime, there is a general theory governing the situation in international criminal law based on complete equality between the contributors to international crime in its various punishable stages, starting from the preparatory work for the crime to the stage of its full implementation (Hassanein Ibrahim, 1979). International criminal jurisprudence rejects the distinction between the original actor and the actor with others, and the role played by one of them is equivalent to the role of the other, just as it does not consider the image of the actor with others as a form of participation (Hassanein Ibrahim, 1979). The Rome Statute of the International Criminal Court did not deviate from the platform of equality of responsibility and punishment among those contributors to international crime, as Article (25-3) of it stipulates that "a person is criminally responsible and liable to punishment for any crime within the jurisdiction of the Court in the event that this person commits as follows: (a) the commission of such an offense, whether individually or jointly with another or through another person, regardless of whether that other person is criminally liable; (b) Ordering or tempting to commit or induce to commit an offense that has already occurred or attempted, (C) Providing aid, incitement or assistance in any other form for the purpose of facilitating the commission of this crime or the attempt to commit it, including providing the means for its commission. (D) Contributing in any other way to a group of persons acting with a common intent in committing or attempting to commit this crime, provided that such contribution is intentional and provided: 1- Either with the aim of strengthening the criminal activity or the criminal purpose of the group if this activity or purpose involves the commission of a crime within the jurisdiction of the court 2- or with knowledge of the intention to commit the crime with this group. (E) With respect to the crime of genocide, direct and public incitement to commit the crime of genocide".

The equality of international criminal law among all contributors to international crime, regardless of the role played by one of them, is a commendable trend in view of the grave gravity that it entails threatening international peace and security with the imminent danger on the one hand, on the other hand, whoever talks himself about contributing to international crime is of a great deal of criminal danger, so the matter necessitated expanding the scope of criminalization to affect all forms of participation in international crime.

The second requirement / the moral pillar:

In order to achieve an international crime, it is necessary for it to have, in addition to the material element, the moral element so that it can be attributed to the person accused of committing it, as no person is asked about a crime unless there is a relationship between its materiality and his psyche. Intent to commit an international crime, which is considered a sinful intention as long as it tends to commit an illegal act, presumes, logically and legally, that its owner is able to form a comprehensive criminal perception of committing international crime through his understanding and planning for it. Therefore, he must have the ability to perceive, as well as the freedom to choose whether or not to commit the behavior that constitutes the crime (Dhari Khalil, 2002).

The moral element is nothing but a reflection of the materiality of the crime in the same offender, it is the moral link between the behavior and the will from which the "moral attribution" is issued, which for the responsible person is based on error, i.e. the act of committing a wrong act. This error has two degrees according to its severity: intentional and error. This attribution there are reasons to deny. This is what we will cover in order:

* Regarding the criminal intent or intentionality, it is the offender's knowledge of all the constituent elements of the crime and his will to go to its events, or his knowledge to the possibility of achieving the result and its consent. In other words, it is the tendency of the offender's will to initiate the criminal behavior and to bring about the criminal result resulting from him with his knowledge of them. Just as the criminal intent in national criminal law, as well as in international criminal law, is based on the same two elements, knowledge and will. This was recorded by all relevant international covenants, for example, Articles 1 and 2 of the Convention on the Prohibition of Trafficking in Persons and Exploitation of the Prostitution of Others for the year 1949 and Article (1) of the Convention against Torture. for the year 1984.

The idea of probabilistic intent has won support in international criminal law, but it has gone beyond its scope in domestic law, as international criminal jurisprudence equalizes between probabilistic intent and intentional intent completely, for several reasons, including, 1- The offender in both situations - intentional intent and probabilistic intent - His position is sinful and equal in moral terms, in it, his behavior causes the criminal outcome, while he is aware and surrounding it. 2- International criminal law is a customary law, so the elements of the crime cannot be clearly defined and the elements are very difficult to identify or diagnose the psychological state of the perpetrator. 3- The settlement between the two intentions is dictated by the nature of international crimes and their motives and motives, in addition to the fact that these crimes are often inspired by others, meaning that the offender did not commit them by his own will or for his own account only. Possible intent, such as war crimes, crimes against humanity, crimes of genocide, and crimes that occur pursuant to an order, if the perpetrator acted in one way or another without having clearly seen the results and did not consider them confirmed, but he was satisfied with what happened, that is, he had expected and accepted these results. The rules of international criminal law are nothing but fictitious and useless rules (Hamid Al-Saadi, 1971).

The Rome Statute of the International Criminal Court, specifically Article 30, states that: 1- Unless otherwise stipulated, a person shall not be criminally responsible for committing a crime within the jurisdiction of the court and shall not be liable to punishment for this crime unless the material elements are achieved with the availability of intent and knowledge. 2- For the purposes of this article, a person has intent when: A- This person, in relation to his behavior, intends to commit such conduct. B- This person, in relation to the result, intends to cause that consequence or is aware that it will occur within the normal course of events. 3- For the purposes of this Article, the term "knowledge" means that a person is aware that circumstances exist or that results will occur in the ordinary course of events. The terms "knowingly" or "knowingly" are interpreted accordingly.

By extrapolating this article, it becomes clear that paragraph (2-a) of it explicitly states that the principle of criminal responsibility for the crimes stipulated in the Basic Law is the responsibility for intentional crimes. As for paragraph (2-b) of the same article, it has established criminal liability based on contingent intent (Dhari Khalil, 2002).

We find that the Rome Statute has equated probabilistic intent with intentional intent in Article (30), taking the objective criterion for measuring the availability of probabilistic intent or not. This is illustrated by his reference in paragraph (2-b) of this article to the person's awareness of the outcome occurring within the normal course of events, i.e. he used the standard of the usual person placed in the same circumstances, which is the objective standard. However, it is noted on the article that it did not refer to the state of "acceptance" of the result that occurs, which distinguishes the probabilistic intention from the conscious error.

The image of special intent was also mentioned in the Rome Statute of the International Criminal Court in several places, for example, Article (6) on the crime of genocide, which states: "…with the intent to destroy a national, ethnic, racial or religious group…" Likewise Article (1-7/g-4), which embodies a form of crimes against humanity represented by forced pregnancy. As stated in the text of the Elements of Crimes" 1-That the

perpetrator imprisoned one or more women who were carried by force with the intent to influence the ethnic composition of any population group or commit grave violations of international law. This intent to act constitutes the specific intent of the offender, as well as the general intent of his action, that the act constitutes part of a widespread, systematic, or directed attack against a civilian population. Also, articles (7-1/h), (1-7/j), and (8-2/a, 2-1).

* As for the unintentional error, which is the offender's breach of the duties of vigilance and caution imposed by the law, as a result of which he did not expect the result to occur and then did not prevent it from happening while he was able and his duty to anticipate it and prevent it from happening. The offender turns his will to the act without the result.

In international criminal law, such a matter is based on legal logic on the one hand, and justice on the other (Ashraf Tawfiq, 1998), since the degree of attribution should affect the punishment, whoever had a criminal intent deserves a more severe punishment than someone who had nothing but carelessness or negligence, even if the result of the behaviorists committed under the same two intent, but the degree of danger is different (Hassanein Ibrahim, 1979).

There is an opinion in jurisprudence that international crimes are always committed intentionally and are rarely committed unintentionally. Rather, the perception of these unintentional crimes is a theoretical perception as a result of recognizing the idea of criminal responsibility, but the scientific reality did not reveal its existence. Perhaps this is due to the gravity of the act and the lack of her agreement - Unintentional crimes - with the nature of the crimes committed during the first and second world wars, which were characterized by ferocity and brutality that cannot be attributed to the error (Hassanein Ibrahim, 1979).

By extrapolating Article 30 of the Rome Statute of the International Criminal Court, we find that it makes the lack of knowledge and intent (unconscious error) a reason to refrain from responsibility, also, this article states in paragraph (2/b) that for the purposes of this article the person has intent when (b) that person intends with respect to the result to cause that result or realizes that it will occur within the normal course of events." and it decided in paragraph (3) that for the purposes of this article, the word "knowledge" means that a person is aware that there are circumstances or that results will occur in the normal course of events "that is, if a person does not know or realize or does not intend the result, his responsibility does not arise, meaning that the system excluded the accountability of the perpetrator for Crimes he commits based on unconscious error, unless the system decides otherwise[2], this is a very serious issue. How many serious and grave international crimes have been committed and committed, and the perpetrators argue that they committed an unintentional mistake by us, and that they were not aware of the elements or facts of the crime, or they did not intend its events.

* As for the denials of the moral element, or as it is also called the denials of the moral attribution, they are (1) ignorance or error of the facts (Article 32-1 of the Rome Statute of the International Criminal Court). (2) Ignorance or error of the law (Article 32-1 of the Rome Statute of the International Criminal Court).

The third topic: International Criminal Responsibility:

International criminal responsibility assumes that there is an international crime that has occurred and all its elements have been proven, and it has the effect of obligating the perpetrator of the international crime to bear the legal consequences of his illegal act.

The international legal system, whether its source is custom, international conventions, or general principles, like internal legal systems, imposes obligations on its persons that are enforceable. If this person violates his obligations, he bears international responsibility as a result of his illegal act.

The international person's assumption of international responsibility is a penalty for enjoying the rights granted to him by international law and ensuring his fulfillment of his international legal obligations and duties. International rights are matched by international obligations and duties whose implementation is guaranteed by law by establishing international criminal responsibility for an international person if he violates one of them (Omar Muhammad, 1983).

But to which person of the international law should international criminal responsibility be attributed, is it the state, the individual, or both?

[2] This matter was the subject of controversy and strong reservations from many countries in the (Rome) conference, which called either to include the perpetrators of unintentional crimes, even if based on an unconscious mistake in view of the seriousness of these crimes and the possibility of justifying this plea before the court, or to include a lack of responsibility for the unintentional mistake In addition to the fact that crimes against individuals as individuals in national criminal laws, the perpetrator is asked about the non-intentional crime, and thus the issue of the perpetrators of genocide or crimes against human beings even for crimes of unconscious error .Dr. Dari Khalil Mahmoud - General Criminal Principles in the Statute of the International Criminal Court - Journal of Legal Studies - Second Issue - Year 1-1999 - p. 12.

© 2024 | Published by Scholars Middle East Publishers, Dubai, United Arab Emirates

The first requirement / is the responsibility of the international criminal state:

The criminal responsibility of the state is defined as holding a state accountable for committing an act that international law considers an international crime and punishing it by the international community with the penalties prescribed for the committed international crime or that ensure its deterrence from repeating its international crime (Omar Muhammad, 1983).

The International Law Commission has divided the rules governing responsibility into basic obligations related to the maintenance of the main interests of the international community, the violation of which is grounds for imposing punishment on the offender state as a perpetrator of an international crime, and to other international obligations that are less serious based on this division. The opinion that prevailed in general in the past was that the rules of public international law related to the responsibility of states envisaged only one system of responsibility that would be applicable to every act of the state that is supposed to be internationally illegal, regardless of the place of the obligation in which this act is considered. In the current era, this opinion is not widely accepted. Doubts were raised about it from several quarters, which soon escalated after the Second World War until it crystallized later in the framework of a contemporary legal intellectual trend that takes two systems of international responsibility that are fundamentally different from each other. The first system includes cases of the state's violation of one of the obligations whose respect is of primary concern to the international community as a group, such as the obligation to refrain from acts of aggression, genocide, apartheid and others, and the second system includes cases of state breach of respect for obligations of less importance and general.

Several trends have emerged in the jurisprudence of international criminal law regarding the extent to which the state can be held criminally accountable, or the lack of this possibility. Several trends have emerged regarding this issue, some of which support the need for the state to be held criminally accountable for its violations of the rules of international criminal law, and others reject this accountability. The trends in favor of the international criminal responsibility of the state were based on several directions in determining the foundations of the state's responsibility:

1- Sovereignty equality between states.
2- Being satisfied with the illegal act and ensuring its harm.
3- The degree of violation of international law and the penalty directed against the state.
4- The state is a person with a real existence and not a virtual being.
5- The nature of the compensation imposed on the violating state (Bushra Salman, 2004)

As for the trends rejecting the criminal responsibility of the state, it was based on its rejection of this responsibility on the following trends:

1- The idea of moral attribution, which is based on perception and choice, is only available in the natural person (individuals).
2- The nature of the legal personality of the state.
3- The international responsibility is the individuals who act for the state, not the state.
4- The criterion of sovereignty, which contradicts the accountability of the state legally, and that the sovereignty of the state makes it the only reference for deciding the consequences of its behavior (Bushra Salman, 2004).

Denying the international criminal responsibility for the state leads to a waste and cancellation of the rules of international law and a threat to the international system, as this will allow the state to transgress and violate the sanctities of international law and the rights of its people as it wants without supervision or accountability, this is totally unacceptable, so there is no question of establishing the international criminal responsibility towards a state that violates or breaches one of its obligations and duties imposed on it by international law. This is proven and referred to by many international agreements, explicitly or implicitly, or in a way that compensates for the damage caused by the illegal action of the state resulting from the breach of its obligations towards another state or states[3].

The principle of recognizing the criminal responsibility of the state is noted more clearly and modernly in the Rome Statute of the International Criminal Court, as Article (24-4) of it stipulates that no provision in this Statute relating to individual criminal responsibility shall affect the responsibility of states under international law.

[3] Such as the Convention on the Rights of the Child, which is mentioned in most of its texts in the form of duties and obligations on states in implementing the rights stipulated in the Convention, such as Article (43.1) and (44). As well as Article (14) of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children supplementing the United Nations Convention against Transnational Organized Crime, as well as Article (3-4) of the Optional Protocol to the Convention on the Rights of the Child on the exploitation of children and Article (3) of the Hague Convention on War Wilderness of 1907, Article (9) of the Convention on the Prevention of the Crime of Genocide, Article (148) of the Fourth Geneva Convention of 1949, and Article (91) of Protocol I attached to it.

© 2024 | Published by Scholars Middle East Publishers, Dubai, United Arab Emirates

A draft articles on state responsibility were also drawn up that establishes the responsibility of states for the internationally wrongful act that they carry out[4].

Based on the foregoing, we can say that the international criminal responsibility of the state is considered in international criminal law in particular and international law in general, a developed principle and recognized by a large part of the jurisprudence of international law and stipulated in many international covenants, in addition to the fact that the international criminal responsibility of the state is not waived by any consideration. It also includes acknowledgment of criminal responsibility for it without prejudice to the responsibility of the natural persons who caused the commission of these crimes, as they must also be punished for that. In addition, as long as the state can be held civilly accountable, there is no need to exclude it from criminal responsibility.

The possibility of criminal accountability of the state is not related to the type of criminal sanctions, or even their nature. Punishment is not considered a basis for determining criminal responsibility. There are penalties that are imposed on natural persons that cannot be imposed on a legal person, such as freedom-depriving and restricting penalties. There are other penalties that are compatible with the nature of the legal person in general and the nature of the state in particular, and in a manner that cannot be argued against the possibility of punishment in order to exclude criminal responsibility from it when committing the international crime.

The international criminal responsibility of the state is prompted by the circumstance and circumstances that justify its behavior internationally in accordance with the provisions of international criminal law. The most important of these reasons are:

1- Legitimate defense, which is a right established under international law, and there is no responsibility or punishment for the behavior that falls within its limits. This right was mentioned in Article 10 of the Hague Conventions of 1907 concerning the rights and duties of the state and impartial persons. The same applies to Article (2) of the Geneva Protocol of 1924. Also - and this is the most important - Article (31) and what follows, and Article (51) of the Charter of the United Nations.
2- The state of necessity: It is the situation in which the state, according to its objective assessment of matters, is threatened by a serious situation - or an imminent solution - that threatens its existence, its statute, its personality or its independence so that it can only avoid it by wasting legitimate foreign interests in accordance with the provisions of international law (Hassanein Ibrahim, 1979). despite the opposition of modern jurisprudence to take the state of necessity as an excuse to justify its criminal behavior for fear of taking it as a pretext, Article (33) of the draft articles on the responsibility of states stipulates and restricts the state of necessity that the state may not resort to it except within certain limits. Since the Charter of the United Nations did not recognize the state of necessity as in legitimate defense, and through the operative part of Article (2-4) of the Charter, which prohibits resorting to force, we can be certain that the state of necessity is included in the general prohibition of resorting to the use of force stipulated in Article.
3- Reciprocity: It is the right established by law for countries that have been subjected to a criminal attack to respond with a similar attack aimed at forcing compliance with the law or to compensate for the harm resulting from its violation.

The reason for considering this issue as one of the reasons for preventing responsibility in the contemporary international community is due to the lack of a supreme authority to punish the aggressor and take the right of the aggressor or force him to compensate the damages resulting from his aggression. The basis of reciprocity is to pressure the aggressor state to abide by the limits of the law or to recognize rights The legitimate state exercises the means of coercion.

The jurisprudence called for putting an end to the principle of reciprocity in cases in which the individual is a subject. Also, this principle is considered an act of taking revenge, and therefore it is considered an abnormal procedure in legal social life, however, it is nevertheless recognized in international law as a measure taken against states during war to force them to return to order and put an end to their lawlessness. However, this method may not in any way be taken against the nationals of the aggressor country, even if there is a violation of the provisions of the law of war.

We do not support considering this procedure a reason to push for irresponsibility for its dire consequences for peoples and innocents on the one hand and for the failure of many countries to respect the rules of international law on the other hand, especially the dominant states. As long as there is no supreme authority that compels states to respect the rules of international

[4]Consider the document of the United Nations - General Assembly - A/51/332 on this draft and the Yearbook of the International Law Commission 2001 Volume Two, Part Two, Report of the International Law Commission to the General Assembly on the work of its fifty-third session - A/CN.4/SER.A /2001/Add.1 (Part 2) - p. 31 and beyond.

law, the recognition of this principle constitutes a great danger.

* Adopting the principle of the criminal responsibility of the state, entails the necessity of imposing a penalty on it, with the need to focus on the possibility and usefulness of this penalty. Sanctions must also bear the character of a material sanction:

1- Compensation.
2- Embargo or economic sanctions.
3- The military response is either to respond in kind or to intervene in the interest of humanity.

Some of these penalties carry the character of a moral penalty:

1- Diplomatic sanctions.
2- Moral compensations that take the form of satisfaction, such as the responsible state saluting the flag of the affected state or sending official missions to express an apology or make an official apology or punish the guilty individuals, as well as the decisions issued by international courts and international committees on the illegality of the behavior of the violating state.
3- Disciplinary penalties, such as expulsion of the condemned country from membership in an international organization or temporarily depriving it of the benefits of membership in that organization or benefiting from its services (Article 16-4 of the Covenant of the League of Nations and Article 61 of the Charter of the United Nations). The state convicted of violating the rules of international law[5].

The second requirement - the international criminal responsibility of the individual:

It has been recognized for a long time, that international law imposes duties and obligations on individuals just like states, and the individual's international criminal responsibility for the international crimes committed by them has become of great importance in preventing the commission of such crimes and ensuring the effectiveness of international criminal law and observance of its provisions. Modern international law requires that natural persons bear individual responsibility for their crimes and criminal violations of international law along with the concerned states.

Although the conflict over the international personality of the individual had its impact in terms of the division of international jurisprudence between a supporter of the individual's international responsibility and a rejection of it and a decision to double responsibility for both the individual and the state, but the recognition of the individual's international criminal responsibility has become a reality in contemporary international jurisprudence, especially after World War II, It also decided to individual responsibility for reasons to be paid. However, if this responsibility is established on him, then this will have an impact on him that is embodied in his entitlement to one or more of the penalties established under the rules of international law.

* The individual was under dispute in international law in terms of his international personality and his direct loyalty to this law, and this dispute had its impact on the division of international criminal jurisprudence in light of the changes that occurred in the international legal system into three doctrines regarding the extent of this responsibility:

1- There is a doctrine that believes that the state alone is responsible for the international crime because international law addresses only states and the crimes of this law are committed only by those who are addressed to it and that the individual is not criminally responsible because the individual is subject to two legal systems at the same time - that is, internal law and international law - it is unimaginable at a time when there is no global organization or a global state, so it is difficult to determine the international responsibility of individuals.
2- This doctrine was based on the theories of traditional international jurisprudence and neglected the updated aspects of international changes that embodied in the individual's recognition of the international personality and international rights and duties, and then did not

[5] For example, it was mentioned in United Nations Document No. E/2002/23 - E/CN. 4/2002/200-2002 regarding the report of the Human Rights Committee on its 58th session in the substantive session of 2002 on 19/4/2002 on the situation of human rights in Iraq (15/2002). It notes (with dismay) that there has been no improvement In the case of human rights in the country, and (strongly condemns) the systematic, widespread and extremely serious violations of human rights and international humanitarian law by the Government of Iraq, which result in persecution and persecution of all, supported by widespread discrimination and widespread terrorism, (and requests the Government of Iraq) To fulfill its freely undertaken obligations under international human rights treaties and international humanitarian law to respect and guarantee the rights of all individuals within the territory of Iraq and subject to its jurisdiction, regardless of their origin, ethnicity or religion, p. 84 et seq. of the document. Many developing countries also called at the World Conference on Human Rights held in Austria for the period from 14-25 June 1993 to issue an official reprimand against the double standards that are taken by some countries in relation to the application of human rights standards. Vitit montarbhorn-think global act local -a human rights riddle -bangkok post -joly-27-1993 - p.4 For more details on these sanctions see Bushra Salman Hussain - previous source - p. 83 and beyond.

respond to them and no longer represents a thought worthy of reliance in the jurisprudence of modern international law (Muhammad Mohieldin, 1966).

3- A doctrine that takes the dual responsibility of the state and the individual because the legal person has a real existence and because it must be taken into account that international law is tasked with protecting states against the attacks they are exposed to, and it is therefore impossible for the same states not to bear criminal penalties in cases where they are convicted of international crimes, also, international criminal law cannot ignore the responsibility that falls on individuals in connection with the criminal acts they commit in the name of the state, and that if special criminal sanctions should be applied to states, then international punishment should also extend to the people who led and committed those acts. Therefore, two types of responsibility can arise from international crimes, the collective responsibility of the state to which the international crime is attributed and the individual responsibility of the individuals who committed the acts constituting that crime.

4- And a doctrine that holds the individual (the natural person) alone with international criminal responsibility because individuals are the ones who commit international crimes that require this responsibility, while states, because they are a legal person, so they cannot have the element of criminal intent, which is the basis for the crime, and therefore they cannot be criminally responsible (Abdul Wahed, 1995), even if governments are held accountable, international crimes are always individual and individuals bear criminal responsibility (Abdul Wahed, 1995).

As it was established since the issuance of the Noor Memberg and Tokyo regulations, the principle of individual responsibility for violations of international obligations established in custom or in agreements, it has been confirmed by many international agreements concluded after World War II until this day, the most important of which was the Rome Statute of the International Criminal Court, as it addresses individuals, not states, with its provisions. Article 1 of it stipulates ((The court will be a permanent body with the authority to exercise its jurisdiction over persons…)) As for Article (25-1) it has specified exactly who this court exercises its jurisdiction, as it stipulates (((The court shall have jurisdiction over natural persons pursuant to this Statute)) as for paragraph (2) of this article, it established the responsibility of individuals for crimes committed within the jurisdiction of this court, as it states: "A person who commits a crime within the jurisdiction of the court shall be responsible for it in his individual capacity and subject to punishment in accordance with this statute.".

In turn, we support the establishment of international criminal responsibility against individuals who commit international crimes so that a person does not escape punishment for the threat he causes to international peace and security and to the peace and security of individuals, but at the same time, we also support the establishment of international responsibility against states in addition to the responsibility of individuals - that is, double responsibility - because states are also responsible for these crimes for violating their international obligations towards the international community. In fact, it has been proven that it has violated its international obligations[6].

We find that Article (25-4) of the Rome Statute has gone in the same direction, as it states: ((No provision in this Statute relating to individual criminal responsibility shall affect the responsibility of states under international law)).

*There are many reasons that push the availability of one of them to international criminal responsibility for the individual who committed the international crime. These reasons are called the impediments of criminal responsibility, and they are similar to what is stated in the internal legislation. Now the Rome Statute - which is the first to explicitly decide as an international rule and as an

[6]Article (5) of the draft Code of Crimes against the Peace and Security of Humanity states that not prosecuting an individual for a crime against the peace and security of humanity will exempt the international from any responsibility under international law for an act or omission that can be attributed to it. The comment on this article stated that (the current draft article does not affect the international responsibility of the state in the traditional sense of this phrase stemming from general international law, for actions or omissions that can be attributed to the state because of crimes attributed to individuals and agents of the state) and from reviewing the decision issued by the Court of Justice In the dispute between Bosnia and Herzegovina and the Federal Republic of Yugoslavia (Serbia and Montenegro) over the implementation of the Genocide Convention, it was found that the court had issued a reservation order on March 20, 1993 and confirmed it on September 13, 1993, requesting the Republic of Federal Yugoslavia to fulfill its obligations under the Convention and to take all measures within its power to commit the crime of genocide. That is, the court addressed the Yugoslav political authority and not specific individuals, which confirms the responsibility of the state for acts of genocide. The black book looks at the details, the policy of continuing the siege is a form of genocide against the people of Iraq, a paper presented to the special session of the permanent office of the Arab Lawyers Union, Baghdad, October 1-3, 1994, p. 43.

international legal rule the reasons that prevent international criminal responsibility for individuals - are among these reasons, the most important of which are:-

1- Mental impairment: Article 31-1/a of the Rome Statute stipulates that ((in addition to the other reasons for excluding criminal responsibility stipulated in this Statute, a person shall not be criminally responsible if, at the time of his behavior: (a) he suffers from a disease or mental deficiency in his inability to realize the unlawfulness or nature of his behavior or his ability to control his behavior in accordance with the requirements of the law.
2- State of drunkenness: Article (31-1/b) of the Basic Law stipulates that ((... a person shall not be criminally liable if at the time of committing behavior B he was in a state of intoxication which renders him incapable of perceiving the legality or nature of his behavior or his ability to control his behavior including Consistent with the requirements of the law, unless the person had voluntarily drunk under circumstances in which he knew that it was likely that he would, as a result of intoxication, conduct behavior that constituted a crime within the jurisdiction of the court, or he ignored this possibility.
3- Coercion: Article (31-1/d) of the Basic Law stipulates that "a person shall not be held criminally responsible if at the time of committing conduct (D) if the alleged conduct constituted a crime within the jurisdiction of the court was caused by the effect of coercion resulting from a threat of imminent death." or of continuing or imminent serious bodily harm against that person or another person, the person acted necessary and reasonable to avoid this threat, provided that the person did not intend to cause a greater harm than the harm sought to be avoided. This threat shall be: 1- It is issued by other persons. 2- Or it was formed by other circumstances beyond the control of that person.
4- Compliance with the orders of the Supreme President: Article 33 of the Rome Statute states: (1) In the event that a person commits a crime within the jurisdiction of the Court, the person shall not be exempted from criminal responsibility if his commission of that crime was done in compliance with the order of a government or President, military or civilian, except in the following cases: (a) If the person has a legal obligation to obey the orders of the government or the relevant president. (B) If the person is not aware that the order is unlawful. (c) If the wrongfulness of the order is not apparent. 2. For the purposes of this section, the wrongfulness is apparent in the case of orders to commit genocide or crimes against humanity (Bushra Salman, 2004)
5- Legitimate Defense: The failure of the Rome Statute to defend oneself or others is one of the reasons for excluding responsibility, according to Article (31-1/c), which states: (1) … a person shall not be criminally liable if at the time of the conduct he: (c) is acting reasonably in defense of himself or another person, or in the case of war crimes, of property indispensable for the accomplishment of a military mission, against an imminent and unlawful use of force; in a manner proportional to the degree of danger to which such person or other person or property is intended to be protected, and the participation of a person in defensive operations by forces shall not in itself constitute a ground for excluding criminal responsibility under this subparagraph.

*As for the effect of establishing international criminal responsibility before the individual, he must be punished for the international crimes he committed. Punishment is the main pillar on which the law is based in its obligation and fairness to the situation, so there is no obligation without penalty. The penalty is exceptional in international law, but an important precedent was set in the Nuremberg and Tokyo trials (Stanislav A. Nehlik, 1984).

Subsequently, the International Criminal Tribunals for Yugoslavia and Rwanda were established. The statutes of their establishment did not provide for the death penalty, but the highest penalty was life imprisonment (Articles 24 of the Yugoslav court system and 23 of the Rwanda court system).

As for the Rome Statute of the International Criminal Court, it came with more diverse and accurate details of the penalties that may be imposed on the convicted person. Article (77) of the system clarifies the types of penalties that can be imposed on a convict of a crime within the framework of Article (5) of the system, which is limited to negative penalties. freedom and financial penalties. Freedom-depriving penalties are embodied in:

a- Imprisonment for a limited number of years for a maximum of 30 years.
b- Life imprisonment where this penalty is justified by the extreme gravity of the crime and by the particular circumstances of the convicted person.

As for financial penalties, the court may impose them in addition to imposing one of the two previous penalties. The financial penalties are:

a- Imposing a fine in accordance with the criteria stipulated in the rules of procedure and rules of evidence.
b- Confiscation of the proceeds, property and assets derived directly or indirectly from that crime without prejudice to the rights of bona

fide third parties, among the measures of a financial nature that this system imposed on the convict is what Article (75) of it - which is an article contained in the system outside the scope of Chapter Seven devoted to penalties - about "reparation for the victim's damages", which takes the concept of compensation, rehabilitation and restoration of rights. It is in many of them of a financial nature.

Article (80) of the system also stipulates that "Nothing in this chapter of the Basic Statute prevents countries from imposing the penalties stipulated in their national laws or prevents the application of the laws of countries that do not provide for the penalties specified in this chapter.".

Article (78-1) of the system also stipulates that "the court shall take into account, when determining the penalty, the seriousness of the crime and the special circumstances of the convicted person, in accordance with the procedural and evidentiary rules.".

It is worth mentioning here is the consecration of the principle of non-observance of the extinguishment of criminal judgments, whether in the public case or in the penalties imposed, as there is no lesson for the passage of time, general amnesty, special amnesty, rehabilitation, forgiveness of the injured party, transfer of the sentence period or its reduction with the exception of death. Article 29 of the Rome Statute states that "the crimes within the jurisdiction of the Court shall not be subject to a statute of limitations, whatever its provisions.".

Nor is there immunity enjoyed by the accused, whatever his capacity. This is stipulated in Article (27) of the Rome Statute that ((1- This Statute shall apply to all persons equally without any discrimination on the grounds of official capacity. An elected representative or government official. They do not in any way absolve him of criminal responsibility under this Statute, nor do they, in and of themselves, constitute a reason to fear punishment 2. Immunities or special procedural rules that may relate to the official capacity of a person, whether under national or international law, shall not preclude the court exercising its jurisdiction over this person).

THE CONCLUSION

RESULTS

Despite the texts in this regard - international crime - it is necessary to activate its application, take this issue seriously and look at it with international attention, as there is no benefit from any legal text, regardless of its degree of sobriety and the details of any international crime and its protection of the rights of the victims if it is not applied and punish the perpetrators for what they have done.

This cannot be countered not by laws alone or by enacting more laws, but by creating the possibility to prosecute those who commit atrocities and atrocities.

National courts alone do not play a satisfactory role, even with good attempts, as the need is for an international criminal court that enjoys broad international support.

All those who commit atrocities, war crimes, crimes against humanity, genocide and all international crimes should know that the international community will eventually hold them accountable, no matter how long it takes, and they will be brought to international justice, and all perpetrators without exception should be brought to justice.

We know that achieving full justice for all war criminals will take time in a world far from ideal, but we certainly need to start building justice step by step and case by case when improvements can be made on all levels over time. All nations should see that walking this path is in their interest, and not one country without another.

There must also be real and honest seriousness in addressing the causes that lead to the expansion of international crime in all its forms.

There should be real activation of the law, the strengthening of mechanisms for its implementation, the judiciary, or at least the limitation of leniency in its implementation, putting an end to impunity by reforming laws and their application system, and eliminating rampant corruption among law enforcement agencies and state institutions.

The world today, more than any other era, needs to protect man from the dangers and disasters that surround him as a result of the grave violations he is exposed to due to the weakness of international, social and humanitarian principles, values and ethics. It serves the interests of humanity and the promotion and protection of its rights in order to maintain international peace and security and to guarantee the future of the entire world.

RECOMMENDATIONS

1- The provision of international crimes within national legislation, while encouraging the universal jurisdiction mechanism, and the use of this technology does not make the state breach its international obligations, but on the contrary, it will establish the rule of law.
2- Strengthening international cooperation with other countries in the judicial, legal and technical fields, especially in the field of extradition, through the conclusion of bilateral or multilateral agreements.

3- Inviting states that are not parties to the permanent International Criminal Court to sign and ratify the Statute of the Court to increase international cooperation to curb international crimes.
4- Emphasizing that international criminal justice is one of the elements that fall within the scope of the protection of human rights in international crimes, especially since we are in an era in which there are many violations against humanity, and thus academic and educational bodies and universities have a basic and effective role in conducting objective studies. It may also allocate classes for teaching international criminal law in all disciplines, in an independent curriculum, highlighting the role entrusted to the International Criminal Court, its competencies and the legal and political challenges it faces.
5- Supporting human rights defenders within the specialization of international crimes and grave violations by various means and methods, as they represent the bridge between the framework of international and customary law and the criminal law at the level of national systems. To ensure that perpetrators do not go unpunished through effective monitoring and documentation of violations committed within the framework of these crimes.
6- It is necessary to understand the role of the International Criminal Court in the field of protection and promotion of human rights in order to achieve its role in the context of this broader framework of justice and accountability. In order for progress to be made in this area, there must be a continuous quest regarding the limits and application of international criminal justice, because failure to do so risks squandering the interests of millions of victims of serious crimes and even harming the international institutions of criminal justice themselves.

REFERENCES

- Ashraf Tawfiq Shams El-Din - Principles of International Criminal Law - Arab Renaissance House - Cairo - 1998.
- Ibrahim, A. N. (1998). General Rules in the Comparative Penal Code. *Al-Yabeen Printing Press, Baghdad*.
- The International Criminal Court: Immunity Challenge - A scientific symposium sponsored by Dr. Hassan Risha, Minister of Higher Education in Syria for the period 3'4 November 2001 - Damascus University, Faculty of Law and the International Committee of the Red Cross - Al-Daoudi Press - Syria -2002.
- Hamid Al-Saadi - Introduction to the Study of International Criminal Law - Al-Maaref Press - Baghdad - I 1-1971.
- Raouf Obeid - Causality in Criminal Law - Nahdet Misr Press – 1959.
- Ramses Bahnam - General Theory of Criminal Law - Origin of Knowledge in Alexandria - Egypt – 1971.
- Stanislav A. Nehlik - A Brief Presentation of International Humanitarian Law - International Review of the Red Cross - July - August 1984.
- Dhari Khalil Mahmoud - Al-Basit in Explanation of the Penal Code, General Section - Publisher Sabah Sadiq Jaafar - Baghdad - I 2002.
- Dhari Khalil Mahmoud and Basil Youssef - International Criminal Court - House of Wisdom - Al-Zaman Press -2003.
- Amer Al-Zamali - Introduction to International Humanitarian Law - Publications of the Arab Institute for Human Rights – 1997.
- Abdel Rahim Sedky - Principles of International Criminal Law - Cairo -1986.
- Abdul Wahed Muhammad Al-Far - International Crimes and the Authority to Punish them - Dar Al-Nahda Al-Arabiya - Cairo -1995.
- Arabi Muhammad Al-Amawi, International Crime from the Perspective of International Criminal Law / The crimes of the Israeli occupation in Palestine as a model, a master's thesis submitted to the joint program between Al-Aqsa University and the Academy of Administration and Politics for Graduate Studies Program: Law and Public Administration, 2017.
- Ali Abdel Qader Al-Qahwaji - International Criminal Law - Al-Halabi Human Rights Publications - Edition 1 -2001.
- Omar Muhammad Al-Mahmoudi - Contemporary Issues in Public International Law - Jamahiriya House for Publishing, Distribution and Advertising - Libya - 1st Edition-1983.
- Muhammad Hafez Al-Ghanim - International Responsibility - Institute of Arab International Studies - League of Arab States – 1962.
- Mahmoud Naguib Hosni - Causal Relationship in the Penal Code - Dar Al-Nahda Al-Arabiya - Cairo University Press and University Book – 1983.
- Nashat Othman Al-Hilali - Lectures on International Organization - Arab Renaissance House, Cairo - 1990.
- Walid Al-Saadi, Establishment of the International Criminal Court, International Criminal Court: The Challenge of Immunity, Symposium under the auspices of Dr. Hassan Risha for days 3 and 4/11/2001, International Committee of the Red Cross 2002, p. 31.
- Ibrahim Darraji, International Crime, research published on the website http://arab-ency.com.sy/law/detail/163493.
- Amal Al-Murshidi, a study on international crime, research published on the website https://www.mohamah.net/law.
- Dr. Hanna Issa - Responsibility of natural persons for crimes against peace and humanity and war

crimes - Roya magazine issued by the Palestinian National Authority - Roya magazine website.

- Dr. Ali Muhammad Jaafar - the Qana massacre, an international massacre - the research site, International Crime.
- Dr. Munther Al-Fadl - Human Rights Violations and International Crimes in Iraq: Website.
- Amnesty International - STOP FLAG - Amnesty International website.
- The Black Book - The Policy of Continuing the Siege is a Form of Genocide Against the People of Iraq - Research Presented to the Extraordinary Session of the Permanent Office of the Arab Lawyers Union - Baghdad - 1-3 October 1994.
- International Review of the Red Cross - Year Eleven - No. 59 - 1998.
- Bushra Salman Hussein - International Criminal Violations of the Rights of the Child - A thesis submitted to the College of Law / University of Baghdad to obtain a PhD in Law -2004.
- Hassanein Ibrahim Obaid - International Crime - Encyclopedia of Jurisprudence and Judiciary - Part 61 - 1979.
- Judge Raja Abdel-Zahra - Legal Protection of the Child - Research submitted to obtain the first class of judges - 1999.
- Dhari Khalil Mahmoud - General Criminal Principles in the Statute of the International Criminal Court - Journal of Legal Studies - House of Wisdom - Second Issue - Year 1 -1999.
- Muhammad Mohieldin Awad - Studies in International Criminal Law - Journal of Law and Economics - Second Issue - 1966.
- United Nations Document - General Assembly A/51/332.
- United Nations Document - E/2002/23-E/cn.4/2002/200.