LAW APPLICABLE IN THE INTERNATIONAL CRIMINAL COURT- ANALYTICAL LEGAL STUDY

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ABSTRACT

The research deals with the study of the legal rules that are applicable in the criminal court as an analytical study, as it shows the crimes that the criminal court has jurisdiction to consider, the most important of which are the crimes of international armed conflicts and non-international armed conflicts and the law applicable to them. The research also shows the idea of the principle of legality of criminalization in front of the court, and then proceeds to study the applicable law in the subjective and personal jurisdiction.

The research includes a set of findings and recommendations, perhaps the most important of which is the fact that international crime is the focus of the statute of the International Criminal Court and that it is a criminal offense firstly and international secondly. The most important thing in the recommendations is the necessity that international criminal jurisdiction is not limited to international crimes mentioned in the statute of the International Criminal Court, but rather it should also cover other crimes.

Keywords: Crime, Legal, International Criminal Court, Law, Analytical Legal Study

INTRODUCTION

Over the international criminal justice in its development in several stages, and each stage of these stages a reflection of certain conditions and the effects of certain forces. With the establishment of the United Nations in 1945, the efforts of peace advocates and international legitimacy appeared in order to establish a permanent international criminal justice in which all member states of the international community are committed, considering that establishing such a jurisdiction is indispensable for achieving and protecting international legitimacy.

After the determined efforts of the United Nations Legal Committee and later the United Nations Preparatory Committee in establishing a permanent criminal judiciary, the Rome Conference of Diplomatic Commissioners was held in 1998, which decided to announce the establishment of a permanent criminal justice, the International Criminal Court, to try perpetrators of genocide, crimes against humanity and war crimes. And later the crime of aggression after a definition of it was reached.

The international criminal justice adopted the criminal liability of individual so that the Court shall have the authority of jurisdiction over natural persons, and ruled out the moral responsibility of corporate association and the most important of the state as an international legal person.

The Rome Statute of the Criminal Court as the basic law to apply exclusively its jurisdiction, which is its exclusive consideration of all of the crimes of genocide, crimes against humanity and war crimes.

With the discussion of a fundamental issue, which is the solution to the problem of conflict that can arise between the international criminal judiciary represented by the International Criminal Court and the national criminal judiciary represented by a national criminal trial through the adoption of the so-called principle of complementarity, which is embodied by considering the

international criminal judiciary as a complementary judiciary to the national judiciary, as the jurisdiction of the International Criminal Court is not convened unless the national judiciary abstains from it, shows its unwillingness and its seriousness, or shows its inability to prosecute the perpetrators of crimes, since this appreciation of the desire in the courts is governed by different criteria that we are not here to mention.

Research Problem

The research problem is embodied in determining the applicable law in front of the International Criminal Court in light of the intertwining and overlapping of the legal rules that have defined its jurisdiction over such crimes. Are they national, international or regional rules, or are they objective rules or procedural rules, all of these matters may pose challenges For the researcher and they need to research and investigate. Whereas, the research topic focuses on defining the law applicable to crimes in front of International courts.

The Significance of the Study

The importance of this research is embodied in the fact that the international judiciary stands on a moving ground that is attracted by legal and political forces, especially since the international judiciary needs its critics to support its legal existence. Certainly, every research in the field of the judiciary supports the future of the international judiciary and deepens its legal dealings, as supporting the existence and activation of the criminal court and preventing attempts to undermine it is a warning that we have to control every day so that the world will pay attention to this important step towards progress in the global human rights and the rule of law.

The Questions of the Study and Hypotheses

The most important questions and hypotheses that the researcher will try to answer in this research are as follows:

1. What are the crimes that the International Criminal Court has jurisdiction to consider?
2. What is the applicable law in the subject/personal jurisdiction?

Research Methodology

In preparing his research, the researcher will adopt the descriptive and analytical approach in defining the concept and foundations of the research topic, with reliance on the applied approach when it is needed.

Search Keys

1. The Rome Charter.
2. Applicable law.
3. International crimes

Previous Studies

1. Dr. Ali Yusef Shukri, International Criminal Judiciary in a Changing World, House of Culture for Publishing, Amman, 2011, this study deals with the historical framework of the period for establishing international criminal courts and the International Criminal Court in accordance with the provisions of the Rome Statute in addition to the legal system that governs the work of the International Criminal Court.
2. Dr. Talal Al – Issa & Ali Jabbar, International Criminal Court, Legal Study, Al-Yazouri Publishing House, Amman 2009. This study deals with the origins of the International Criminal Court, its legal nature, formations, objective and personal jurisdiction, membership provisions in it, in addition to a study of defining the guarantees of the accused in it.

What distinguishes this research from those studies is that it specializes in explaining the personal objective legal rules that govern the work of the International Criminal Court, in order to accomplish its main tasks, which are to prosecute and punish the perpetrators of international crimes stipulated in the statute of the court.

Research Plan

It consists as follows:
Introduction

The First Topic: The Crimes that the International Criminal Court has Jurisdiction to Consider

The first requirement: crimes of armed conflict of an international character and the law applicable to them in front of the International Criminal Court.
The second requirement: non-international conflict crimes, their nature and sources.
The third requirement: the principle of legality of criminalization in front of the court.

The Second Topic: The Applicable Law in the Subjective and Personal Jurisdiction

The first requirement :the application of the criminal law of the concerned state
The second requirement :implementing the statute of the International Criminal Court
Conclusion

THE FIRST SECTION

Crimes that the International Criminal Court has Jurisdiction to Consider

Article 5 of the Rome Statute contains an exclusive enumeration of crimes including within the jurisdiction of the International Criminal Court, where the substantive jurisdiction of the court is limited to examining the most serious crimes and the subject of concern of the entire international

community. These crimes, as defined by the aforementioned article, are limited to genocide, crimes against humanity, war crimes and the crime of aggression, but with regard to the latest crime, the aforementioned article contains a special provision to the effect that the court's exercise of its jurisdiction over this crime depends on the adoption of a ruling in this regard in accordance with Articles (121) and (123) define the crime of aggression and lay down the conditions and elements necessary for the court to exercise its jurisdiction over this crime, and this ruling must be consistent with the relevant provisions of the United Nations Charter.

Therefore, we found it appropriate to discuss in some detail this topic according to the following demands:

The first requirement: crimes of armed conflict of an international character and the law applicable to them before the International Criminal Court.

The second requirement: non-international conflict crimes, their nature and sources.

The third requirement: the principle of the legality of the criminalization before the court (there is no crime and no punishment except with a text

The First Requirement

Crimes of Armed Conflict of an International Character and the Law Applicable to them in Front of the International Criminal Court

We will address this requirement as follows:

The first issue: the concept of international conflict, its sources, and its nature.

The second issue: armed conflicts of an international character.

The third issue: Crimes Committed in the Context of an International Armed Conflict.

FIRST ISSUE

The Concept of International Conflict, its Sources, and its Nature

The international conflict has existed since ancient times and was in its simple form that was compatible with the nature of human relations, and primitive interests according to the human formation. The conflict evolved into a conflict of national wills due to difference and contradiction, and thus a conflict over the resources and capabilities of each human group that began in the form of a clan and tribe... even the state, and has been a tense dispute starts first, a state of hostility or fear and doubts... finally ending the conflict, a lack of agreement between two or more may be up to the stage of armed confrontation (Obaid, 1999).

First: The Concept of International Conflict

The conflict occurs as a result of a convergence or collision between different directions or a lack of consensus of interests between two or more parties, which leads the parties directly concerned not to accept the status quo and try to change it. The conflict lies in the process of interaction between two parties at least, and this interaction constitutes a basic criterion for classifying conflicts (Hatti, n.d).

The main domains of the international conflict can be identified as follow

1. It is a conflict of national wills due to the difference and contradiction in the motives of states, their perceptions, goals and aspirations (Makled, 1991).

2. It is a conflict over the resources and capabilities of each country, in order to preserve these resources or expand towards acquiring them.
3. The contradictory nature of these relationships between the different parties leads to foreign policy decisions being taken by one or more parties that harm the interests, potentials and resources of one or more other parties.
4. In all cases, this contradiction and difference does not come out of the circle of conflict, which is not up to the use of military means to resolve it. Otherwise we transmitted from the international armed conflict to the war and represent the highest point of the situation in the stages of international disputes (Bastgraff, 1985).

Second, the International Sources of Conflict (Makhitar Lakehal)

The main sources of international disputes can be identified as follows:

The first source: the conflict over resources, primary, mining, agricultural, and industrial resources, as conflicts were considered in the twentieth century - disputes over oil, uranium, or diamonds. And it has economic dimensions in the conflict that push the powerful states to search for gaining more influence and expansion in these areas to achieve their strategic objectives and to gain more power to outperform their competitors and opponents.

The second source: which lies in the seizure of geostrategic sites in the sense that every powerful country seeks to monitor vital geographical areas, on land, sea and space to maintain its security protection or to maximize its defense power.

The third source: It lies in the collective identity that is usually used as a cover for the previous two sources, and this power is of an ethnic, national, or religious character, or the combination of these criteria (Chauprade, 1999).

Third: The Nature of International Conflicts

International conflicts are characterized as a sociopolitical phenomenon of great complexity and intertwining due to its mobility and dynamism, and the multiplicity of its parties and their diversity between the internal and external, which leads to the multiplicity of its causes, manifestations and dimensions, and it is also difficult to follow its interactions in the event of its rise.

It is worth noting that international humanitarian law recognizes two categories of conflicts: international conflicts and non-international conflicts. Knowing the nature of conflicts in terms of whether they are international or internal is of legal importance due to the different provisions that apply to the type of disputes.

THE SECOND ISSUE

Armed Conflicts of an International Character

The international armed conflict exists mainly when an armed clash occurs between two states, and therefore the presence of more than one state within the framework of the conflict is what gives it an international character (Amer, 2003) Based on that, the armed conflict is the declared war, or any other armed conflict between two or more states, even if one of the parties does not war, and this also includes armed conflicts in which peoples struggle against colonial

control, foreign occupation and against (Racist regimes in the context of peoples' exercise of their right to self-determination) (Al Majed, 1992).

First: Cases in which the Armed Conflict is International

International law jurists have proposed six cases in which armed conflict is of an international character, as follow:

1. The case of an armed conflict between two or more states.
2. The state of developing an internal armed conflict into a situation of actual participation in the war.
3. A situation of an internal armed conflict in which foreign powers intervened to become international.
4. A situation of an internal armed conflict in which the United Nations forces intervened.
5. National Liberation Wars.
6. Wars with the intention of secession.

The role of international humanitarian law is to limit the methods and means of warfare and to protect the victims of armed conflicts, especially after the emergence of many humanitarian principles and foundations that govern and regulate the behavior of states during the conduct of military operations and their entrenchment in many international documents (Muhammad, 1996).

The teachings of the divine religions had an effect on refining the behavior of the warring countries among themselves, as the teachings of the Christian religion and the orders of the churchmen to urge the warring countries to observe the rules of compassion and gentleness between the belligerents, and then the emergence of the Islamic religion and its teachings had a clear effect in the consolidation of many rules and customs of the law of war, which He established it on the basis of morality and human virtue (10).

The emergence of regular armies and their replacement of mercenary soldiers also had an impact on establishing some rules and customs of war, especially if we know that mercenaries often violate the rules of honor and humanity in order to increase their spoils, then regular soldiers follow the orders of their superiors and follow the rules of war set by their countries (Ali All, 1952).

Second: The Rules Governing the Conduct of Military Operations between the Belligerent Countries

The factors that were mentioned and others had led to the emergence of many rules governing the conduct of military operations between the warring states, which were established in practice through customary or written rules.

It was found that most of the rules governing the conduct of hostilities originated through customary rules used to states to follow during the war, so that the rules of the law of war was the other mostly customary rules in the nineteenth century, and it soon rules written, whether fixed in the treaties appeared Bilateral, or were fixed in legal treaties, which had the greatest impact in establishing the rules governing the conduct of warriors, among which we mention the Paris Declaration 1856, the St Peter Berg Declaration 1868, the First Lahai Conventions 1899, and the second 1907, Washington Conference resolutions 1921-1922, the 1925 Special Protocol By criminalizing resort to gases and bacteriological wars, and the Havana Convention of 1928 on maritime neutrality, then the rules governing the conduct of military operations were crystallized in the four Geneva Conventions concluded on August 12, 1949 [1] and the protocols annexed thereto that were concluded in 1977 [2] And other than that of the agreements and protocols that were concluded for the same purpose, which have become considered sources for the rules governing the

conduct of states during the course of war operations, and the warring states must abide by the principles and provisions contained in these sources, whether these countries are parties to the conventions This is what the International Court of Justice confirmed in its advisory opinion regarding the Convention on the Prohibition of Genocide and Punishment for it on May 28, 1951 by stating that “the principles contained in the convention are principles recognized by civilized nations, and states are bound by them even in the In the absence of an agreement link ". [3]

This is also confirmed by the court regarding the Geneva Conventions of 1949, as the court considered them a concrete expression of the general principles of international humanitarian law that are applicable in the absence of any text. [4]

THE THIRD ISSUE

Crimes Committed within the Framework of an International Armed Conflict

Armed international conflicts are a social phenomenon, as mentioned above, that has accompanied humanity since the beginning of creation, and these conflicts are considered means of violence that states resort to in pursuit of a political or regional goal or greed.

Wherever wars break out their nails, suffering and hardships inevitably follow. Conflict constitutes the ground for breeding mass violations of human rights.

First: The Grave Violations of the Geneva Conventions

They are represented by acts committed against persons or properties protected by these conventions and include the following crimes:

First: premeditated murder.

Second: Torture or inhuman treatment (including medical experiments).

Third: Intentionally inflicting great suffering, physical or health harm.

Fourth: Widespread destruction or appropriation of property not justified by military necessity, unlawfully and arbitrarily.

Fifth: Forcing a prisoner or civilian to serve in the opposing state's forces.

Sixth: Intentionally depriving a prisoner of war or a protected civilian of his right to a fair trial in a legally organized court.

Seventh: Illegally protected civilian deportation or transfer.

Eighth: The illegal detention of a civilian.

Ninth: Taking hostages.

The First Additional Protocol of 1977 expanded the protections and the Geneva Conventions for international disputes, so the following violations became serious legal violations, namely: certain medical experiments, attacks on civilians or specific sites of defense that make them inevitable victims, the deceptive use of the Red Cross or Red Crescent emblem, the transfer of an occupying power Fragments of its own population into the land it occupies, undue delay in the repatriation of prisoners of war, attacks on historic monuments, denial of persons from a fair trial.

Moreover, states are required, according to the Geneva Conventions and Additional Protocol I, to prosecute persons accused of grave breaches of law or hand them over to a state ready to prosecute them. The provisions relating to grave legal sheep shall apply to international armed

conflicts only, and to acts directed against so-called protected persons or during military operations. Protected are:

- Wounded and sick military personnel on land and at sea.
- Prisoners of war.
- Civilians who find themselves in the grip of a state they are not citizens of.

Second: Serious Violations of the Laws and Customs Applicable to International Disputes[5]

The reference to international law can lead to the statement that an individual bears responsibility whenever he violates principles of international humanitarian law, such as the principle of distinction between combatants and civilians, the principle of proportionality, and the principle of military necessity.

The crimes that have been defined relate to the Hague law and are considered war crimes under the First Protocol Additional to the Geneva Conventions (Additional Protocol).

However, this category also includes acts that violate the right to protection guaranteed to humanitarian aid and peacekeeping missions conducted in accordance with the Charter of the United Nations, as long as they are entitled to the protection afforded to civilians and civilian places under the international law of armed conflict and do not directly participate in hostilities (Additional Protocol). Moreover, launching an attack intentionally with the knowledge that such an attack may cause severe, widespread and long-term damage to the natural environment, which is clearly excessive. As for the expected concrete and direct military advantage [6], and intentionally directing attacks against specialized religion, education, art or science facilities or purposes or historic monuments, hospitals and places of assembling the sick and wounded, provided that a military marksman. [7] They are also war crimes and are directly related to the rules that protect cultural property in particular in situations of armed conflict. It is also important to mention that this text in the Rome Statute refers only to multiple attacks against one type of such property, which are installations for the arts. The archaeological sites, books and other movable and immovable properties of great significance for the cultural heritage of peoples do not seem to be taken into account. [8]

THE SECOND REQUIREMENT

Crimes of Non-International Armed Conflicts and their Nature

The vast majority of armed conflicts today are internal conflicts, and many of them have lasted for decades despite major international efforts to find solutions to them.

These conflicts are often triggered by issues of identity, ethnicity, religion, and competition for resources, especially oil and mineral wealth.

The non-international armed conflict arises whenever it takes place on the territory of one state and does not extend to include another state and has not interfered with foreign authorities. Non-internationalism has replaced the term civil war (CIVIL WAR) traditional, which means an armed struggle between the official armed forces of the state and organized groups that have a regional pillar in which they exercise effective sovereignty, and seek to achieve various goals, including the secession of part of the state's territory, liberation from the grip of a foreign state, or just the seizure of power in the state. It also includes armed conflicts, even if they take place between non-governmental groups) (Allah, 2000). Jurisprudence is now taking a broad interpretation of the concept of armed conflict not of an international character as being broader in its concept and its connotations than civil war. [9]

We will address in this requirement the following branches:

The first section: the concept and nature of non-international armed conflicts

The second section: crimes committed within the framework of a non-international armed conflict.

First Issue

The Concept and Nature of Non-International Armed Conflicts

Classifying conflict as internal is something that has many legal consequences. The Geneva Conventions provide only basic protection in the event of civil wars, through Article 3 common to the agreements. That article prohibits flagrant and flawed violations of human dignity such as murder, torture, ill-treatment and the taking of hostages, and secondly, the Second Additional Protocol of 1977, which deals specifically with internal conflicts, provides less protection for such conflicts than the Geneva Convention provides for international disputes, and thirdly, the conventions do not assign criminal responsibility for the prosecution of crimes. War only if violations are committed in international armed conflicts. The developments have shown the possibility of prosecuting war crimes in internal conflicts without the need to find some kind of connection with an international war, by relying on special statutes and customary international law the Rwanda statute has given that court jurisdiction over serious violations of Common act 3 and Additional Protocol II. Yugoslavia court also interpreted its statute to allow jurisdiction over serious violations of article III and serious violations of the laws and customs of war in internal conflicts, and came to the Rome Statute to determine clearly many criminal acts committed in internal conflicts (Ratner, 1998).

The Second Issue

Crimes Committed within the Context of a Non-International Armed Conflict

Act (3) common to the Geneva Conventions has set out rules applicable in non-international armed conflict, which is the most widespread type of conflict at the present time, and it has stipulated that humane treatment and non-discrimination are among the basic principles that must guide the behavior of the parties to the conflict towards persons other than It also provides a list of the rules which, according to the International Court of Justice, are an expression of primary considerations of humanity (ICI Reports, 1986).

Therefore, it is not only a binding treaty law, but it is also part of customary international law that is included in the list of peremptory norms of absolute priority, and Article Three stipulates the following:

" In the event of an armed conflict that does not have an international character in the territory of one of the High Contracting Parties, each party to the conflict is obligated to apply, as a minimum, the following provisions :

- People who do not participate directly in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness or injury to traction and, detention, or any other cause, shall in all circumstances be treated humanely, without any discrimination harmful based on the basis of race, color, religion, belief, data, gender, birth or

wealth, or any other similar criteria. For this purpose, the following actions are prohibited, and remain prohibited in relation to the aforementioned persons, at any time and place:

1. Assault on life and physical integrity, especially killing in all its forms, mutilation, cruel treatment, and torture.
2. Taking the hostages.
3. Outrages upon personal dignity, and in particular humiliating and degrading treatment,
4. Issuing judgments and executing penalties without conducting a previous trial in front of a court formed in a legal manner that guarantees all judicial guarantees that are indispensable in the eyes of the people."

The Second Additional Protocol of 1977 relating to the protection of victims of non-international armed conflicts, developed and complementary to third article common to the Geneva Conventions, does not apply in conflicts that break out in the territories of a state that is a party to an armed conflict arising between its regular armed forces and rebel armed forces exercising under responsible command of some kind Controlling. A part of the territory to the extent that it is capable of waging coordinated and continuous military operations.

The protocol included basic guarantees under the heading of "humane treatment", stating that "all persons who do not participate directly or who cease to participate in hostilities - whether or not their freedom is restricted - shall have the right to enjoy respect for their persons, their honor, their beliefs, and their practice of their religious rites." They must be treated humanely in all cases without any adverse distinction. The protocol specifically prohibits the following actions:

- Assault on people's lives, health and safety, physical or actual, particularly murder, cruel treatment, such as torture or mutilation or any form of corporal punishment.
- Collective penalties.
- Taking the hostages.
- Acts of terror.
- Violation of personal dignity, humiliating and degrading treatment, rape, coercion into prostitution, and anything that might violate modesty.
- Slavery and the slave trade in all its forms.
- Plunder and pillage.
- Threats to commit any of the acts mentioned above. [10]

Armed conflicts have demonstrated the lack of respect for act 3 of the Geneva Conventions. Various brutal crimes have been committed by persons belonging to the ruling regimes or by persons with authority during conflicts not of an international character, not to mention that those regimes consider what is happening on their territories an internal matter that concerns It contains its national institutions and laws. [11]

THE THIRD REQUIREMENT

The Principle of the Legality of Criminalization before the Court (There Is No Crime and No Punishment except by Text)

In this request, we will study the concept of the principle of legality and what are the consequences of adopting it. And according to the following:

FIRST SECTION

The Concept of the Principle of Legality of Criminalization

The issue of criminalizing any act on the part of the national or international legislator is done according to the standard of rights protection, as it - that is, rights - all need protection, with the variation in this protection according to the difference in the degree of need.

There are rights that can only be protected by incriminating provisions expressed in interests deserving of criminal protection.

Therefore, the aforementioned principle is one of the main principles on which modern criminal systems are based, and according to this principle, there is a need for a legal text that defines the crime and the criminal penalty for it, which gives this description to certain materials, and transfers it from the permissibility to the criminalization department.

The penal laws in the countries of the world stipulated the aforementioned principle, and confirming this principle has been stipulated in most of the constitutions of the world, and the meaning is very briefly that every act committed for the purpose of holding the perpetrator accountable must have stipulated its prohibition and criminalization in the body of law.

The aforementioned principle is also one of the most reliable rights stipulated in the international bill of human rights, represented in the Universal Declaration of Human Rights.

When searching for the extent to which any legal system adheres to the principle of legitimacy, the point worth studying must be the extent to which this legal system adheres to the results of the principle, as the text of the principle in the folds of constitutions and laws is insufficient and does not achieve the purpose for which peoples fought in order to lay the foundations of this principle (Bassiouni, 1998), but what makes this principle achieve its purposes is the adherence to the consequences of adopting it.

It is the practical practice of the principle. If we look at many regulations and laws, we may find that they stipulate the principle but threaten it at the same time due to lack of commitment to the consequences of adopting it.

THE SECOND SECTION

The Consequences of Adopting the Principle of Legality

The principle of legitimacy entails several legal consequences, and these results in turn entail obligations on the legislative authority and the judiciary according to the following order:

First: Obligations of the Legislative Authority

1. The legislative authority itself must enact provisions for criminalization and punishment.
2. The legislative authority must also issue its legislations in a clear and specific manner, far from ambiguity and lack of specificity. The aim of the principle of legality is to guarantee the public with what is considered a crime and the punishment resulting from it, and with this clarity the legal stability is achieved for individuals.
3. The legislator does not have the power to set the rules of criminalization and punishment except for the sake of the future, so it is not permissible for him to criminalize acts that did not take place at the time of the implementation of the law he issued, because individuals must be informed through legislation of the illegality of the act before its commission and the so-called principle of non-retroactivity of the rules of criminalization and punishment.

Second: Obligations of the Judicial Authority

1. The judge does not have the power to rule the punishment unless it is stipulated in the text that abstracts the behavior of the accused that has passed judgment of his conviction, and if he has served a sentence that does not match this text, then his ruling is contrary to the principle of legitimacy.
2. It is not permissible for the criminal judge when changing the texts of incrimination and punishment to resort to analogy because it will lead to the creation of a crime or to a ruling for a penalty that has not been stipulated in a legislative text.
3. Applying the law to events subsequent to the implementation of this law, the non-retroactivity of the criminalization and punishment provisions is a principle that both the legislator and the judge adhere to, except for the retroactive application of the law if it is more favorable to the accused, and this is also a well-established principle in the field of criminal law and usually stipulated in criminal laws.

Third: Obligations of the Executive Authority

1. The executive authority is not permitted to execute the punishment unless a criminal judgment determines it, because only this ruling reveals the occurrence of the crime and its submission to the provisions of incrimination and punishment.
2. It is not permissible for the executive authority to issue a decision for a penalty. Punishments are not decided except by a court ruling, and this principle emphasizes that the judiciary is the natural guardian of freedoms.
3. The administration must implement the penalties in accordance with the enforcement rules applied at the time the crime is committed, as long as these rules are part of the texts regulating the penalties (Sorour, 1977).

THE SECOND ISSUE

Law Applicable to Substantive and Personal Jurisdiction

In this study, we will deal with two requirements according to the following:

The first requirement: the application of the criminal law of the concerned state.

The second requirement: the application of the rules of Rome in subject matter and the person jurisdiction.

THE FIRST REQUIREMENT

Apply the Criminal Law of the Concerned State

A region is the spatial field in which we apply the legal rules of the state and it represents the jurisdiction of the state in terms of place. In this sense it is that part of the world in which the state exercises its authority and takes from it a basis for its jurisdiction, and since the principle of territorial jurisdiction is the basic principle or principle in the application of criminal law as long as this is The law is the most important aspect of state sovereignty over its territory. There was no regional law in the way we understand it, because any law applies to everyone who lives on the state's territory, whether they are national or foreign. And that the regional base of criminal law has two sides. Positive and negative and the positive aspect is that the criminal law applies to all crimes committed within the territory of the state, regardless of the nationality of the perpetrator or the victim, and the positive aspect of the principle of territoriality of criminal law is justified in terms of convenience, public interest, the interest of the individual, and the guarantee of his freedom. The negative aspect is that the laws of the state do not extend their effectiveness beyond the boundaries

of its territory. If the effectiveness of the laws of one state extended to the territory of another state, that would have been an aggression against the sovereignty of that state.

The first section: the scope of validity of the criminal texts

The second section: the mandate of the International Criminal Court

FIRST SECTION

Scope of Validity of Criminal Texts (Shukri, 2001)

It is not sufficient for the application of behavior to a legal text incriminating and punishing it until the legal element of the crime is established. Rather, for the text to apply to the incident, it must be valid and apply to the event in time and place, meaning that the text is valid in terms of time and place, because the laws are not permanent and hence their validity was discussed. From a temporal point of view, it is important, as it does not apply to all places, so researching its spatial scope of validity was also important.

First: The Validity of the Criminal Text in terms of Time

Pursuant to the principle of criminal legality, the criminal law is only applied to acts that take place after its entry into apply and in force in time domain, and then it does not apply the criminal law retroactively to the facts prior to its enforcement, so the basic principle in the law is that it applies with immediate and direct effect, which is known as the expedited enforcement of laws (Salama, 1979).

A- The Law Transmitted to Apply

The basic principle is that the law will be enforceable and valid after its approval by the legislative authority and its publication for viewing. The criminal law is applied from the moment it is issued until the moment it is repealed.

B- Governing on Continuing Crimes and Habitual Offenses in Application

In consecutive temporary crimes, continuous crimes, and habitual crimes, their material corner requires a long time and reaches several months, such as building without a license, concealing stolen things, using forgeries, possessing a firearm without a license, stealing electricity, or getting used to begging and so on.

C- Non-Retroactivity of the Criminal Rule

The criminal rule is only applied to acts that take place after its enforcement and during its continuation, whether this criminal rule is objective or procedural formal, and this application has been known since ancient times among jurists of the principle of non-retroactivity of criminal rules on the past (Bilal, 1996).

Second: The Validity of the Criminal Text in Terms of Location

One of the principles recognized internationally and in legislation is that the law of any state is the only one that applies within its territory and to its citizens, and does not transcend it abroad until this matter became known as the principle of territoriality of the Penal Code.

The reason for enshrining this principle is that the right to punishment is inherently one of the characteristics of public authority and is a manifestation of the original sovereignty of the state, and therefore it may not be assigned to any foreign body or authority, and the judge should not apply a law other than the law issued by the state (Salama, 1979).

There is no doubt that each country is more capable than others in determining the types of behaviors that can be criminalized or not, as well as the appropriate penalties for them.

Likewise, the principle of legality necessitates saying that laws are territorial so that individuals are not surprised by the punishment of a law they are not aware of, because if a person does not excuse ignorance of the law after its administration and enforcement, then this is in the country in which he is present or on whose territory he resides, and the International Criminal Court shall have jurisdiction over the crimes that It is located in the territory of every state that becomes a party to the Rome Statute. But if the state in whose territory the crime was committed is not a party to this treaty, then the rule is that that court has no jurisdiction to hear it unless that state accepts the jurisdiction of that court to hear the crime. This is an application of the treaty effect principle. But this principle if the application is justified in the field of mutual obligations on the shoulders of every state party to the treaty. However, in the field of international criminal justice it may be a means of obstructing the course of criminal justice. It is sufficient for any aggressor or it have intention to be an aggressor country not to enter a party in this system and not accept the jurisdiction of the court to look into the crimes that are the subject of the assault in order for its citizens to escape punishment for those crimes (Khalil, 1992).

By combining the texts in the Penal Code and the Code of Criminal Procedure, we find that the application of the law in terms of place has not remained governed by one principle, which is the principle of territoriality of the penal law. Rather, the spatial application of the penal code has become governed by four principles, namely: the principle of territoriality, the principle of personality, the principle of kind and the principle of universality. [13]

Third: Determine the Place where the Crime was Committed

The application of the principle of regional criminal law requires that the crime be located within the borders of the region, which requires determining the location of the crime by relying mainly on the elements whose material element is only without giving consideration to the place of residence of the perpetrator or the victim or their nationality, so the only criterion is where the material element is achieved. It is something that may seem at first glance easy and simple, but it is known that the crime appears through its material corner, and this material pillar consists of three behavioral components and the result and causal links between them (Bassiouni, 2004). In the case in which the criminal behavior achieved the result of most of these crimes, the place of their commission is determined in a specific region due to the connection of its only material element to that region, but it is possible that the crime is committed on several different regions by dividing the material element, in other words the criminal act has been committed in a particular country and appears Its results in another country, but the theory of action, despite its adoption by the

jurisprudence and jurisprudence of the judiciary, but today it is unable to solve the problem due to the presence of varieties of crimes in which criminal behavior is achieved in more than one place, which allows the emergence of the outcome criterion that depends on determining the place of committing the crime, the place where The criminal activity occurred in it, and this effect must be considered, given that it is the intent and purpose of the criminal, and the result is that which proves the crime and is the place of meeting its material reality, and this standard also accommodates the developments that the world has witnessed, especially external openness and facilitating transactions. The crime has become committed in several regions, which is what it confirms the role of the outcome and not the criminal act, which does not appear easily in this framework. [14]

THE THIRD SECTION

The Jurisdiction of the International Criminal Court

After the first chapter dealt with the emergence of the court in Articles 1 to 4, the second chapter came under the heading (jurisdiction, admissibility, and applicable law) where act (5) enumerates the crimes that fall within the jurisdiction of the court and states in item (1) that: The jurisdiction of the court is limited the most serious crimes and the position of the international community as a whole and for the attention of the Court under this Statute jurisdiction over the following offenses [15] :

A - The crime of genocide B - crimes against humanity

C- War crimes D- the crime of aggression

Act 6 to 8 separate the first three types of crimes.

As for the crime of aggression, Paragraph (2) of the same article indicated that the court exercises jurisdiction over the crime of aggression when the matter is approved by what knows it, and sets out the conditions under which the court exercises its jurisdiction in relation to this crime, and this ruling must be consistent with the relevant provisions of the United Nations Charter) (Sultan, 1978). The significance of this is that the statute of the Criminal Court did not precisely define other crimes like all other crimes, and left it for consultations among members in accordance with act 121 and 123 of the Basic Law regarding amendments that may be introduced to some provisions of the Basic Law, and the establishment of the Secretary-General of the United Nations after the lapse of seven years since The entry into force of this system by holding a review conference for the states parties to consider any amendments to it. Although Article (4) Paragraph (2) (the legal status and powers of the court) states that the court may exercise its functions and powers in the territory of any state party, and it may, under a special agreement with any other state, exercise them in the territory of that state, other provisions of the treaty Emphasizes that states other than the parties may violate the scope of the court's jurisdiction. [16]

First: Jurisdiction, Admissibility, and Applicable Law (Al-Issa, 2009)

In Part II of Article 13 (provided for the exercise of jurisdiction) that the Court may exercise its competence in respect of a crime referred to in paragraph (5), in the following cases (Sultan, 1978):

1 - If a State Party referred to the Prosecutor General in accordance with Article 14 cases in which one or more of these crimes appear to have been committed.

- If the Security Council, acting under Chapter VII of the United Nations Charter, referred a case to the Prosecutor in which it appears that one or more of these crimes have been committed (which is what happened in the Darfur case, which the Security Council referred to the Prosecutor of the International Criminal Court under Resolution No. 2005).

5- If the Public Prosecutor has begun an investigation into one of these crimes in accordance with Article (15).

Article (12) speaks about the prerequisites for exercising jurisdiction, as it clarifies three cases for countries to exercise jurisdiction, which are:

1. The state that becomes a party to this system.
2. In the two cases of Paragraph A and C of Article 13, that is, the referral of a state party to a case to the public prosecutor, or that he has directly started the investigation, in these two cases the court exercises its jurisdiction over the state party or the states parties to the court's statute. The conduct in question or the country of registration of the ship or plane occurred in its territory if the crime was committed on board one of them, and the state must be the person accused of the crime one of its nationals.
3. The state of compulsory acceptance, and here Article 12/3 states the following: If the acceptance of a state that is not a party to this statute is required under paragraph 2 of Article 13 (referral from the Security Council), that state may - by virtue of a declaration filed with the Registrar of the Court - to accept The court exercises its jurisdiction with regard to the crime in question, and the accepting state cooperates with the court without delay or exception.[17]

Second: Personal Immunity

Chapter Three of the Basic Law talks about the general principles of criminal law, and that is in Articles 22 to 33, and Articles 22, 23 and 24 indicate that: There is no crime without a text, and no punishment without a text, and that the effect on persons is irreversible, that is, there is no question. A person under this statute for a previous conduct to enter into force of the system.

Article 25 details individual criminal responsibility, that is, the occurrence of court jurisdiction over natural persons, and the various cases in which a person is responsible for it in his individual capacity and is subject to punishment.

Article 26 indicates that the court has no jurisdiction over persons who were under 18 years of age at the time of the crime.

As for Article 27, it came under the heading (non-consideration of official capacity), which states the following:

1. This Basic Law applies to all persons equally without any discrimination because of their official capacity and in particular, the official capacity of a person, whether he is a head of state or government, a member of a government or parliament, an elected representative, or a government employee, does not exempt him in any case. There are conditions of criminal liability under this statute, and they do not in themselves constitute a reason for commuting the penalty.
2. Immunities or special procedural rules that may be related to the official capacity of a person, whether within the framework of national laws or international law, do not prevent the court from exercising its jurisdiction over that person.

The Second Requirement

The Application of the Rules of the Rome Statute in the Subjective and Personal Jurisdiction

The Rome Statute did not leave the International Criminal Court the right to impose universal jurisdiction, but under its jurisdiction in respect of the most serious crimes committed, which is considered a violation of the international community as a whole (Obaid, 1992).

Not every crime is the subject of prosecution and punishment, but rather it must be committed as part of a plan, a public policy, or as part of a large-scale process regarding specific crimes. In other words, holding the jurisdiction of the International Criminal Court does not mean the court's absolute freedom to conduct trials without certain limits to the scope of jurisdiction. Rather, the jurisdiction of the court is limited to a specific scope to which it is committed and does not exceed it, which is called the substantive scope under which it is obligated to consider certain crimes defined by Article (5) of system and personal scope of the only natural persons respect to States, and excludes legal persons, perpetrators of international crimes, individuals that stipulated in the Statute are the only place of prosecution and trial and immunity considerations prevent the loading of individual criminal responsibility of persons, whether they are leaders or officials.

Article 5 of the Rome Statute contains an exclusive enumeration of crimes falling within the jurisdiction of the International Criminal Court, and it is precisely defined: the crime of genocide, war crimes, crimes against humanity [16] Then the crime of aggression listed in the Basic Law and according to Article (5) of this system, the court's exercise of its jurisdiction over this crime depends on the adoption of a ruling in this regard in accordance with Articles (121 and 123) which require the definition of this crime and the pillars and conditions of the court’s jurisdiction. By looking at it. [18]

CONCLUSION

Through this research, it became clear to us that confronting international crimes has become a matter that needs a scientific and legal mentality that is aware of the principles of human rights, international criminal law and international humanitarian law, and that the entry into force of the Statute of the International Criminal Court on July 1, 2002 is not just an ordinary event. Also, this court differs by its special nature from previous international courts and its jurisdiction is complementary to the national judicial systems, and the world avoids the conflict between national sovereignty and international justice.

Our research was limited to the study of the applicable law in the International Criminal Court, and we tried to be as short as possible due to the fact that the subject matter where we dealt with the study of the crimes that the International Criminal Court has jurisdiction to consider with a clarification of the law applicable to the subjective and personal jurisdiction.

We have reached several conclusions and conclusions, as well as several recommendations and proposals, which we hope will be useful in this field of our research.

First: The Search Results

1. International crime is the focus of the statute of the International Criminal Court, being a criminal offense first and international second.
2. The results of the first and second world wars revealed the necessity and effectiveness of international criminal justice when supported by political will.
3. The establishment of the International Criminal Court made its jurisdiction consistent with international crimes committed in different countries or against persons belonging to different nationalities, thus avoiding many legal and realistic problems.

4. The statute of the International Criminal Court has defined international crimes, their pillars, and the criminal penalties established for them. Thus, this situation constituted a conclusive international legal rule that cannot be violated under any pretext, name or excuse.

Second: Recommendations and Proposals

1. The necessity that international criminal jurisdiction is not limited to the four crimes mentioned in the Statute of the International Criminal Court, but must also include other crimes such as economic crimes and other crimes that transcend the borders of states and represent an assault on international legitimacy.
2. The need to add the death penalty to the sanctions imposed by the court on International criminals whose countries apply this penalty.
3. In light of international political and legal developments, I find it necessary to reconsider the Rome Statute by forming specialized international committees to study and amend the system, or add some legal articles, as they are consistent with the conditions that the world is witnessing today, and this gives a more effective and important role for the work of the International Criminal Court.

ENDNOTES

1. Adel Al Majed, the International Criminal Court and national sovereignty, the Center for Political and Strategic Studies, Al - Ahram, M. 2001, p. 50.
2. In this regard, we refer to the commandments of the Messenger of God Muhammad, may God's prayers be upon him and his family, the best of prayers and peace to the army chiefs, in which he affirms: "Do not kill a mortal old man, nor a small child, or a woman, and he affirms them with kindness, because God loves the doers.
3. Which four agreements resulting from the Geneva Diplomatic Conference, and concerning the first agreement to improve the Condition of the Wounded and Sick in Armed Forces in the Field, and the second to improve the condition of the wounded, sick and shipwrecked armed forces at sea, and the third relates to the treatment of prisoners of war, and the fourth concerning the Protection of Civilian Persons In a time of war.
4. Are a two protocols, first it relates to the protection of the international character of victims of armed conflicts and the second to the protection of victims of armed conflict is international.
5. Court ruling in the case of war activities and semi - war in Nicaragua in CIJ REC. 1986, P. 114.
6. Regulations concerning the Laws and Customs of War land annexed to the Hague Convention of 1907 articles 23, 28.
7. Additional Protocol I, Article (8/(2) (b) (3)), Article 35/3 of Protocol I - a basic rule, prohibits the use of means and causes that cause or are expected to cause widespread and long-term damage to the natural environment. Article 55 also stipulates that care should be taken in the war to protect the natural environment from these damages and prohibit attacks against the natural environment through retaliation, and the United Nations approved in 1976 the convention banning the use of techniques for changing the environment for military or any other hostile purposes.
8. The 1954 Convention Relating to the Protection of Cultural Property in the Event of Armed Conflict, Article 1 As Articles 10 and 15 of the Second Protocol to this Convention, which was adopted in 1999, states that every state party must make attacks on property. Cultural among other acts is a criminal offense in its national legislation. The Convention defines cultural property as cultural heritage that is of the greatest aspect of human importance, and which is protected by appropriate legal and administrative measures at the national level in recognition of its cultural, historical and exceptional value and to ensure the highest level of protection that is not used for purposes Military as shields to protect military sites, and that the party who is in charge of monitoring them above confirms that they will not be used in this way, and the first protocol stipulates Article 85 (4) (d) that it is a matter of launching attacks on historical monuments, works of art and places of worship that can be identified. Clearly upon them, which represent the cultural or spiritual heritage of the peoples, and special protection has been provided to them at a time when these historical monuments, places of worship and works of art are not directly near. From military targets.

9. Salah al - Din Amer, the evolution of the concept of war crimes, within the collective author of the title (International Criminal Court), constitutional and legislative realignments, Red Cross Publications, 2003, a previous reference, p. 999.
10. Those crimes are committed in the context of armed conflicts not of an international character by the state against some groups or minorities under its control, or by the militias affiliated to it, independently of any foreign political or military efforts to intervene to stop the massacres committed.
11. In that show criticism, d. Ahmed Fathy Sorour, Mediator in the Penal Code, General Section, Part 1, Dar Al-Nahda Al-Arabiya, Cairo, 1981, p. 129 and beyond.
12. Ahmed Awad Bilal, The General Theory of Criminal Punishment, Dar Al-Nahda Al-Arabiya, Cairo, 1996, p. 185.3
13. As it discusses the subject within a research, we cannot elaborate on these principles, so we have only mentioned them.
14. The Statute of the International Criminal Court entered into force on July 1, 2002, after 60 states joined it, and today the number of states parties to the Rome Statute has reached 104 states.
15. Hamid Sultan, d. Aisha salary, d. Salah al - Din Amer, general international law, Dar Al Nahda, Cairo, 1978.
16. Hamid Sultan, d. Aisha salary, d. Salah al - Din Amer, general international law, Dar Al Nahda, Cairo, 1978.
17. Adel Al-Majed, The International Criminal Court and National Sovereignty, previous source, p. 65.
18. These crimes are defined in articles (6,7,8) of the Rome Statute and are compatible with existing international criminal law, as well as with the concept of a sense of binding on all state

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