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THE PRINCIPLE OF LEGALITY IN INTERNATIONAL LAW

Amal Sani Muhamedameen
Master in Public Law, Department of law, Near East University, Cyprus - Turkey
amalgardi2@gmail.com

Abstract:
According to the principles of justice and logic, no person may be accused of committing a specific crime, or sentenced to a certain penalty, without being clearly and explicitly stipulated for that crime, nor the punishment prescribed for it, clearly and explicitly in the provisions of the Penal Code, where no act may be criminalized and punished without explicitly stipulating this within the terms and provisions of the Penal Code, which is known as the principle of legality of crimes and penalties, meaning that it must be Criminal acts and the punishment or penalties prescribed for them, along with the precautionary measures that are allocated to some of them as well, to be clearly and explicitly stipulated and specified in the texts of the various penal laws, for a basic and main reason, which is the application of a fixed, well-established and agreed legal and jurisprudential principle, which is that the origin is in permissible things, and the origin is in human innocence, which means that the basis in human life is that all acts are permissible and allowed to be committed, committed and performed. Without punishment for them, and that the origin in human nature is also that man is innocent and not condemned, until some of these behaviors and acts are criminalized under the legal texts and rules enacted and legislated by the competent authority or authorities in each country, and as it deems appropriate to ensure that, at its discretion, it preserves its capabilities and achievements, and protects its security, progress and stability, by preserving its religious, social, economic and even political constants, in accordance with what is known as the rules of public order.
Keywords: International law. International legislation. The principle of legality of crimes and penalties. International criminal law.

Introduction:

According to the principles of justice and logic, no person may be accused of committing a specific crime, or sentenced to a certain penalty, without being clearly and explicitly stipulated for that crime, nor for the punishment prescribed for it, clearly and explicitly in the provisions of the Penal Code, where no act may be criminalized and punished without explicitly stipulating this within the terms and provisions of the Penal Code, which is known as the principle of legality of crimes and penalties, meaning that it must be Criminal acts and the punishment or penalties prescribed for them, along with the precautionary measures that are allocated to some of them as well, to be clearly and explicitly stipulated and specified in the texts of the various penal laws, for a basic and main reason, which is the application of a fixed, well-established and agreed legal and jurisprudential principle, which is that the origin is in permissible things, and the origin is in human innocence, which means that the basis in human life is that all acts are permissible and allowed to be committed, committed and performed. without punishment

for them, and that the origin in human nature is also that man is innocent and not condemned, until some of these behaviors and acts are criminalized under the legal texts and rules enacted and legislated by the competent authority or authorities in each country, and as it deems appropriate to ensure that, at its discretion, it preserves its capabilities and achievements, and protects its security, progress and stability, by preserving its religious, social, economic and even political constants, in accordance with what is known as the rules of public order, which are public health, Public security, and public tranquility, this is with regard to the rules of criminal law or local penal law, as it is easy to determine the body responsible for issuing penal legislation in each country, as well as to determine the executive authority responsible for applying and enforcing these legislation against everyone who is residing on the territory of this state, in addition to determining and determining the extent of the mandatory for each penal law, as well as determining the category to which this law applies, or to which this law addresses, but the question arises about The application of the principle of legality of crimes and penalties in the field of international criminal law, in the sense of what is the international body that has the authority to issue binding international penal criminal legislation, and who is responsible for following up the application and implementation of such legislation, and the extent to which such legislation may be invoked against all, and who are all in that case, are they the population and citizens of each state, or only persons with international status, in the sense that the question arises about the identification of those addressed by international criminal laws, in fact, There is no particular body that has the authority to issue international criminal penal legislation, as in the case of domestic national penal laws, but rather that the matter in its entirety is due to a set of international and regional conventions that are issued, and the extent of their binding for the person depends on the extent to which his State of nationality recognizes, accepts and ratifies that convention, but in some of those conventions it is not necessary for the State to be a party to the international convention that stipulated the criminalization of a specific act and punishment in order for it to be permissible Punishing him for that act, in certain cases, as if he were residing on the territory of a State that recognizes and accepts that Convention, accedes to it and ratifies it, which means that it has become effective against it, in addition to determining the degree of superiority and degree of authority of international penal laws with regard to national penal laws, in the sense that in the event of a conflict between international penal law and domestic national penal law, whichever is the first to apply, noting that the answer to that question necessarily requires addressing The principle of sovereignty specific to each State, meaning whether a State's acceptance of international penal law and its application on its territory is superior to its national penal law, is this considered a violation of its political and legal sovereignty or also a violation of the independence of its judiciary.

The problem of research:

The study raises many legal problems, foremost of which is the statement and identification of the party responsible for approving international penal rules, in terms of indicating and determining the nature of that body, which calls for the need to talk about the legitimacy of the mandatory that is associated with the application of those punitive rules, meaning whether the

application of these legislation and penal laws is mandatory, or subject to the will of each state, and what are the cases in which the state is committed to the application of the International Penal Convention, in addition to that, the question arises about the extent of the validity of the convention Or the international punitive text, which may be stipulated in a specific international convention, or as is the case in some other international punitive sources, such as the Charter of the United Nations, as well as the Statute of the Permanent International Criminal Court, and other sources that will be addressed in the text of this research, so the problem raised at that time, is that related to determining the extent of the authority of international penal rules derived from many and scattered sources in the face of the domestic penal law issued by the legislative authority Therefore, the problem raised in that case relates to determining the supremacy of international penal law as well as determining the extent of its authority when it conflicts with the domestic national criminal law, and on what basis such superiority can be said or determined.

Research Questions:

The research proceeds from a key question, **which is how the principle of criminal legality can be applied in international criminal law**, which is divided into many sub-questions that can be mentioned as follows:

1. What is the definition of the principle of legality of crimes and penalties in international law?
2. What are the sources of punishment in international criminal law?
3. What is the principle of sovereignty?
4. What is the application of the principle of legality of crimes and penalties in accordance with the provisions and principles of Islamic law?
5. Who is responsible for enforcing and enforcing international criminal laws?

Objective of the research:

The study aims to clarify the previous problem, with the associated answer to the questions in question in a manner that is consistent with recognized legal rules, whether in international legal rules or local legal rules, so that the research is suitable in the end to be an accurate and disciplined legal research in addressing all the problems raised in the body of this research, as well as answering all the questions addressed to it, while preparing with it an integrated research on what is related to topics and elements related to It is related to the main topic under study, the principle of legality of crimes and penalties in international criminal law.

The first topic

Sources of criminalization and punishment in international criminal law

The first article of the Charter of the United Nations defines the purposes of international organizations, andentrusts their achievement to the General Assembly, and cooperation with sub-councils, where the General Assembly of the United Nations studies and issues recommendations aimed at developing international cooperation in all fields, protecting international peace and security, and equality for all without any discrimination.

In general, the principle of legality according to international law refers to the principle of the legality of penalties for crimes committed, as the act committed by an individual or refraining from committing it, cannot be considered a crime or a penalty is imposed for it, unless there are legislative texts that prohibit such acts or oblige them to be carried out and that a penalty is placed for violating that, and then it comes out of the circle of permissibility, meaning that the sources of criminalization and punishment in international law are always They shall be confined to the provisions of international law, by its narrow definition, without other sources of law other than the custom and general principles of international law.

First Requirement

Original sources

The international criminal protection of human rights has established international legal norms that have led to the internationalization of responsibility for human rights violations. International criminal protection of human rights has important dimensions for the territorial jurisdiction of States [1]. International criminal protection of human rights, when met by the substantive conditions set out in Security Council resolutions establishing international criminal tribunals or under the Statute of the International Criminal Court, transfers responsibility for human rights violations from the national to the international level, and jurisdiction to try those accused of human rights violations is transferred from the domestic national judiciary to International criminal justice, which constitutes a usurpation of the territorial and judicial sovereignty of the state, and at the same time represents an important guarantee that ensures respect for human rights and fundamental freedoms, which leads us accordingly to the search for international sources of criminal law, which we divided into three demands, the first in which we present the system of the International Court of Justice, the second in which we deal with the Rome Statute established for the International Criminal Court, and the third in which we refer to international custom as one of the sources of international criminal law .

The charters of international humanitarian law included means and procedures required by responsibility for violations of humanitarian law, where the general rule of responsibility

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States have legal sovereignty over persons subject to their jurisdiction, which is recognized as territorial sovereignty in international judicial law, as the State exercises the right to prosecute accused persons for acts that are a crime under national law or under an international treaty.
[1]

followed in international law is applied to the violation of international humanitarian law, meaning that the party that violates its provisions bears the consequence of that, and therefore the provision for reparation and compensation for damage, and the Fourth Hague Convention of 1907, as well as the Geneva Conventions and their First Protocol, approved the principle of responsibility, stipulating that " No Contracting Party shall relieve itself or another Contracting Party of the responsibilities incurred by itself or another Contracting Party for grave breaches", and the term grave breaches is synonymous with war crimes, and it is stated exclusively in the four conventions and Protocol I, and we will address this in the next chapter I of this memorandum. ().2

In accordance with the provisions of Article 146 of the Fourth Geneva Convention and Article 87 of Additional Protocol I, the Contracting Parties undertake to take legal and practical measures to prosecute the perpetrators of war crimes, whatever their nationality, on the basis of the principle of trial and extradition. Following the Second World War, Tokyo and the Tribunals for the Former Yugoslavia and Rwanda, which are temporary international tribunals with jurisdiction limited to their own specific framework and constituted by a Security Council resolution to prosecute war crimes committed on their territory. () 3

There is no doubt that the armed conflicts that led to their formation also precipitated the adoption of the Statute of the International Criminal Court, which has been the subject of long projects and controversy since the late last century. The Statute of the Rome Court, whose Convention was signed in Rome in 1998, provides for the prosecution of war criminals and crimes against humanity and, of course, violations of international humanitarian law, since the International Criminal Court was established by the Rome Statute in 1998 and entered into force with the required number of States ratifying it, and it has been granted full powers to prosecute perpetrators of war crimes and crimes against humanity of whatever nationality, position and responsibility, as long as the acts committed by them are subsequent to their entry into force. However, the statute of this Court is met with objections and strenuous efforts by both Israel and the United States to undermine its foundations, and Israel refuses to sign the Rome Statute under which the International Criminal Court was established so that its leaders would not be prosecuted before this Court4.

International jurisprudence has differed about the jurisprudential role of international law jurists as a backup source of public international law, some have gone to the decline of the role of

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Metwally Ragab Abdel Moneim, The New World Order between Modernity and Change - A [2]Theoretical Study on Current International Events, Dar Al-Nahda Al-Arabiya, Cairo, 2003, p. 144.

3Muammar Faisal Khouli: The United Nations and International Humanitarian Intervention, Arab Publishing and Distribution, no year of publication, pp. 136, 137

Mohammed Fayek, Human Rights between Privacy and Universality, Beirut, Arab Future Magazine, Center for Arab Unity Studies, No. 245, 1999, p. 112.4

international jurisprudence, in the sense that it does not establish international rules , but rather interprets these existing international rules, which means that it is a revealing source of the international legal rule and not its origin, while the majority of jurists went to the decline of this role to below secondary sources as a source of international law, but it is not strange that the judiciary Article 38 of the Statute of the International Court of Justice stipulates that the jurisprudence of the courts and the doctrines of major authors of common law in various nations are considered a backup source for the rules of international law, subject to the provisions of article 59 of the same Statute, which considers that the judgment shall have binding force only in respect of the dispute in which it has been decided. ().5

The International Court of Justice is the principal judicial organ of the United Nations (Article 92 of the Charter), and under Article 34 of the Statute of the Court only States have the right to litigate before the Court.

The second topic

The principle of legality of crimes and punishments in the Permanent International Criminal Court

Against the backdrop of the international trade that tried to establish an international criminal court to try the perpetrators of war crimes, the Rome Statute draft came to establish an international criminal court of 1989, which is competent to try natural persons whose investigations prove guilty of crimes within the jurisdiction of the court specified in its statute in four crimes: genocide, war crimes, crimes against humanity and the crime of aggression. The Statute of the International Criminal Court entered into force in 2002 when The number of ratifying countries reachedsixty-sixcountries.

First Requirement

Article 22 of the Rome Statute

The International Criminal Court shall exercise jurisdiction over all persons who commit the most serious crimes of international concern and shall not exempt the official status of a person, whether he is a Head of State or Government, a member of the Government or in Parliament or an elected representative or a public official from criminal liability, nor does it in itself constitute a ground for mitigation of punishment and does not count any kind of immunities and privileges ().6

In terms of crimes, the jurisdiction of the Court is limited to the most serious types of crimes, which are stipulated in Article V of the Statute, namely the crime of genocide, war crimes, crimes against humanity and the crime of aggression, as these crimes that fall within its

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Olivier Duha Mille and Yves Mini, The Constitutional Dictionary translated by Mansour Al-Qadi5J., Beirut, University Foundation, 1996, p. 265, and see also Ali Abdel Rahman Dawi, Public International Law, Tripoli: General Company for Paper and Printing, 2005, p. 263.

6 Khaled Abd Mahmoud Othman: Filing a Case before the International Criminal Court, Master's Thesis, Faculty of Graduate Studies, Al-Bayt University, Jordan, 2002, p. 122.

jurisdiction do not fall under the statute of limitations, whatever its duration, and the time scope of the Court's jurisdiction extends to include crimes committed after the entry into force of its Statute, and therefore the Court has no jurisdiction over crimes that occurred before the entry into force of the Statute of the Court. The International Criminal Court enters into force, i.e. before the first of July 2002. () .7

International disputes are the dilemma of our time, which necessitates the need to search for appropriate rules to resolve them in order to avoid their dire consequences on peoples and humanity as a whole. The resolution of international disputes at the present time depends mainly on the application of the rules of international law emanating from international legislation, customs and international treaties, within a certain legal framework, such as before the International Court of Justice or an international arbitration court, but resorting to these means depends on the will of states, and then requires that these organs gain the confidence of states, whether large or small, and this confidence must be in the tools used more than in Legal framework ()8.

The Rome Statute is an international treaty aimed at establishing a permanent international criminal court and its content includes the mechanisms of the court's work and composition, and with reference to the Vienna Conventions on the Law of International Treaties of the years (1969-1986), it becomes clear to us the most important features of the Rome Statute, where it follows from the treaty nature of the Rome Statute that states are not It is bound to join or accede to it against their will, and that this Statute is a system that has been the result of negotiations that have taken place until it has taken the form and content it is now 9.

It is also clear to us the applicability of all rules that apply to international treaties, such as those on interpretation, spatial application, its effects and temporal application as well, unless otherwise stipulated in the Rome Statute, in addition to the subordination of disputes related to the Statute in their settlement to the same conditions related to the settlement of disputes, and this feature is a natural consequence of its predecessor, unless otherwise stipulated.

It is also clear to us that reservations to the Statute may not be placed by reference to the text of article 120 of the Rome Statute of the International Criminal Court10. It is clear to us that no reservations to the regime may be made by States, and therefore it is in a whole and

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7 Mays Fayza Ahmed Sobeih, Powers of the Prosecutor at the International Criminal Court : A Comparative Study with the Powers of the Prosecutor in National Criminal Law, Master's Thesis, Faculty of Law, Middle East University, Jordan, Amman, 2009, p. 34

8Semaan Faragallah, Crimes against humanity, genocide of the human race and war crimes and the development of their concepts: Studies in International Humanitarian Law, Dar Al-Mustaqbal Al-Arabi, Cairo, 2002, p. 136.

Rana Ibrahim Salman, Sources of Criminalization and Punishment, Dirasat, Sharia9 and Law Sciences, University of Jordan, vol. 34, second issue, 2007, pp. 404-419.

Article 120 of the Rome Statute stipulates that "10no reservations may be made to this Statute".

indivisible form, in the sense that it must be taken in whole or put forward in its entirety. 11. The principle of legality of the crime is stated in accordance with Article 22/2 of the Statute of the International Criminal Court, which stipulates that "a person shall not be criminally liable under this Statute unless the conduct in question at the time of its occurrence constitutes a crime within the jurisdiction of the Court."

It is noted that the principle (no crime except by text), which is the principle contained in Article (22/2) of the Rome Statute has been contained independent of the principle of no punishment except by text, which is contained in Article No. (23) of the Rome Statute, but it is clear to us that the meaning of the saying (no crime except by text), which is included in the Rome Statute does not differ from its definition in legal studies with a criminal part, as it carries the same definition, That is, no act may be considered a crime under the Rome Statute, unless it has been provided that it is considered so in accordance with the Rome Statute, no matter how ugly or even grave the act may be12.

It is agreed that it was conceived for the purpose of establishing an international criminal court, as were the charters and conventions of other criminal tribunals, but this statute and the court that was established thereunder shall not enter into force until after the entry into force of each of them13.

Second Requirement

Article 23 of the Rome Statute

The Rome Statute was distinguished by its reliance on this principle and explicitly stipulated by the previous international legal systems in that aspect, because this system is considered the last part, according to this system, the legitimacy of punishment is the last part of the principles of legality, which can not straighten the strength of these principles only by it and then it was stipulated in Article No. (23) of the Rome Statute, which stipulated that (no person convicted by the court shall be punished Supreme according to this statute), and through the text of this article embodies the principle of the legality of punishment (no punishment except by text), and it is also clear that several things must be available in order for the punishment to have legitimate justifications, the most important of which is that the punishment is in accordance with the Rome Statute, and if the concept of that is limited to the application of penalties exclusively in the Rome Statute, it is by reference to Article No. (22) of the Rome Statute, especially in the third paragraph It is clear that it provides that "this article shall not affect the characterization of any criminal conduct under international law outside the framework of this

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11Ahmed Abu Al-Wafa, Basic Features of the Statute, a paper presented at the International Criminal Court symposium entitled: The Challenge of Immunity held by the University of Damascus, Faculty of Law, during the period from 3 to 4 February 2001, year 2002, p. 61.

12Mishari Dhainan Nasser Al-Zoubi, Guarantees of respect for human rights in the evidentiary stage in the system of the International Criminal Court, PhD thesis, Menoufia University, Faculty of Law, 2020, p. 98.

Marwa al-Sayyid al-Hassawi, 13op. cit., p. 55.

Statute14."
If this article relates specifically to criminalization, does that mean that the Court applies the penalties provided for in its statute to such crimes, or in other words, is there the power of the Court to exercise its jurisdiction over such crimes and then impose penalties since the adaptation of such crimes was carried out under the rules of international law outside the framework of the Rome Statute? This now requires further clarification in order not to keep the door of jurisprudence open, which may lead to the emptying of the principle of legality of its legal content, in particular the part relating to the legality of sanctions 15 .
The objective criterion of punishment is seen as revolving in three axes, the first of which is that punishment as a derogation or deprivation of the personal rights of the convict, the second axis focuses on the function of punishment in the fight against crime, and the last axis revolves around the objectives of punishment and the pillars on which it is based ().16
It is worth noting that the focus and limitation on one of these axes and trends when defining the penalty objectively and neglecting the rest of the axes, makes the definition flawed and directed at him arrows of criticism or criticism, and within the framework of this criterion as well, and then criticism has been directed to those who defined the punishment as a derogation from the legal rights of the human being inflicted by the judicial authority of those who behave in a manner prohibited by the Penal Code, so that the penalties may lead to complete waste, not just derogation such as Imprisonment or death, confiscation of property and other penalties ().17
Based on the above, we find that some have been alerted to this, as their definitions of punishment avoided this deficiency, as it was defined as a derogation or deprivation of the personal rights of the convict, or it is the pain that the offender must bear when he violates the legal order or his termination in order to correct his behavior, and deter other criminals from coming with the same crime, or it is a pain inflicted on the perpetrator of the crime and because of it.
There are those who define punishment according to the modern concept of criminal sanction, where it refers to the pain inflicted on the offender as a result of violating the order or prohibitions of the law, with the aim of correcting or reforming it and deterring others from following the path of crime fraught with dangers and pain, or that it is an appropriate legal and

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14 Ahmed Abu al-Wafa, op. cit., p. 62.

15 See Taher Muhammad al-Obaidi, General Provisions of Penalties and Rules for their Implementation in the Yemeni Penal Code and Islamic Sharia, Sana'a, Yemen, Al-Sharabi Center, 2001, p. 15.

16 Hamid Muhammad Al-Qamati, Financial Penalties between Sharia and Law: A Comparative Study, Tripoli, Libya, General Establishment for Publishing, Distribution and Advertising, 1986, p. 44.

17 Ibrahim Hamed Tantawi, Criminal Investigation from the Theoretical and Practical Perspectives, Dar Al-Nahda Al-Arabiya, Cairo, 1999, p. 16.

legal sanction, imposed by the responsible authority on behalf of society and in the name of this society, after the charge is proven against the criminal in accordance with a final and final judicial ruling that is not subject to appeal (). Therefore, it 18was necessary to agree between these axes in order to avoid the shortcomings that may suffer from one of them, and therefore the international criminal jurisprudence has unanimously defined punishment as a part determined by law and imposed by the judicial body on those who are proven responsible for any act that is considered a crime in the law to infect the accused in his money, person or honor ().19

Based on the above, several results can be drawn, the most important of which is that the Rome Statute followed the approach when it stipulated the applicable penalties in Article (77) thereof, 20where the importance and predominance of penalties depriving freedom appeared. The human being, on which the system relied mainly, and thus ranked first and then followed by financial penalties such as confiscation and fine, and we find that the Rome Statute has been limited to these two types of penalties, i.e. negative for money or deprivation of liberty without providing for the rest of the other divisions and patterns that result from them.

The penalties for deprivation of a person's liberty are mentioned in paragraph (1/77) of the Rome Statute, which we referred to earlier, which included two penalties of this kind, namely imprisonment for a specific number of years, which does not exceed thirty years, and life imprisonment when the step of the crime and the circumstances of the accused person require it, while the penalties of a financial nature contained in the Rome Statute were represented by

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18Mahmoud Saleh Ani, op. cit., p.123.

19Ahmed Mohamed Kilani, Guarantees of the Accused before the International Criminal Court, PhD Thesis, Alexandria University - Faculty of Law, Department of Criminal Law, 2021, p. 55.

Article 77 of the Rome Statute provides for the applicable penalties by saying: 20

1. Subject to the provisions of article 110, the Court may impose on a person convicted of an offence under article 5 of this Statute one of the following penalties :

Imprisonment for a specified number of years for a maximum period of 30 years;

(b) Life imprisonment where such punishment is justified by the extreme gravity of the offence and by the special circumstances of the convicted person.

2. In addition to imprisonment, the court may order:

(a) Imposition of a fine in accordance with the criteria set forth in the Rules of Procedure and Evidence;

Confiscation of proceeds, property and assets derived directly or indirectly from such crime, without prejudice to the rights of bona fide third parties.

the penalty of fine and confiscation of proceeds, as stipulated in paragraph (2/77) of the Rome Statute. Basic .

In summary, just as the Rome Statute relied on the criterion of interest affected by the crime to indicate the type of international crime, it can be relied on the type of right on which the punishment is focused, to indicate the types of penalties stipulated in the Rome Statute, as evidenced by the interest of the aggressed nature of the crime and its type, the right that the punishment afflicts in return reflects the nature and type of punishment, and based on that, these criteria achieve a clear preponderance over other other criteria that addressed this It.

Thethird topic

The principle of individual criminal responsibility and irrelevance of official capacity

Booting and partitioning:

Responsibility in its general and comprehensive sense refers to the obligation and accountability or responsibility for the behaviors and actions carried out by the state, and opinions have differed on the definition of the content of responsibility, whether in the terminological definition of responsibility or even the linguistic definition of that term, and as a result of the fact that responsibility is an obligation, that obligation has resulted in a basis for the responsibility of the state in the absence of error in the decisions it takes ().21

The first requirement: the principle of sovereignty in international criminal law compared to public international law

Second requirement: the principle of immunity in criminal law compared to public international law

First Requirement

The principle of sovereignty in international criminal law compared to public international law

The origin of the word sovereignty in European languages goes back to the French word souverain, or in English sovereiegn (), in the sense of the highest or nominal and highest, and what is not above it is something higher than it is an adjective and a name, hence it became called the king, monarch or sultan, and derived from it the word sovereignty French souverainete[22] or sovereiegney meaning elevation and height ()[23] They are among the characteristics and characteristics of the master in political science, whether he is a single person, an individual or a group in the form of a body or institution, and the like in terms of what they enjoy or are distinguished by the supreme authority in the State from which all other

21Helmy Khater, State Responsibility for Laws Contrary to the Constitution and International Conventions, Journal of Legal Research, Mansoura University, Faculty of Law, No. 54, 2013, p. 122.

McWhinney, Edward. Self-determination of Peoples and Plural-ethnic States in Contemporary International Law: Failed states, Nation-building and the Alternative, Federal Option. 2006, p88.22

Boyle, now. Soft Law in International Law-Making in: Malcolm D. Evans (ed.), International Law. 2014. pp. 118-13623

authorities emanate[24].

The concept of sovereignty as a legal concept is only a description of the actual capacity of the State, and therefore its strength, and sovereignty also has a political concept besides that legal concept, it represents a certain political reality, which is the actual ability to unilaterally issue political decisions inside and outside the State, and thus the actual ability to legitimately monopolize the tools of oppression at home, and to refuse to comply with any authority that comes from abroad[25].

In fact, sovereignty in international law was known only by its political elements without taking into account the economic aspects, if the state does not have the effective means to practice politics, and if independence remains a formality and if it does not control and does not manage with full independence its effectiveness will keep sovereignty theoretical and far from being applicable, hence independent states began after World War II enthusiastic about the theory of sovereignty over natural resources and resources. ()[26].

After a long struggle in the international field in the United Nations General Assembly and its affiliated organizations, conferences of non-aligned countries, support for the socialist camp (formerly) and legal scholars known for their support for just causes and the right of peoples to self-determination and human rights, sovereignty over natural resources and resources is no longer as desired. In confronting it in international forums, and through an aspect of the jurisprudence it defends, the West is merely a political doctrine, but has become a legal concept and has introduced positive law as part of it ().[27]

After the collapse of the socialist camp and the consolidation of the unipolar sovereignty no longer find someone to defend it sincerely, and the twenty-first century has not become from its inception and now the century in which the concept of sovereignty flourishes, even the Western state began to strengthen its positions we do not find objection to voluntarily give up part of its sovereignty to establish continental groupings such as the European Union trying to unify foreign policy and approved the single currency that has become a reality ().[28]

The idea of sovereignty has many effects, the most important of which are:

States enjoy all the rights and privileges inherent in their sovereignty, whether at the

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See: André Lalande, Lalande Philosophical Encyclopedia, Arabization (Khalil Ahmed Khalil), Beirut, Ouaidatin Publications, Part III, 24unpublished, p. 132. Also: Oxford Dictionary (in English), 16th edition, Oxford University Press, 1982, p. 588, and Roubaix Dictionary (in French), Paris edition, SNL, 1977, p. 1850, and see also: Jamil Saliba, Beirut, Lebanese Book House, 1982, p. 678.

Emad Gad, International Intervention between Humanitarian Considerations and Political Dimensions, Cairo, Al-Ahram Center for Political and Strategic Studies, 2000, p. 16.25

Abbas Mahmoud Adnan, Changing Territorial Sovereignty and its Effects on International Law, PhD thesis, Ain Shams University, Faculty of Law, 1989, p. 44.26

Arthur 27Nussbaum, op. cit., p. 116.

Ramadan Ben Zayer, International Relations in Peace, Libya, Dar al-Jamahiriya for Publishing, 1989, p. 155.28

international level, such as the conclusion of international treaties, the exchange of diplomatic and consular representation and the invocation of international responsibility to claim or repair compensation for damage suffered by them or their nationals. At the domestic level, the State has the right to dispose of its primary resources and natural resources29. It may also take such measures as it deems appropriate towards persons present in its territory, regardless of their status as citizens or foreigners.

Equality between States: Sovereignty also follows that States are legally equal, as there is no hierarchy in sovereignty, meaning that the rights and duties enjoyed or bound by States are legally equal even if there is a difference between them in terms of population density, geographical area or economic resources.

However, the principle of sovereign equality recognized in the Charter of 30the United Nations is not absolute, as there are many rights enjoyed by the permanent members of the Security Council but not by other Member States, including the use of the veto and the right to amend the Charter31.

On the other hand, however, there is a tendency in international law to try to address de facto inequality by developing legal rules that reduce de facto inequality, by establishing legal rules that reduce glaring differences.32

Inadmissibility of intervention in the affairs of other States: perhaps one of the most difficult tasks encountered by jurisprudence in international law is to develop a precise definition of what is expressed as intervention at the international level.33

There are those who define it as: a dictatorial interference by one State in the affairs of another State with a view to maintaining or changing the status quo with a view to undermining the integrity of the national territory and the political independence of that State34.

International law prohibits any State from interfering in the internal affairs of another State, as each State is free to choose and develop its own political, economic, social, political and cultural system, without interference from the other. However, State sovereignty is restricted by the provisions of international law, particularly with regard to human rights, the commission of war

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Abdelnasser Abdel Wahed, Current International Relations, New An-Najah Press, Casablanca, 2003, p. 98.29

Article II, first paragraph, of the Charter of the United Nations[30].

On this subject: See: Muhammad Al-Alam Al-Rajhi: On the Theory of the Right of Veto in the United Nations Security Council, Jamahiriya House for Publishing and Distribution, Misrata, Libya, 1989, p. 66.[31]

For example, rules on preferential action in favour of poor States, including the advantages provided by the 1982 United Nations Convention on the Law of the Sea to landlocked and geographically affected States[32].

Imran Abdeslam M'hamed El Hadj M'hamed: The Security Council and the Right to Intervene to Enforce Respect for Human Rights: PhD [33]Thesis, Faculty of Legal, Economic and Social Sciences, University of Agdal, Rabat, 2001, p. 21.

Said Regraki, Approached in the Study of International Relations, Marrakech, Press and National Paper, 1991, pp. 117-118[34] .

crimes and the crimes of genocide. A State is not free to act in the field of international relations, as it is subject to international law, which is imposed on States on the basis of considerations superior to their will, which sets out restrictions on the conduct of States and governs their relations with other States and with international bodies35.

Sovereignty is one of the principles of international law, and it has been stipulated in Article II, first paragraph of the Charter of the United Nations, and the principle of sovereignty wore double importance, whether at the legal level or at the political level, which made the concept of sovereignty a subject of disagreement and discussion, but the principle of sovereignty withstood and formed a mandatory base of international law, although its content knew many developments during the successive historical right according to the development in the international system, and the different orientations of major countries The principle of sovereignty is one of the principles that are directly related to the changes in international relations, which made the principle of sovereignty one of the principles attached to the right to self-determination, as both principles are highly sensitive to changes in the global system or changes in the nature of international relations.

Sovereignty is one of the basic ideas on which contemporary international law is founded and constructed, and the theory of sovereignty has gone through several stages.36
The theory of sovereignty in the modern era has been fundamentally criticized and abandoned by many as incompatible with the current conditions of the international community, and indeed the theory of sovereignty has been misused to justify internal authoritarianism and international anarchy. This theory has hindered the development of international law, obstructed the work of international organizations and led to the domination of powerful States over weak States .
The concept of sovereignty has now moved in a new direction, as the transformations of the international system in the economic, political and military fields have led to the erosion and erosion of the idea of the sovereignty of the national State37.

The principle of sovereignty has aroused the interest of many researchers, men and scholars of international law, and tried to follow it since the initial inception of the humanitarian community, and what has happened as a result of the change in the international situation, and to monitor what may be exposed to this principle of launching it sometimes and restricting it at other times, and the principle of sovereignty has been subjected throughout its history to rapid and successive change, as a result of its association with the concept of the State as an

Abdul Karim Alwan, The Mediator in Public International Law: Book One, General Principles, Amman, Jordan, Dar Al-Thaqafa Library for Publishing and Distribution, 1997, p. 131[35] .
Ahmed Abu Al-Wafa, Mediator in Public International Law, Cairo, Dar Al-Nahda Al-Arabiya, 1996, p. 38. 36
Ali Sadiq Abu Heif, Public International Law, Alexandria, Knowledge Foundation, 1995, p. 10337 .

expression of its supreme authority internally and externally ().[38]

Opinions have differed and varied about the renewal of the source of sovereignty, there are those who believe that it is the sovereignty of public authority, as sovereignty is a pillar of the state, while others see it as the sovereignty of the nation represented in the state, and other jurists see it as popular sovereignty (), and one of the most important theories that have been presented for the sovereignty of the state (the theory of the [39] sovereignty of the nation), and this theory is based on the sovereignty of **the nation** as an abstract unit independent of other individuals constituent it, sovereignty is not for an individual Or for a group of groups, where none of them is considered the owner or owner of part of it, the nation is a stand-alone legal person distinct from the individuals constituent it, and some scholars bring the concept of the sovereignty of the nation closer to the concept of democracy as two expressions of one idea, but on two sides, as democracy is an expression of the political form while the principle of the sovereignty of the nation is an expression of the legal form ().[40]

The idea of sovereignty has emerged at the hands of the two laws who were defending the powers of the king in France against the Pope and the Emperor, stressing that the full sovereignty of the king, and that he has the supreme authority that does not compete with anyone in the state, and with the French Revolution remained the idea of sovereignty of the nation with its capacity at all, but moved to the nation to become the will of the nation is the supreme authority ().[41]

1. Sovereignty is indivisible across a direct or semi-direct democratic system, and the form of democracy that is consistent with this theory is representative democracy.
1. Election is a function rather than a right and is therefore imposed on individuals against their will, and it can be restricted by conditions that limit the voter base ()[42].
2. A member of parliament is considered a representative of the entire nation, not just a representative of the voters of his constituency.
3. The law expresses the nation as a whole and its previous, present and subsequent generations, and changing the basic rules is difficult for the sake of the interest of future generations

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Sufi Abu Taleb, History of Legal and Social Systems, Cairo, Dar Al-Nahda Al-Arabiya, 1995, p. 33.38

Abdel Karim Awad Khalifa, Public International Law: A Comparative Study, Alexandria, New University House, 2011, p. 299.[39]

Hamid Sultan, Aisha Rateb, Salah al-Din Amer, Public International Law, Cairo, Dar al-Nahda al-Arabiya, 1987, p. 805.[40]

Ali Ibrahim, Human Rights and Intervention to Protect Humanity, Cairo, Dar Al-Nahda Al-Arabiya, 1999, p. 144.[41]

Mohammed Al-Majzoub, International Organization, Beirut, Al-Halabi Human Rights Publications, 2006, p. 192.[42]

The criticisms of this theory are as follows:

1. This theory had the benefit of limiting the powers of kings but is now useless.
2. This theory leads to the recognition of the legal personality of the nation and this is not legally acceptable
3. It leads to tyranny as long as the law is an expression of the will of the nation and not an expression of the will of the majority

Second Requirement

The principle of immunity in criminal law compared to public international law

Immunity has several meanings, but it converges in essence around one meaning, which is immunity, protection and prevention of what is intended to be prevented or prevented.

The definition of immunity in its general sense is: "a privilege established by public international law or domestic law that exempts the beneficiary from a burden or assignment imposed by public law on all persons located on the territory of or gives the State the advantage not to be subject to the provisions of a public authority of the State, in particular the judiciary or some aspects thereof ."43

Aninternational organization can be broadly defined as a permanent body established by agreement of a group of States, with a view to achieving common goals and interests established by the founding charter of the organization, with self-will and legal personality independent of its member States.

It is clear from this definition that four elements are required for the existence of an international organization.

The first element – permanence or continuity

What is meant by permanence and continuity is the independence of the Organization in its existence and in the exercise of its activity from its constituent States, as long as its founding Charter is in force. The criterion by which an international organization proves permanent, is that it carries out its mission for which it was established on an ongoing basis. This does not necessarily require that all organs of the organization act simultaneously, since the activity of some of them is in fact that of the organization as a whole represented by one or another organ.44

The continuity and permanence of an international organization does not preclude the possibility of its disappearance after a period of time that may be longer or shorter, and the character of permanence or continuity that characterizes the international organization may be expressly stipulated in the charter establishing the organization, for example, as stipulated in article I of the Charter of the International Labour Organization .

Arabic Language Academy, Dictionary of Law (Arab Republic of Egypt, Emiri Presses, 1st Edition, 1420 AH 1999 AD), p. 64243

44 Kamel Al-Saeed, Explanation of the Code of Criminal Procedure, Dar Al-Thaqafa for Publishing and Distribution, Jordan, 2008, p. 414.

Element II - Convention status

For the existence and emergence of an international organization, an international agreement must establish it. Its legal system shall specify its objectives, competencies, the various organs entrusted with achieving these objectives and the rules governing its workflow.

In most cases, this agreement establishing an international organization is made in the form of a collective international treaty, subject to the general rules of the law of treaties codified in the Vienna Convention, whether its drafters call it a charter, constitution, instrument or statute. Accordingly, a State shall not participate in an international organization unless it expresses its desire to do so through ratification, approval or accession to the Charter establishing the organization or as soon as it is signed.

The treaty establishing an international organization is either a new or new treaty or a treaty amending an earlier treaty.

Agreement between a group of States to establish an international organization is what distinguishes an intergovernmental organization from an international non-governmental organization. ()45.

Third element – internationalization

By the international character of an international organization, we mean that the States that establish it and join it after its establishment are those that enjoy - mostly - only membership in it, and these countries are represented in the organization by members of governments or their representatives.

There is nothing to prevent intergovernmental organizations from accepting in their membership - with diminished rights - other non-international units that do not fit the description of a fully sovereign and independent state (territories - provinces - overseas territories - political authorities representing - temporarily - some territories), and some specialized international organizations of the United Nations allow admission to membership of regions or provinces that are not independent states, such as, the World Health Organization, the International Civil Aviation Organization

Immunities and privileges accorded to international organizations:

International organizations, given the scope of membership, may be divided into universal organizations, regional organizations and doctrinal organizations, and an organization is considered universal if its membership is open to any State of the world when it meets the conditions required by the Charter of the Organization, such as the League of Nations, the United Nations, specialized international organizations and the International Atomic Energy Agency.

Regional organizations are those whose membership is limited to a certain group of States that meet the conditions for cultural, social, economic, intellectual and linguistic convergence as well as the conditions of geographical vicinity, such as the League of Arab States, the Organization of African Unity, the Council of Europe and the Organization of American States.

45Ibid., ibid.

An international organization shall complete its independence from its constituent member States and shall enjoy a special will distinct from the will of the member States, expressed in accordance with the rules contained in its Charter and within the limits of its specific competences. By self-will, we mean the most important element of an international organization and its fundamental pillar, which qualifies it to enjoy its own legal personality.46 It follows from the self-will of an international organization that the effects of its conduct do not extend to its constituent States but to the organization itself as an international legal person independent in its legal life from the States that created it. The organization is responsible for its lawful and unlawful legal acts in accordance with international law. Staff members report to the Organization, not to Member States, and owe allegiance only to the Organization. The Organization shall have a separate special budget so that Member States cannot interfere in its operation

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In principle, all international organizations have the necessary powers to meet their internal management needs, such as the resolution of problems relating to their personnel, their financing and their methods of functioning. We can distinguish between three types of international organizations according to the extent of the powers enjoyed by a large number of international organizations. It does not exercise any real powers vis-à-vis member States, but its role is limited to carrying out certain material acts that do not have any binding legal effect vis-à-vis States. Examples of such work include the collection and dissemination of information, research and studies. Organizations to which this description applies include the Maritime Consulting Organization and the Meteorological Organization.

If the privileges and immunities of diplomatic envoys are determined by the provisions of international custom, the custody and privileges of international organizations shall be determined by the provisions of a convention, or in other words arising from an international agreement. While multilateral and bilateral treaties are the source of custody and privileges of international organizations, the degree of generality and abstraction that characterizes them makes them, at least with regard to the United Nations system, the establishment of customary rules.

1. Judicial immunity

Immunity from jurisdiction of an international organization means that the courts of the member States of the organization and other States have no jurisdiction over actions brought against the international organization, unless there is an agreement or clause in a contract concluded by the organization that gives the court such jurisdiction. This is confirmed in article II of the Convention on the Privileges and Immunities of the United Nations: "The United Nations, its funds and assets, wherever they are located and in the hands of whomever they are, shall enjoy the absolute right of judicial exemption, unless the organ expressly decides to waive

46Semaan Boutros Farajallah, Crimes against humanity, genocide of the human race and war crimes and the development of their concepts: Studies in International Humanitarian Law, Dar Al-Mustaqbal Al-Arabi, Cairo, 2002, p. 136.

this right. Such waiver shall apply in all cases except those relating to executive proceedings.47
The judicial immunity established for international organizations is a comprehensive immunity that covers all acts of the organization and extends to its property and headquarters, and protects the organization against any legal action before national authorities, whether judicial, administrative or executive, whether the organization is called to appear before the judiciary or is requested to provide information.
2. Inviolability of buildings and places occupied by the Organization and its correspondence.
The buildings and premises occupied by international organizations and their funds shall be inviolable and shall not be the object of any administrative or legal coercive measures. Such as (search - seizure - confiscation - expropriation) International organizations also enjoy immunities for their correspondence not less than those prescribed for diplomatic letters and bags, so that their correspondence and official communications are not subject to any control. International organizations also have the right to use the symbol or code in their telegrams.
3- Financial and tax immunities and privileges:
The need for the international organization to enjoy immunities, privileges and financial and tax facilities is to prevent the host State from benefiting from the presence of the organization on its territory through the exercise of its financial and tax powers over the organization.
The international organization is therefore exempt from direct taxes and indirect withholding (domestic and sales taxes) on its purchases important for official use. It is also exempt from customs duties, taxes on the movement of capital and cash exchanges, and any restriction or prohibition on imports or exports for their official use.

The end:

The difficulty of including one text on both crime and punishment remained in the fields of international criminal law and continued even after the development of the Rome Statute, and in confirmation of these facts, the political conditions prevailing in the international system play a fundamental and influential role that led to the predominance of international interests and realistic considerations in the international system over the ideal legal ideas included in the Rome Statute, and then the principle of legality stipulated in Articles (22-23) of this system so that the text of on the legality of the crime independently of the legality of the punishment.
According to the Rome Statute, there is independence of the criminalization texts from the provisions of the penalty, as the same text also did not include both the crime and the punishment, and the punishment was not determined independently, but a list of crimes and another list of punishments were included, and it was left to choose the punishment for each crime according to the discretion of the International Criminal Court according to what it sees and according to the excuses and circumstances that were also received in an existing manner.
International crime can be defined as any negative or positive behavior or act, prepared by international law and determined for the perpetrator of a criminal sanction, because of the brevity and comprehensiveness of this concept at the same time.
The Rome Statute did not include the provision of any kind of complementary or ancillary punishments, especially dismissal from public office and the inadmissibility of assuming them,

47Fatima El-Sayed Mahmoud Abdellatif, op. cit., p. 72.

which were stipulated by a majority, if not all domestic laws, and in connection with crimes less serious than the crimes contained in the Rome Statute, and it is also noted that the Rome Statute did not include the provision for the death penalty, which contains strange paradoxes in the responsibility of the offender before national courts, especially those that stipulated It has domestic laws and its responsibility before the International Criminal Court in accordance with the Rome Statute, which contradicts the principle of legality stipulated therein, especially if it turns out that strengthening the principle of complementarity between the Rome Statute and national systems requires reducing the differences between them and not including the death penalty in the Rome Statute.

It became clear to us that the relationship between the principle of legality stipulated in the Rome Statute and the principle of legality in domestic laws has been embodied in the principle of complementarity stipulated in this statute, through which the many aspects of the relationship between the Rome Statute and national systems are reflected, especially the States parties to this system, and in particular the States parties to this system, as we have found through reference to the historical background of the principle of complementarity that it has an application within the framework of public international law. The principle of complementarity between the International Criminal Court and national courts aims to put an end to impunity for the perpetrators of the international crimes specified in article V of the Rome Statute, which the Statute of the Court describes as the most serious international crimes for the stability of the international community. Punishing the perpetrators of these crimes, because of its lack of jurisdiction or failure to do so due to the collapse of its judicial or administrative system, or the failure to show seriousness in bringing the accused to trial, then jurisdiction is transferred to the International Criminal Court, which is responsible for punishing the perpetrators of these crimes in application of the principle of complementarity.

Recommendations:

First RecommendationJ:

We propose to the Assembly of States Parties a provision that would deprive and dismiss those found guilty of one of the international crimes set forth in the Rome Statute from public office in order to prevent them from repeating it again so that such persons would not be rewarded for the crimes committed by their Governments or organizations by appointing them or as an incentive for them to commit such crimes.

Second recommendation:

It is important and more useful in the Rome Statute not to provide for the exception relating to the applicability of its provisions to crimes committed after its entry into force and before the accession of the State that becomes a party to it, when the State that becomes a party to it accepts or agrees to do so, or to provide for the condition that the acceptance of the accused individuals and the consent of their States be combined with the consent of their States to the application of this exception, so that the will of the individual and the State can be respected with each other.

Third recommendation:

Violations must be monitored and documented in order for the case file to be convincing, and

the recording of the violation should include, in addition to proving the identity of the victim, documentation supported by details including statements on the subject of the violation to which the victim was subjected, the international and national legal reference that stipulates the right that the violation was lost, with statements of the identity of the perpetrator or perpetrator of the violation, and their whereabouts and addresses if possible.

Fourth recommendation:

We recommend the importance of making amendments to the Charter of the United Nations that would fill the gaps, specifically the rules that determine the mechanism of work of the Security Council to ensure that major powers do not dominate, and at the forefront of these amendments must address the issue of the veto (veto), especially after we found that this right made the Security Council, an organ that has a task related to the fate of the international community and its interests linked to the political interests of major countries, which may affect the abuse of referral to the Court and thus undermine Independence.

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