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THE PRINCIPLE OF CRIMINAL LEGALITY IN INTERNATIONAL CRIMINAL LAW

Ethar Kamal Abdullah
Near East University, Law department, TRNC, 10 Mersin, TR-99040 Lefkosia, Türkiye
20225638@ std.neu.edu.tr

Assist. Prof. Dr. Ahmad Mustafa Ali
Near East University, Law department, TRNC, 10 Mersin, TR-99040 Lefkosia, Türkiye
ahmed.ali@neu.edu.tr

ABSTRACT

The origin of human innocence, which means that the basis in human life is that all acts are permissible and allowed to be committed, committed and carried out 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 and progress And its stability, by maintaining its religious, social, economic and even political constants, in accordance with what is known as the rules of public order, namely 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 determining the executive authority responsible for applying and enforcing these legislations against everyone who is residing on the territory of this state, in addition to determining and determining the extent of mandatory of each penal law, as well as the determination of the category to which this law applies, or to which this law addresses, but the question arises as to the application of the principle of legality of crimes and punishments, in the field of international criminal law

Keywords: Criminal law, penal law, principle of legality of crimes and penalties, international criminal law.

1. 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, in a clear and explicit manner 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 of 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, public tranquility, this With regard to the rules of criminal law or domestic penal law, as it is easy to determine the authority responsible for issuing penal legislation in each State, as well as to determine the executive authority responsible for the application and enforcement of such legislation against everyone residing in the territory of this State, in addition to determining and determining the extent of the mandatory nature of each penal law, as well as determining the category to which this law applies, or to which this law addresses, but the question arises regarding 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 residents 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 The power to issue international criminal penal legislation, as in the case of domestic national penal laws, but 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 criminalizes a specific act and punishes him in order to be punished for that act. In certain cases, as if he were resident on the territory of a State that acknowledges 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, that is, 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, In the sense of whether the state's acceptance of international penal law, and its application on its territory by transcending its national penal law, is this a matter of compromising its political and legal sovereignty or also compromising the independence of its judiciary, which we will try to review and explain in this research, in terms of the statement of the sources and rules of international obligation, as well as the sources of international penal laws, and the degree of their authority and acceptance, and address the principle of sovereignty and the statement of its concept and legal framework in the vicinity of local legal rules, international legal rules, and

other topics, which we will address Each is in the right place of the body of this research.

1.1 Importance of the study:

The research raises a certain importance, in that it will try to answer an important question from one of the questions that were and are still the subject of great controversy at the level of national jurisprudence as well as international jurisprudence, which is the way to apply international legal rules to the citizens of a particular state, in conflict with its local punitive principles, without prejudice to its national sovereignty, political, and the independence of its national judiciary, as the research seeks to provide a satisfactory answer to this question, in accordance with the rules of International criminal law, as well as the rules of national criminal law, in the sense that the answer to this question and other questions under study must be provided based on what is stipulated in the rules of justice and logic, legal justice and legal logic, in addition to what is found in the principles of Islamic legislation, in the sense of whether there is anything similar in the principles of Islamic legislation, that is, the degree of authority and superiority of international legal rules in the face of the principles of Islamic law is determined, noting that according to For the rules of jurisprudence, the principles of Islamic law are the first to apply, of course, being legal jurisprudential principles derived from the divine self and stipulated by the Lord of the worlds Almighty, but the matter arises in the event of a conflict between the rules of international conventions to which the state is a party, including the mandatory of that agreement in the face of it when it ratifies, and the principles of Islamic law, which is a breach of the state's duty in some way with its international obligations, all these questions research seeks to provide The typical legal answer to it, including what may be with it, and it is also the case that this research is considered an accurate and disciplined legal reference for all researchers and scholars who seek to pursue one, some or all of the parts and elements dealt with by those studies by examination, statement and analysis.

1.2 The problem of the study:

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.

1.3 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?
6. How are these laws enforced and applied on the territory of the State?
7. Is this an infringement of the sovereignty of the State's political decision and the independence of its judicial system?

1.4 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.

1.5 Study Methodology:

The study sought to answer the questions raised in the research, in addition to clarifying its problem, by relying on the descriptive approach and trying to clarify the concept of the principle of criminal legality, as well as the elements of this principle, in terms of its presence in the principles of national criminal law, as well as international criminal law, and the principles of Islamic law, in addition to clarifying everything related to the principle under study of legal texts and judicial rulings, bringing us to the second approach followed, which is the analytical approach, which in turn is based on trying to analyze all The above facts and information are intended to deduce accurate and disciplined legal results and theories, consistent with the legal premises from which the research was launched, which also comes with the existence of the existing comparative approach between comparing the existence of this principle in the rules of national criminal law, international criminal law, and the principles of Islam, and that comparison is what helps to diversify and enrich the study.

2. Sources of criminalization and punishment in international criminal law

Article I of the Charter of the United Nations defines the purposes of international organizations, and entrusts their achievement to the General Assembly, cooperation with sub-

councils, where the United Nations General Assembly conducts 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.

The international criminal protection of human rights has established international legal norms that have led to the internationalization of responsibility for human rights violations. The 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 level to At the international level, the jurisdiction to consider the trial of those accused of committing human rights violations is also transferred from the domestic national judiciary to the international criminal judiciary, which constitutes a usurpation of the territorial 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 of which we present the system of the International Court of Justice, The second deals with the Rome Statute of the International Criminal Court, and the third refers to international custom as one of the sources of international criminal law through three demands as follows:

Requirement I: Statute of the International Court of Justice
Second Requirement: Rome Statute of the International Criminal Court
Third Requirement: International Custom

1.2 **Statute of the International Court of Justice**

The charters of international humanitarian law included means and procedures required by responsibility for violations of humanitarian law, where the general rule of responsibility 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 [2]therefore

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

[2]

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. (3).

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. (4)

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 end of the 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 Court5.

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 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

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

4Muammar Faisal Khouri: The United Nations and International Humanitarian Intervention, Arab Publishing and Distribution, no year of publication, pp. 136, 137.

5Mohamed Faye, Human Rights between Privacy and Universality, Beirut, Arab Future Magazine, Center for Arab Unity Studies, No. 245, 1999, p. 112.

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, taking into account 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. (6).

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.

2.2 **Rome Statute of the International Criminal Court**

International crime, especially those committed against the peace and security of mankind, is one of the main factors that raise concern for the international community as a whole and threaten its existence, as it represents a flagrant attack on the interests protected by international criminal law.

The first attempt to establish an international criminal justice was that contained in the Treaty of Versailles of 1919 in Article 227 of this Convention, which determined the responsibility of the Emperor of Germany (Guillaume II) for crimes committed during the First World War against the principles of international morality and the sanctity of treaties and thus decided to establish an international tribunal to try the Emperor, but this attempt failed because the Netherlands refused to extradite him to the Allied States on the grounds that their law did not allow them to do so7.

Article 228 of this Convention also required the German government to hand over to the Allies anyone charged with a war crime until he or she could be tried before a special international military tribunal, but this attempt did not yield any positive result either.

Despite these political circumstances that prevented the principles established by the Treaty of Versailles from receiving the correct application, the provisions of this treaty were not without benefit, as it is one of the first international texts that decided some provisions related to the accountability of violators of the laws and customs of war, as well as the possibility of holding heads of state accountable for their grave violations of the rules of morality and sound lofty principles, and the violator of criminal responsibility, in the definition of law, is considered a "criminal"; Or leave the act of duty to do and impose a specific penalty for those who did not comply with it, as criminal responsibility was not an unknown idea in the old laws, although it differs from its current concept, criminal responsibility in ancient societies was based on automatic and material and the idea of revenge was the most prominent but only criminal

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

7Murad Abdullah Muhammad Akash, guarantees of the accused before the International Criminal Court compared to internal criminal laws, Faculty of Law, Mansoura University, PhD thesis, 2016, p. 98.

responsibility, and the idea of revenge is also evolved where revenge began individually as the individual himself responded to the assault that falls on him, but the matter developed later as the matter turned From individual revenge to collective revenge, the aggressor has taken revenge on the aggressor with the help of his family members. (8)

There are many forms of responsibility according to the social controls prevailing in society, there is religious responsibility that arises from violating the provisions of religion and its controls Legal responsibility that arises from violating the provisions of the law, for the provisions of the law, the forms of legal responsibility change, changing according to the legal provisions that are violated, most notably, criminal responsibility, since its impact falls on the human soul directly, even if its effects are graded, and its impact is also called the term "felony"

The violator of criminal responsibility, in the definition of the law, is a "criminal"; the crime is to do an act intended by the legislator and set a penalty for the perpetrator, or leave an act that must be done and impose a specific penalty for those who did not comply with that, and criminal responsibility was not an unknown idea in the old laws, although it differs from its current concept, criminal responsibility in ancient societies was based on automatic and material and the idea of revenge was the most prominent but only criminal responsibility, and the idea of revenge is also evolved where it began Individual retaliation, as the individual himself repelled the assault that occurred on him, but the matter developed later, as the matter turned from individual revenge to collective revenge, as the aggressor became retaliatory against the aggressor with the help of family members.

It is worth noting that power often leads to tyranny and arbitrariness and to the waste of the rights and freedoms of individuals, especially if it is concentrated in one hand or body. This is what the history books are full of, as the kings were often keen to be their will is the final reference in everything related to matters or affairs of the state and the head of state represents the top of the political pyramid in the state, has numerous competences and powers in the field of the executive, the legislative and the judicial function of the State. In view of the importance of these fields in the life of society, the contribution of the head of state to them has an effective and influential role in the fate of implementation in general and legislation in particular.

In the positive legal system in various countries of the civilized world, the ruler or president is restricted by many constitutional and legal restrictions necessary to guarantee the rights and freedoms of individuals, so that his accountability to leaders or presidents has become available at the national and international levels, as this subordination is the distinctive criterion for democratic governance from other systems9.

The principle of the rule of law is also one of the most important elements of the legal state, and it is intended that the state subjects' rulers and convicts - individuals, groups and bodies - to the law in its general sense, whatever its source is constitutional, legislative, or regulations and instructions.

8Ahmed Mohamed Kalani, Guarantees of the Accused before the International Criminal Court, PhD thesis, Alexandria University, Faculty of Law, Department of Criminal Law, 2021, p. 98.

9Ashraf Tawfiq Shams al-Din, Principles of International Criminal Law, Cairo, Dar Al-Nahda Al-Arabiya, 1998, p. 25.

In order for this principle to be achieved, the superior and subordinate must be subject to the authority of the law, which may raise the question about the conflict between the principle of the rule of law and the subordinate's duty to obey his superiors, when he receives illegal presidential orders, whether the subordinate prevails over the duty of obedience to the presidency, and wastes the principle of legality, or neglects the duty of obedience and adheres to obedience to the law. This principle does not apply to the conduct of one sect or group over another. Rather, it includes the governed in their relations and the presidents or rulers in the exercise of their powers, these and those are subject to the provisions of the law alike, and this can only be achieved in the legal state

With the development of the rules of international criminal law that include criminal accountability of the individual, the International Criminal Court was established and granted jurisdiction to try the perpetrators of serious crimes of concern to the international community. Presidents and leaders, without having the opportunity to invoke immunity, because international crime is characterized by its gravity, heinousness and breadth of effects and threatens the entire international community; 10

When international efforts to find an international criminal justice came together, the first experiment was in the Treaty of Versailles in 1919 on the trial of the Emperor of Germany (Guillaume II), on charges of great insult to international morals and the sacred authority of treaties, but this experiment failed because it did not perform the required purpose, followed by the Nuremberg Tribunals established by the London Convention of 1945 after World War II to punish major war criminals from the Axis powers, accused of serious violations of the laws and customs of war after World War II. Which was the actual start to devote the principle of international criminal responsibility to leaders and presidents, and then followed by those experiences the establishment of the Tribunals for the former Yugoslavia and Rwanda to confirm in turn that principle, as all previous courts were temporary courts, and this was followed by the signing of the four Geneva Conventions and after strenuous international efforts, the Statute of the International Criminal Court was adopted to be the first court of its kind, a permanent court, which was stipulated in its statute on the principle of international criminal responsibility for leaders and presidents, and since the adoption of that principle is no longer Leaders and presidents can protest and invoke immunity from office, to evade violations of international humanitarian law attributed to them.

With the development of the rules of international criminal law that include criminal accountability of the individual, the International Criminal Court was established and granted jurisdiction to try the perpetrators of serious crimes of concern to the international community. Presidents and leaders, without having the opportunity to invoke immunity, because international crime is characterized by its gravity, heinousness and breadth of effects and threatens the entire international community, so depriving the perpetrators of their immunities granted to them by law and preventing them from being held criminally accountable has become necessary for the administration of criminal justice.

10Mona Mahmoud Mustafa, International Crime between International Criminal Law and International Criminal Law, Cairo, Dar Al-Nahda Al-Arabiya, 1989, p. 77.

When international efforts to find an international criminal justice were combined, the first experience was in the Treaty of Versailles in 1919 on the trial of the Emperor of Germany (Guillaume II), on charges of great insult to international morals and the sacred authority of treaties, but this experiment failed because it did not perform its required purpose, followed by the Nuremberg Tribunals established by the London Convention of 1945 after World War II to punish major war criminals from the Axis powers, accused of serious violations of the laws and customs of war after World War II. Which was the actual start to devote the principle of international criminal responsibility to leaders and presidents, and then followed by those experiences the establishment of the Tribunals for the former Yugoslavia and Rwanda to confirm in turn that principle, as all previous courts were temporary courts, and this was followed by the signing of the four Geneva Conventions and after strenuous international efforts, the Statute of the International Criminal Court was adopted to be the first court of its kind, a permanent court, which was stipulated in its statute on the principle of international criminal responsibility for leaders and presidents, and since the adoption of that principle is no longer Leaders and presidents can invoke immunity ex officio to evade violations of international humanitarian law11 attributed to them.

Non-international armed conflicts are considered one of the old conflicts known to international law, as these conflicts have been characterized by a tragic nature as a result of the spread of violence and weapons in them and serious violations of the basic principles of international humanitarian law, yet the latter came with a limited and limited organization that is not sufficient to ensure the necessary international legal protection and humanitarian assistance to the victims of this type of conflict, especially if we look at the international organization of international armed conflicts.

As for the rules on the means and methods of warfare, we find that international humanitarian law has clearly and explicitly regulated most of the rules related to the means and methods of warfare during non-international armed conflicts, despite the absence of common article III of the four Geneva Conventions of 1949 and Additional Protocol II of 1977 of the provisions relating to means and methods of warfare, but the international legislator remedied this deficiency in 1990 when he issued the Declaration on the conduct of hostilities during non-international armed conflicts. The latter contained many important principles, most notably the principle of distinction between civilians and combatants, as well as part of the rules related to the prohibition or restriction of certain weapons during combat.

While others have remained as a peremptory customary norm that applies during the outbreak of this type of armed conflict and which the parties to the armed conflict are obliged to respect, the challenges facing non-international armed conflicts posed by some means and methods of warfare also apply to international armed conflicts as a result of some ambiguity in the organization of these means, especially with regard to the use of some weapons, especially conventional weapons, such as nuclear weapons, for example.

11Mahmoud Saleh Ani, Statute of Limitations of the Case before International Courts, PhD Thesis, Ain Shams University, Faculty of Law, Department of Public Law, 2021, p. 71.

International humanitarian law may include some international conventions aimed at regulating hostilities, and the use of tools and means of warfare (Hague Law), where there are many international rules governing the conduct and management of hostilities, there are some provisions that limit the use of certain means and methods during armed conflicts, whether by prohibiting the use of specific methods of combat or prohibiting or restricting the use of certain types of weapons. The enshrinement of these rules in the law of armed conflict is in application of the principle of the law of war, which restricts the power of the parties to the conflict to choose the means of harm to the enemy12.

The rules on the limitation of means and methods of warfare aim to regulate the conduct of hostilities and take into account the requirements of military necessities in the first place, and if these rules find their legal basis directly in the Hague Conventions, but the Geneva law has taken many of these rules, especially within the scope of the two Additional Protocols of 1977, after the expansion of the scope of prohibitions and restrictions imposed by the law of armed conflict on the right of the parties to the armed conflict and the choice of means and methods of warfare, The scope of application of these rules, which contain these restrictions and prohibitions, has become a fundamental area of international humanitarian law.

The provisions on international armed conflicts set out the rules obliging parties to an armed conflict to take all necessary precautions when choosing means and methods of warfare (article 57) of Additional Protocol I of 1977, and in contrast with the provisions governing non-international armed conflicts, the provisions governing such conflicts did not contain any explicit reference to the duty to take the necessary precautions.

Despite the limited interest in non-international armed conflicts and the narrowness of their international legal regulation compared to international armed conflicts, most of the rules relating to the limitation of means and methods of warfare are originally customary rules, the latter usually characterized as general and flexible rules applicable to all armed conflicts (13)

As soon as the atrocities of the Second World War passed, the events of the Balkans and the genocide committed in Rwanda were evident on the horizon to impose strongly the need to punish criminals responsible for flagrant violations of the rules of international humanitarian law, as this time the Security Council was responsible for condemning it by issuing decisions to establish special and temporary courts based on Chapter VII of the Charter of the United Nations to try them and impose the necessary punishment on them.

Thus, the Security Council played a significant role in completing the rules governing this responsibility, which began to be formulated by the trials of the Second World War, and its impact was evident in consolidating the idea of individual criminal responsibility for the serious violations committed by the individual of the rules of international humanitarian law during international or non-international armed conflicts.

12Fatima El-Sayed Mahmoud Abdel-Latif Fayed, The Extent of Criminal Responsibility for International Crimes, PhD Thesis, Faculty of Law, Mansoura University, 2021, p. 255.

(13)Stan, Carsten, and Goran Suiter. The Emerging Practice of the International Criminal Court. Leiden: Martinus Neuhoff, 2009, p17

In view of the criticism faced by the emergence of special international criminal tribunals and the difficulties they faced that affected the work of these tribunals, the need arose to establish a permanent international criminal court, in which the criticism faced by the special courts could be avoided. 14

This was already achieved at the end of the Rome Diplomatic Conference, which was held from 15 to 17 July 1998, which culminated in the adoption of the Statute of the International Criminal Court, as this system is the first international legal text to establish a permanent international court, whose task is to try individuals who have committed the most brutal crimes, especially since humanity has known the commission of crimes on a large scale that shook the conscience of humanity and showed the failure of States to carry out their international duties and led to the spread of impunity, as expressed by society. The International Council expressed concern that criminals would remain free under the cover of sovereignty or non-interference in internal affairs15.

Thus, the Rome Statute has been adopted to put an end to the state of impunity, since this phenomenon is an obstacle to memory, the function of the Court is not limited to punishing the guilty, it collects evidence related to the actions of criminals, testimonies of survivors and evidence documents to avoid forgetfulness as the second death of victims, and impunity is an obstacle to memory, the Court's function is not limited to punishing the guilty, as it collects evidence related to the acts of criminals and testimonies Survivors and supporting documents to avoid forgetfulness as the second death of victims Impunity is an obstacle to national reconciliation, as the lack of justice for victims develops in them the will to take revenge and finally impunity is an obstacle to justice.

It reduces the importance of legal rules at the domestic and international levels, and therefore the emergence of the International Criminal Court is one of the important legal issues raised at the international level, as it has attracted the attention of states, international organizations and even individuals, as this new body of international justice will enhance respect for the rules of international law as a deterrent mechanism, and this by containing its statute on objective rules related to the definition of international crimes under its jurisdiction and which are of interest to the international community as a whole, as well as including important provisions related to responsibility. The International Criminal Court and the sanctions applied by the Court to the perpetrators of these crimes and the means of their implementation on those convicted, and thus the system of the Court has included a set of principles and legal rules necessary to deter anyone who commits these heinous crimes, which makes this Court one of the pillars of international criminal justice as an indicator of the supremacy of human and religious values and a criterion

14Mutasim Khamis, Key Features of the International Criminal Court, Journal of Security and Law, Dubai Police Academy, first issue, Dubai, year 2005, p. 325.

15 Abdul Wahab Shaman, International Humanitarian Law and the Legal Necessity for the Establishment of the International Criminal Court, International Humanitarian Law, Beirut, Al-Halabi Human Rights Publications, 2005, p. 208.

for measuring the level of civilization of nations16.

However, one aspect of the ICC that restricts its jurisdiction at the international level is that, unlike the ICTY or the ICTR, the ICC does not take precedence over national criminal legislation but complements domestic criminal proceedings. The ICC commences its deliberations only if the State concerned is unwilling or unable to undertake an investigation or prosecution (Statute, art. 17). This means that if a legal organ The ICC may not act unless it proves that the deliberations are not being carried out in good faith.

However, one aspect of the ICC that restricts its jurisdiction at the international level is that, unlike the ICTY or the ICTR, the ICC does not take precedence over national criminal legislation but complements domestic criminal proceedings. The ICC begins its deliberations only if the State concerned is "unwilling or unable to undertake an investigation or prosecution" (Statute, Article 17). This means that if a legal organ The ICC may not act unless it proves that the deliberations are not being carried out in good faith.

The exercise of the jurisdiction of the ICC is subject to the prior consent of States, and whether a case concerns genocide, war crimes or crimes against humanity, the Court can only investigate crimes if the State of nationality of the accused person or the State in whose territory the crime was committed agrees to the jurisdiction of the ICC (Statute, art. 12). The absence of any reference to the State to which the victim belonged or the State in which the accused lived had thwarted most assumptions. The realism under which the investigation could have been initiated (17)

3.2 International custom

In terms of the order of emergence of international rules dealing with wars, custom comes at the forefront and constitutes an important source of international humanitarian law along with international conventions that codified the rules governing armed conflicts (), which was confirmed by the famous and 18 well-known rule in international humanitarian law (the Martins rule), and this rule was put by Sir Frederick de Matins, Russian origin in 1899 in the Second Hague Convention on Land War of 1899 in its introduction, and then reaffirmed In the Fourth Hague Convention on Land Warfare of 1907 in the seventh paragraph of its preamble, which stated that "in cases not covered by the provisions of the Convention concluded, the civilian population and combatants shall remain under the protection and authority of the

16Ali Awad, International Criminal Justice and the Law of Armed Conflict, Journal of Security and Law, Dubai Police Academy, first issue, Dubai, 2005, p. 128.

(17)Askar, Yusuf. Implementing International Humanitarian Law: From the Ad Hoc Tribunals to a Permanent International Criminal Court. London: Routledge, 2004, p99.

18Eric Morris, Introduction to Military History, Arabization of Akram Deri and Haitham Al-Ayoub, Arab Institute for Studies and Publishing, 2nd Edition, 1979, p. 141, and see: Ahmed Abu Al-Wafaa, "International Protection of Human Rights within the Framework of the United Nations and Specialized International Agencies", Dar Al-Nahda Al-Arabiya, second edition, 2005, p. 27.

principles of the law of nations."

Custom is a fundamental source of international law, and it is binding on States, whether they participate in its formation or not, and whether these States existed at the time of its inception or not 19 . Because these conventions may come in some or most of their rules as codification of international norms ().20

Has contributed to the formation of the international custom on armed conflicts many factors, including the idea of military honor possessed by veterans and knights in the Middle Ages, where wars in their view an honorable struggle governed by special rules related to the treatment of the wounded and sick and non-exposure to non-combatants from the population of the enemy state and the credit for the development of this trend among the knights, which is an essential element in the equestrian system is due to the principles of the Christian religion that calls for love and good treatment for all, whether They were enemies or friends, and the most prominent images of chivalry were shown in caring for the wounded and securing treatment for them by the palace fathers themselves, and this became a common tradition among enemy knights who often held truces for the purpose of burying their dead, conducting Christian burial ceremonies and treating the sick.

An example of the behavior of belligerents being affected by the idea of military honor that was established by the Knights of the Middle Ages, and its continuation in directing and governing the behavior of enemies in wars, is what happened in 1745 at the Battle of Fontanilla between the French forces led by Louis XV and the forces of England and the Netherlands, where the idea of military honor and the equestrian system was taken into account. All the wounded were treated by quality medical services provided by both parties, as well as by mutual appreciation reflected in the behaviour of the leaders of that war by exchanging greetings before the war began21.

It also contributed to the formation of international norms and installed by other factors, including the formation of regular armies by states, and this is what happened after the thirty-year war called religious wars, where the existing regimes needed regular permanent armies to

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19Saad bin Muhammad Al-Odaiba, International Humanitarian Law between Commitment and Ignorance, published in the Journal of the Saudi Arabian Armed Forces, Year 31, No. 89, 1993, p. 54.See: Ahmed Abu Al-Wafaa, "The Mediator in the Law of International Treaties", Dar Al-Nahda Al-Arabiya, Cairo, 1996, p. 315.

This rule has been reiterated in articles 63 of Convention C(1), A/62 of C (2), A/142 of C (203) and A/158 of C (4), where the fourth paragraph of these articles of the four Conventions of 1949 stipulates that "Withdrawal shall have effect only on the withdrawing State, and shall have no effect on the obligations that the parties to the conflict must continue to perform in accordance with the principles of international law arising from international customs." firmly established among civilized nations...) This rule was then reaffirmed in Protocol I (2) and Protocol I (2) and P4 of the Preamble to Protocol II of 1977.

21Jean Gill Yzerman, The Contribution of Army Doctors to the Emergence of International Humanitarian Law, Research Published in the International Review of the Red Cross, Publisher, International Committee of the Red Cross, Geneva, Second Year, Issue VIII, August 1989, p. 234

replace the old armies arbitrarily recruited and based on looting, looting, rape and non-submission to the system, and the formation of these regular armies is what helped to install the rules for wars, due to the submission of regular soldiers to their superiors and their adherence to military orders and instructions issued to them and to be followed during combat, which led to the development of a spirit of submission to the law and thus the fixation of the rules governing wars

In turn, he contributed on the other hand to the formation of customary rules through military orders and instructions and laws that were directed to control armies, for example, examples from the seventeenth and eighteenth centuries, including the internal document issued by the Governor-General of the Netherlands - Duke de Vella - Hermosa, which was called the deed of protection on August 23, 1677 on the occasion of the fall of one of the French hospitals established in Marching - Urbom - in the hands of the Dutch and the content of the protection deed was Placing the staff, managers, doctors and patients of the hospital under the protection of the King, and this protection included sick soldiers, servants and hospital property, and it was decided in this instrument that anyone who assaults the aforementioned will be subject to punishment for violating the orders issued for protection (22)

A prominent example in the eighteenth century was the decree issued in France in 1793 influenced by the principles of the French Revolution of 1789, which stipulated in its article 26 respect for humanitarian provisions relating to prisoners: "Enemy prisoners, sick and wounded, shall be treated in military hospitals in the French Republic, whether in outpatient clinics or in hospitals, with the same care as French soldiers, and their wages and salaries shall be subject to the same deductions that in similar cases are deducted from the salaries of officers and soldiers." Republic (23) ..."

In the American continent, laws and internal orders related to the organization of war procedures also appeared, the most famous of which is the Lieber Code, which was issued by the government of the United States of America in the 19th century in 1863, and this code acquires its importance from the fact that it was the first attempt to codify the laws and customs of war that existed at the time and was directed to any address to federal forces in the field, and these instructions were the first step to control the behavior of armies in the field under precise and written rules and had a positive impact on the law of war outside the United States and formed As a basis for subsequent international negotiations and measures, their status coincided with the drafting of the 1864 Red Cross Convention24.

22David in Moscow, Five Judges the Gathering, "The Security Council and the Emergence of the Modern World Order", translated by Ghaada Tantawi, National Center for Translation, first edition 2014, p. 81

23Mahmoud Cheri Bassiouni: Human Rights, Studies on Global and Regional Documents, Volume II, Second Edition, Dar Al-Ilm, Beirut 1998, p. 70.

24Mohamed Nour Farhat: History of International Humanitarian Law and International Human Rights Law, in: Studies in International Humanitarian Law, Cairo, Dar Al-Mastaba Al-Arabi, 2000, p. 83.

3. **Backup sources**

Private international law is a branch of international law on the one hand, and private law on the other, so it relates primarily to the other branch of international law, namely public international law, and on the other hand to other branches of private law, namely civil law, commercial law and civil and commercial procedural law.

As for its relationship with public international law, it is evident from the fact that both are described as international, and in fact each of them governs relations that are not exclusive, in all respects within the borders of one State, but the difference between them is that public international law governs relations between States themselves, it is general law, while private international law governs relations between individuals, so it is private law.

First requirement: international justice

Second Requirement: International Jurisprudence

1.3 **International justice**

International criminal law is characterized by a mandatory character and has a criminal nature that punishes those who violate it, especially when this violation is formed through an international crime stipulated in Article V of the Statute of the International Criminal Court in 1998, and therefore international criminal law has many mechanisms to ensure its implementation at the internal and international levels, and these mechanisms are represented at the internal level, and at the international level in the obligation of States to issue the necessary legislation to apply international humanitarian law, and that this obligation derives its source from The four Geneva Conventions, each of which was keen on individuals, a special text confirming this obligation, and that the state that fails to implement this obligation bears international responsibility if the rest of its conditions are met, especially the presence of damage.

Historically, the rules of international law that dealt with prisoners, the wounded and other groups, such as women and children, had been dealt with by bilateral agreements, where there was no systematic codification of rules guaranteeing their protection from the effects of war, in the form of general and multilateral international agreements, 25except in the middle of the nineteenth century, specifically until 1864, which is the date of birth of the first multilateral international convention for the protection of victims of war, especially the sick and wounded, and it was later agreed that it represents the date of birth. International humanitarian law codified in international conventions and before that date there were bilateral conventions (26).

For example, the bilateral agreements concluded by the Spanish commanders with the other side of the war, which included provisions concerning the treatment of the wounded and sick and the treatment of the doctors and surgeons who care for them, the oldest of which was the

25Raja Ballou, Freedom and Obstacles to Action, "Establishing a Liberal Concept of Freedom in Arab Thought", Tabbing newspaper, seventeenth issue, June 2016, pp. 122-155.

(26)Marco Sassily ،Antoine A. Bouvier ،and others, How Does law Protect in War, ،int. committee of red cross، Geneva ،1999 ،Pp. - 105.

extradition agreement concluded by Sandura Farnese after the surrender of Tournay in 1581.27

Legislation : Legislation 28 is one of the official sources of private international law, and legislation is the written law issued by the will issued by the legislator and applied by the judge to the disputes that are adjudicated, and the importance of legislation as a source of private international law varies depending on its different subjects, with regard to nationality and due to its close connection with the entity, its regulation is only through the rules issued by the national legislator**.**

As for the conflict of laws and international jurisdiction, legislation has not played an important role except in a relatively recent history, and the judiciary has relied for decades on solutions developed by jurisprudence, especially within the framework of the theory of conditions, and the importance of legislation has not taken into account the growing importance of conflict of laws and conflict of jurisdiction until the middle of the nineteenth century (29).

International treaties are one of the most important tools that contribute to the regulation of international relations and activities practiced or can be practiced by subjects of public international law, but at the same time treaties constitute the ideal tool to achieve international legal development, the most important of which are the Convention on the Prevention and Punishment of the Crime of Genocide (1948), the International Convention on the Elimination of All Forms of Racial Discrimination (1965).

There is a set of codes of a general international character dealing with some issues of concern to the international community, the most important of which is the United Nations Code of Conduct for Law Enforcement Officials (1979) and the United Nations Standard Rules for the Administration of Juvenile Justice of the Beijing Rules of 1985.

2.3 **International jurisprudence**

Responsibility can be defined linguistically as the liability and from it bear the consequences, and it can be said that this definition carries with it a modern legal term, and this term corresponds to the term guarantee when Muslim jurists, and the latter means that the guarantor person is the potential for the fine of deficiency, destruction or defect in the event that the thing occurs

The term guarantee has been given to the term obligation, considering that the guarantor's liability is preoccupied with what he guaranteed, so he is committed to performing it, and one of the concepts of guarantee as well among Muslim jurists is that it means the obligation to compensate materially for the damage caused to others, and many jurists have used it in the sense of bearing the risk of destruction, which is the meaning intended in their rules according

27Arthur Nussbaum, Al-Wajeez in the History of International Law, translated by Dr. Riyad Al-Qaisi, House of Wisdom, Baghdad, 2002, p. 196.

28Marwa Al-Sayed Al-Hasani, The Principle of Universality in Criminal Law, PhD thesis, Faculty of Law, Mansoura University, 2019, pp. 22-45.

29Delinda Youssef, Agreements on Judicial and Legal Cooperation, Algeria, Dar Houma, 2005, pp. 77-117.

to the saying (abscess by guarantee), or (fine by sheep).

Responsibility in Islamic jurisprudence means the feeling of a person followed him in every matter entrusted to him, and his firm realization that he is responsible for him before God Almighty, when he overdoes it, and indulges in his performance in the manner he bears, while responsibility in the legal sense is that obligation that imposes on a person to repair the damage caused to another person, and the responsibility of the state in its traditional sense means obliging it to pay compensation to those who suffer damage, as a result of the exercise of the administrative activity of the state, within the framework of Applicable terms and conditions of liability.

At the terminological level, responsibility is the case of the person who committed something that requires blame, and the act that requires blame, may be 30 an act that is morally terminated as a result of forbidding religion or good morals, and then the responsibility arising from it is called moral responsibility, and the act that requires responsibility may be legally terminated, and then the responsibility arising from it is called legal responsibility, The latter, in turn, are divided into criminal liability and civil liability.

Responsibility is terminological to multiple meanings such as accountability and accountability for certain acts or behaviors, as well as refers to the penalties resulting from abandoning duty, or doing what should have been refrained from, and it also holds the person responsible for the consequences and consequences of his negligence, or whoever supervises or supervises him.

However, the general and comprehensive concept of these terms means the obligation of the official in accordance with the law to compensate third parties who have suffered damage as a result of damage to money or loss of benefits, or partial or total material or moral damage, accident of the soul.

The Charter of the United Nations is concerned with human rights and fundamental freedoms in more than one place, the preamble of which states that the peoples of the United Nations have committed themselves to reaffirming their faith in "fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and of nations large and small". Article31 1.2 states that one of the objectives of the Organization is "to develop friendly relations among nations on the basis of the principle of equal rights among peoples", and article 1.3 adds that such objectives also include: "To achieve international cooperation in solving questions of an economic, social, cultural and humanitarian character and in promoting respect for human rights and fundamental freedoms for all, as provided for in Articles 55 (c/56) of the Charter on guarantees of respect for human rights and international cooperation among States Members of the United Nations in this regard, and in Articles 73 and 76 of the same Charter contain obligations relating to the promotion and respect of human

30Suleiman Markus, Civil Responsibility in the Technologies of the Arab Countries, Section I, Institute of Arab Research and Studies, sixth edition, 2014, p. 1.

[31]Cf. Preamble to the Charter of the United Nations of 1945.

rights[32].

The wisdom of the fact that the drafters of the Charter of the United Nations should include in the Charter the provision of explicit legal obligations to respect human rights and fundamental freedoms lies in giving these obligations great legal importance compared to other international treaties, since the Charter of the United Nations is the supreme and supreme law at the international level and therefore the obligations contained therein take precedence over other international treaties."[33]

In addition to the international conventions that constitute international humanitarian law and the established customs on them, which placed many obligations on the shoulders of states, which created a set of legal principles on which international humanitarian law is based, some of these principles are derived from the context of the legal text because they express the essence of law, others have been explicitly formulated in international conventions, and others have emerged from international norms. These principles, as described by Jean Tektite, are It is the skeleton of a living human body, it sets guidelines in cases not provided for, and it represents a summary of international humanitarian law that is easily spread. It should be noted, however, that these principles, on which international humanitarian law is based, are divided into two main parts:

Section I: Deals with the detailed aspects of the vocabulary of the law of war (Hague Convention of 1907) and the Law for the Protection of Victims of International Armed Conflicts (Geneva Conventions and their supplementary protocols) relating to the protection of armed conflicts, the treatment of victims of war, the provision of medical, humanitarian and spiritual services to them and ensuring respect for their dignity. States should implement their international obligations in good faith, including those imposed on them in humanitarian law, and if they contravene the provisions contained in the law of armed conflict, they are obliged to compensate and are responsible for All acts carried out by persons belonging to its armed forces that constitute a violation and violation of this law, and it is not entitled to shirk its responsibility towards such violations and violations, and from the general and internationally established legal principles, the principle of equality before the law, the equality of individuals before the law and non-discrimination between them with regard to the applicability of the law to them, a principle confirmed by international humanitarian law within the framework of ensuring protection for victims of armed conflicts, according to which all persons protected by international humanitarian law must be treated. Humane treatment without any discrimination, including the principles of no crime or punishment except by stipulation, the right to a fair trial, respect for freedom of religious belief, the principle of personal security, according to which individuals may not be arrested except in the cases specified by law, the accused is innocent until proven guilty, and the principle of respect for the king and the inadmissibility of arbitrarily depriving

[32]See the text of Articles 73 and 76 of the Charter of the United Nations.

[33]Ahmad Abu al-Wafaa, Mediator in the Law of International Treaties, op. cit., p. 315.

anyone of his property. The principle of the right of peoples to self-determination is one of the important legal principles of public international law and is the pillar of friendly relations among States.34

The second section is the overlap of humanitarian rules with the branches of public international law, such as defining the rules governing the conduct of hostilities, prohibiting and restricting means and methods of warfare in a humane manner, controlling the conduct of combatants, and defining the rights and obligations of the parties to the conflict in order to ensure that civilians, non-combatants and civilian objects are neutralized from any hostile acts. In addition to social security issues, and crimes against humanity. These principles are specific to the law of armed conflict (IHL) and apply only during armed conflicts, and their advantage is that they have been established. It is established in international conventions and customs, so it is not an independent source of international humanitarian law as much as it expresses conventional and customary legal rules, and its binding comes from the binding legal text established in it, and among these principles is the principle of military necessity, which means that the use of means of war, whether military equipment, plans or tricks in wars and armed conflicts, is only for the purpose of achieving a specific goal - and often the goal of any war is to impose the will on the enemy and force him to surrender Retreat from its position - and for its sake the use of means and methods of warfare within the limits that ensure the achievement of this objective in order to be legitimate and thus prohibit the parties from using means of warfare that increase human suffering without justification. Human resources and material resources, and to weaken the human resources of the enemy there are three means: killing, wounding, assault, which are effective means to paralyze the power of the enemy if it is possible to weaken the enemy by arresting members of his armed forces and their families, here the capture is preferred to wound and kill, as is the case if the wound achieves the goal of the state in paralyzing the ability of the enemy and forcing him to surrender, the wound will be preferable to killing. In turn, it will lead to another principle, which is that the right of the parties to an armed conflict to use means and methods of warfare is not an absolute right, but rather restricted. According to the principle of proportionality, the latter cannot use atomic or nuclear weapons, because of the dangers that this entails, first, exceeding in their effects the objective to be achieved, which is to weaken the enemy's power. Therefore, the principle of proportionality is part of a modern strategy that focuses on the use of the minimum possible means in combat because the extermination of civilians and military personnel does not contribute to military victory. A fundamental principle of international humanitarian law is the principle of distinction, which means distinguishing during hostilities between civilians and military personnel, because only military personnel can direct military actions against them, and it also means distinguishing between civilian objects and military objectives. and the principle of

34Ibrahim Ahmed Abdul Samarra, International Criminal Court, Journal of Legal Sciences, Nos. I and II, vol. XVI, College of Law, University of Baghdad, 2001, p. 120.

separation of law in war and the law of war.

These principles, as described by Dr. Jean Pectit, are the skeleton of the living human body and carry out the task of developing guidelines in cases not provided for and represent a summary of international humanitarian law that is easy to spread 35.

The first section is characterized as general legal principles applicable to all domestic and international legal systems, including the international humanitarian law system, while the second section is legal principles specific to the law of armed conflict (international humanitarian law) applicable during armed conflicts. The importance of dividing the basic principles of international humanitarian law into these two main sections is shown in the fact that only the first part of the principles of international humanitarian law, which are of the type of general legal principles, will be characterized by the description of the independent legal source of public international law as indicated in A/38 of the Statute of the International Court of Justice, because it is characterized by generality, based on it and approved by various legal systems. These general legal principles include the principle of good faith in the performance of obligations, and pacta sunt Servando the principle of compensation for damages36.

The end

States should implement their international obligations in good faith, including those imposed on them in humanitarian law, and if they contravene the provisions of the law of armed conflict, they are obliged to compensate and will be responsible for all acts by persons belonging to their armed forces that constitute a breach of this law, and shall not be free from their responsibility for such violations and violations.

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