

Principle of Legality in International Criminal Law

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Abstract

The research examined the compatibility of the establishment of an international criminal court with the principle of legality and outlined the grounds for legitimizing international criminal law. The aim of the research is to demonstrate the role of international criminal justice in helping to expedite and facilitate the prosecution of accused persons for the purposes of justice. The research reached a number of conclusions, the most important of which was that international criminal law was customary in nature and took an expanded interpretation. In contrast, article 22 of the Rome Charter's statute reflected the principle of *nullum crimen sine lege* and *nullum poena* only in the text applicable nationally.

Keywords: International Criminal Court, Principle of Legality, International Crimes, Criminal Law.

Introduction

Humanity has witnessed for ages the most brutal and vicious crimes against humanity that have resulted in tragedies and disasters that the international community has tried to prevent, even late, the commission and recurrence of hence the need to find bodies and organizations in which States cooperate to work on the formulation of principles to halt the commission of the most serious crimes against humanity and to have access to impartial bodies in which victims and perpetrators of crimes find their punishment even after time (Ambos, 1996; Al-Billeh, 2022a).

After vigorous efforts by the United Nations Legal Committee and later by the United Nations Preparatory Committee for the Establishment of a Permanent Criminal Court, the 1998 Rome Conference of Diplomatic Plenipotentiaries was convened to

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announce the establishment of a permanent criminal court, the International Criminal Court (Ambos, 2003; Al-Billeh, 2022b).

The Rome Statute of the Court has defined its jurisdiction exclusively to include crimes of genocide, crimes against humanity, war crimes and crimes of aggression. Hence, the legality of criminalization before the International Criminal Court has been determined by the Court's Statute (Ambos, 2018; Al-Billeh, 2022c).

The problem of research focuses on determining the application of the principle of legality before the Criminal Court and the extent to which such legality is adopted by the Court's Court when it considers the proceedings before it. The court relied on individual criminal liability so that the court had jurisdiction over natural persons and excluded the liability of legal bodies. The question of the criminalization of an act by an international legislator is in fact in accordance with the criterion of protection of rights as -- that is, rights -- all of which need protection with inequality of need. There are rights that can only be protected by criminalized texts expressed in the interests that deserve protection.

Any legal system that is required to comply effectively with provisions requires an independent and permanent judiciary that ensures respect for its provisions and determines the responsibility of anyone who derogates from them. As special international criminal tribunals have been prosecuting specific accused in specific disputes These courts and their laws have raised fundamental questions about their compatibility with the principles of legality, The disagreement over the appropriateness of establishing an international criminal court, which contains the basic laws of international tribunals, was a fundamental reason for the suspension of the Commission's drafts and the special commissions that had worked to that end. (1) Opposition to the Establishment of an International Criminal Court Competent to Try Persons Accused of International Crimes.

However, what is of interest to us in our research is the grounds that legitimize international criminal law. Some jurists (1) consider that its existence will have a protective effect that prevents derogation from the provisions of general international law. Hence, the importance of the topic is reflected in the fact that the principle of legality is based on the question of the protection of the rights of accused persons while ensuring the application of the required criminal justice. The principle of legality is one of the most closely enshrined rights in international human rights law, as enshrined in the Universal Declaration of Human Rights

The aim of the research is to demonstrate the role of international criminal justice in helping to expedite and facilitate the prosecution of accused persons for justice, public and private deterrence, as well as to eliminate the problem of conflict of jurisdiction and facilitate the task of extraditing war criminals, thereby giving international criminal law legitimacy and effectiveness in the case.

Methodology

Given the customary nature of criminal law before the Rome Statute because of the absence of an international legislator, it is not possible to prosecute a person for an act not considered an international crime by international custom at the time of its commission (Matwijkiw, 2014; Al-Billeh & Abu Issa, 2023).

Since some principles of legality in international criminal law at that stage are customary in the sense that the notion of international crime does not exist under written legislative texts, but can be inferred by the stability of international custom, it does not change the existence of international texts establishing certain crimes, such as some international treaties, however, the rules of international criminal law began to become clear after the First World War (May 2014; AL-KHALAILEH et al. 2023; O'Byrne, 2011; Al-Khawajah et al., 2023).

Difficulty in accounting for international crimes

In particular, such an inventory required the strict stability of international custom, which was difficult to recognize, and what could be confined to crimes of customary origin had not been the subject of agreement between States. Thus, we have no choice but to confine ourselves to acts that do not raise significant differences about their criminal nature (Clements, 2018; Al-Billeh, 2022d).

The elements from which custom derives its obligation, namely justice and morality, and the general good of the international community, can be invoked (Drumbl, 2016; Al-Billeh, 2022e).

Unclear notion of international crime

The customary character of an international crime is unclear and undefined and the reason for this is that the international crime is not codified, which makes it difficult to identify its elements. Moreover, it is difficult for the judge to match the conduct attributed to the accused to a specific legal formulation of the assertion of the existence of a crime. Likewise, the question of the codification of custom in written texts in the form of an international treaty or convention is reflected in the treaty's or treaty's customary nature, with the result only that an act is characterized as wrongful without specifying the elements, elements, etc. The judge therefore bears the burden of reverting to these Sources if they wish to examine whether or not the act is lawful within the scope of international criminal law (Duttwiler, 2006; Alkhseilat et al., 2022).

The conclusion can be drawn that the principle of legality, prior to the Rome Statute, does not exist in international criminal law as recognized in domestic criminal law but exists in a manner consistent with the nature of international law (Elewabadar, 2005; AL-KHAWAJAH et al., 2022). The legitimate rule of international criminal law

can be expressed at that stage by saying: No crime, no criminal sanction, except on the basis of a legal rule (Engel, 2010; ALMANASRA et al., 2022).

Results of the principle of customary legality

The principle of customary legality has the following consequences:

A. Actions of the principle of legality: Acts of the principle of legality: the customary nature of international criminal law at that stage necessitates that the source of the rule of criminality is custom, or is provided for in a treaty, or an international normative convention, and in all cases the acts of the principle of legality in the area of the said law are within the limits of the Rome Statute permitted by its nature, and within those limits there shall be no infringement on the legitimacy to which it is enforced, text or meaning (Gadirov, 2015; Alshible et al., 2023).

B: Principle of non-retroactivity: Criminalization texts have no effect on the past, unless they are more appropriate for the accused, and certain strips are available the question of non-retroactivity is a logical consequence of the legality doctrine's actions and its meaning. In this context, the international rule of criminality cannot be retroactive (Goy, 2012; Al-Billeh et al., 2023).

Thus, if the provisions of its treaties or an international agreement to criminalize a chapter, the application of this provision to acts committed prior to its promulgation does not mean that the text has been applied retroactively, as this provision was preceded by an international custom that lends a description of illegality (Jalloh, 2009; Isa et al., 2022).

B. Expanded interpretation and measurement: International criminal law prior to the Rome regime accepts the expanded interpretation given the customary nature of its rules, and the reason for accepting the expanded interpretation is because the rule of criminalization is often not defined: the elements and images of the crime (Kastner, 2019; Al-Billeh & Al-Qheiw, 2023).

International legal norms may be formed over many years in accordance with specific disciplines and provisions, allowing for renewal of their meaning and exact scope of application. In addition, the adoption of an expanded interpretation and measurement approach will lead to the loading of international criminalization texts that are not in them, in the sense of creating new offences and penalties contrary to the methods known in international criminal law (Luban, 2011; Al-Billeh & Abu Issa, 2022).

Principle of legality under the Rome Statute

The Rome Statute has expressly established the principle of written legality along the lines of domestic criminal legislation. This emphasis on the principle of legality has been necessary to highlight the criminal nature of international criminal law, as well as the possibility of establishing the International Criminal Court. It should be noted that the Rome Statute has introduced the principle of criminal legality as criminal and punitive, as follows:

Article 22 stipulates that "a person shall not be criminally questioned under these Regulations unless the conduct in question at the time of its occurrence constitutes an offence within the jurisdiction of the Court", which constitutes an expression of the principle of (No offence, no punishment except by provision), which means in criminal studies that no act is considered an offence, however serious or ugly it may be, unless it is prescribed by law as such, and therefore this act is punishable if it is not provided for as a crime (1). This principle is considered to be the most important safeguard of the freedom of individuals, especially since this guarantee is at the same time a restriction on the State's various authorities, including the judiciary (Matwijkiw, 2014; AL-Hammouri et al., 2023).

The application of this principle makes the judge bound by the legislator's texts in determining what constitutes an offence and what constitutes the determination of the elements and conditions of the offence. Article 23 also stipulates that "no person convicted by the court shall be punished except in accordance with this Statute", which reflects the principle (no offence, no punishment except by law). This means that the judge must, if it is established that an act constitutes an offence, impose the penalty or punishment to which the legislator decides and declares it within the framework of legal provisions.

On the other hand, the international legislature has provided for international crimes falling within the jurisdiction of the International Criminal Court exclusively in article 5 of the Rome Statute. Since the three crimes within the Court's jurisdiction had already been legislated, the Court had therefore not initiated new crimes but had adopted the foregoing in international criminal law. Moreover, they were the product of a treaty and carried out the burden of legal application.

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Therefore, the description of criminal conduct must be in a written document because it is a principle (No international crime except by provision) includes the absolute offence, whether provided for in the Rome Statute or in other rules of international criminal law, but this provision is expended in conjunction with article

1. and (21) which defined applicable law, and which had taken from applicable international treaties and custom subsequent sources of the Statute to fill gaps in application (May, 2014; Al-Billeh, 2023a).

Some felt that the phrase "outside the framework of this Statute" did not mean conduct other than those crimes falling within the jurisdiction of the Court, otherwise the scope would be given. This broad interpretation under the exclusive jurisdiction of the Court is incompatible with the limits laid down by the regime for the Court's jurisdiction in the light of the explicit texts to that effect.

The Rome Statute has also determined that a person is not criminally liable under its provisions for conduct prior to its entry into force. but that does not preclude recognition of the retroactive effect of the interpretative criminal provision, The criminal provision, the application of which has an interest in the interested person, and in the event of a change in the law being applied in a particular case prior to the final judgment, applies the more favorable law of the person under investigation, trial or conviction. This reflects the principle of non-retroactivity as one of the consequences of the Rome Statute's legality (Mayr, 2014; Al-Hammouri & Al-Billeh, 2023).

Furthermore, Article 22 (2) of the Rome Statute provides that "the definition of a crime shall be strictly interpreted and shall not be expanded by analogy", which prohibits an expanded interpretation and reproduces previous texts in the Rome Statute that explicitly or meaningfully refer to the possibility of resorting to an expanded interpretation of the provision of criminalization.

However, problems arise in this area that certain acts are considered offences under the Rome Statute, at a time when they are not offences under domestic legislation, and the most important consequence of these problems is that they may permit interference in the political and religious organization of each State, at the expense of the principle of sovereignty in its narrow sense, especially since the Rome Statute authorized the convening of the jurisdiction of the Court. without the request of any State in the event of a request by the Security Council, or for the Prosecutor to initiate investigations on his own initiative, after obtaining the Pre-Trial Chamber

This concern for expansion may be the international legislator's push to establish two restrictions, as well as other restrictions, to ensure that interpretation is not subject to personal whims and criteria:

The first limitation is clear: providing that the Court uses elements of crimes to interpret and apply articles (6, 7, and 8).

The second limitation: when the Rome Statute decided that the definition of crime was strictly interpreted

In the event of confusion or ambiguity, the definition is interpreted in favor of the person under investigation, trial or conviction

To some extent, this ensures that States do not expand on the interpretation of certain behaviors as international crimes (4), and the international legislator prohibits the expansion of the Rome regime by analogy), it is not interpreted to measure an act that has not been criminalized for an act or response (O'Byrne, 2011; Al-Billeh et al., 2023; Al-Billeh, 2023b).

The reason for this was that no attempt was made to create an offence not provided for in the above system and that prohibition of standard interpretation was undoubtedly incompatible with the article. (31/3) of Regulation (1), which allows the Court to Furthermore, the international legislator has taken the rule of doubt to be interpreted in favor of the accused as one of the main rules of criminal evidence, as expressly affirmed in the text of article (22/2) of the Rome Statute: "In case of ambiguity, the definition is interpreted in favor of the person under investigation, trial or conviction seek other grounds for exclusion from criminal liability contrary to the situations in the above article(Theofanis, 2003; Al-Billeh & Al-Hammouri, 2023).

Conclusion

This study examined the compatibility of the establishment of an international criminal court with the principle of legality and outlined the grounds for legitimizing international criminal law, since its existence would have a preventive effect preventing derogation from international law. This study demonstrated the customary nature of the principle of legality prior to the elaboration of the Rome Statute of 1998, as well as the principle of legality under the Rome Statute. The study produced a number of results, the most important of which are:

The principle was customary in nature a year ago in 1998 making it impossible to prosecute a person for an act not considered an international crime by international custom at the time of its commission. International criminal law prior to the Rome Statute accepts an expanded interpretation given the customary nature that prevails over its rules.

Under the Rome Statute, article 221 of the Statute stipulates that a person shall not be criminally questioned under this Statute unless the conduct in question at the time of its occurrence constitutes an offence within the jurisdiction of the Court and is, in fact, a reflection of the principle (*nullum crimen sine lege*). Deepening the idea of legality in the International Criminal Court's consideration of the cases before it and attempting to describe the criminalization of all acts committed. Such acts are included in the legal description found in the provisions of the Rome Statute in order to legitimize them.

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