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THE MEANING AND ELEMENTS OF INTERNATIONAL CRIME

Jaafar Ahmed Nehme[1], Mustafa Ali Hassan[2]

[1,2] Law Department, Al-Hikma University College, Iraq

Email: [2]mustafa.ali.hasan@hiuc.edu.iq

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ABSTRACT

The research study aims to define the seriousness of the international crime and review the most important international efforts made to define the meaning of international crime. Besides, identify its elements, where the concept of international crime is still incomprehensible and ambiguous in terms of the intention to commit crimes of any kind, war crimes, aggression, crimes against humanity, or genocide crimes. Generally, international crime is a major threat to the international community, because it was vague and neglected in the national laws of countries. Therefore, the international community had to play a role in addressing this type of crime. This research aimed to study these types of dangerous crimes and explain their concept and elements and understand the national laws of countries with their seriousness. However, this kind of crime is very important and occupies a large space in international societies, and humanitarian and human rights organizations give it great importance in the national laws of countries.

INTRODUCTION

Throughout the ages and history, the world has faced the most brutal and cruel crimes, which resulted in catastrophic incidents that cannot be expressed from various types of crimes. On the contrary, the subject of this research is a specific type of crime, which are international crimes that are the focus of this research. It is also considered one of the important topics, as a result of the very dangerous effects that this type of crime has on the international community, which affects human life, interests, and basic values. Recently, the international community was very keen to maintain these concepts, as it was criminalized any act of violence to it with the harshest penalties. After that, there was a lot of discussion and repercussions about international crimes

of an international character as the basis of international criminal law, and it constitutes one of the fundamental problems facing the world at present. It similarly constitutes an important issue that today continues to captivate the international community's thinking in many respects, especially in terms of the extreme danger that is unique to this crime because it does not threaten a single person. But rather threatens an entire community with their entity and structure, which is represented by the international community. Accordingly, this study dealt with all of its definitions and the most important crimes that have been identified as international crimes and fall under their scope, as well as determining their elements.

***The Research Hypothesis**:*

The assumption of the research is based on a fundamental point for the meaning, which is the statement of international crime and its definition and distinguishing it from the rest of the crimes, through its elements. Besides, identifying it as a crime of an international nature, and is what this research aims at.

RESEARCH METHODOLOGY:

This research relied on the descriptive, analytical approach to delve deeper into the crime, analyze it and describe it within international crimes to monitor international crime and determine its elements.

***The Problem of Research**:*

The problem of research is highlighted in the extent to which international crime is known and distinguished from the rest of the ordinary crimes, by defining its elements and legal nature, as it is represented as follows:

- What is an international crime? What is its legal nature?
- The most prominent crimes from which international crime originated?
- What are the elements of an international crime?

***The Importance of The Research**:*

the importance of the research in this study is clarifying “international crime” and identifying each of its elements to distinguish it from the rest of the crimes and to set the appropriate punishment for it. Moreover, this study acquires its importance through the seriousness of the topic that lies in international crimes. International crime negatively affects the harmony and coexistence among all peoples. Peace is considered one of the most important interests necessary to continue living in the life of the international community free of wars and the scourge of crimes until security, safety, stability, and tranquility prevail.

The Study Objectives:

The research study aims to clarify an understandable and simplified form of international crime by introducing it, its danger to the international

community, its legal nature, and clarifying the elements that apply to it as an international crime of an international character.

The Research Structure:

The research was divided into two topics; where the first topic represents the definition of international crime and its legal nature which can be categorized into the definition and rooting of international crime, and the legal nature of international crime requirements. On the other hand, the second topic was represented by elements of international crime that include the physical element of international crimes, the moral element of international crimes, and the international element requirements.

THE FIRST TOPIC

Definition Of International Crime and Its Legal Nature

It is imperative to study this subject and open up to defining the meaning of international crime and then defining its elements. This division is due to the internal legislation, the provisions of which were established not a short time ago, in contrast to the laws that support international crimes it is newly established. In addition, its provisions have not been established in a way that makes it enjoy stability except in certain cases due to its nature and the difference in defining its elements. Besides that, the policy followed its objectives and international disputes regarding it as a result of the control, and influence exercised by major countries through international institutions.

THE FIRST REQUIREMENT

Defining And Rooting International Crime

International criminal law is considered a branch of public international law in terms of form, for legal scholars, the source is almost confined to international custom, international treaties, general principles of law, and principles established by international judiciary and jurisprudence. Despite this similarity between them, the foundations of international criminal law began to be formed on clear texts through the establishment of specialized and permanent international courts to look into international crimes. As well as, identifying the elements of the latter and the associated criminal responsibility and its aggravating or mitigating circumstances in the field of imposing the penalty. Thus, international crimes began to approach the crimes stipulated in national legislation, but sometimes included the same crimes as terrorism, transnational organized crime, human trafficking, and drug trafficking. The international element remains the one that gives the international character to these crimes and distinguishes them from others so that they are subject to the jurisdiction of the Permanent International Criminal Court (Rome Statute 1998). The definition of international crime can be deduced from the nature referred to, as it is a voluntary and illegal behavior prohibited by international law and exposes the perpetrator to punishment. Otherwise, it represents an attack on an interest protected by international law or that exposes it to danger, which

would cause disturbance in the international public order, and the international community decides on it with specific penalties. The Rome Statute defined it by listing the crimes within the jurisdiction of the Court that deal with the most serious crimes of concern to the international community as a whole, namely genocide, humanitarian crimes, war crimes, and the crime of aggression (Article 5). Thus, it appears clearly that crimes in the international sphere are based on the same foundations that constitute them in the local criminal sphere, whether in terms of the physical element, the moral element, or the legal element of the crimes. In addition to the international element, the latter is what distinguishes these crimes and gives them the international character because they are concerned with this human right. Furthermore, it aims to protect it directly or indirectly so that it is not violated in this ugly way, especially in times of crises and armed conflicts, whether they occur at the local level or the international level.

The Principle of Legality of Crimes and Punishments in International Criminal Law:

The rule of the legality of crimes and punishments stipulates that there is no crime or punishment without the text of the law in the comparative penal system G. Graven, 1955: 253 and Abdullah Suleiman, 1992: 85). Therefore, does the same provision apply to the international penal system? To determine the correct answer, it can distinguish between the period before the Rome Statute 1998 and after the completion of this system. Before the beginning of the Permanent International Criminal Court, the custom was considered a basic source of the rules of criminalization and punishment in the international sphere. Consequently, it occupied an important position in terms of the sources of international criminal law. Most of the crimes that were formed in this framework are based on custom and then adopted by the international community in the texts of international treaties and charters, such as war crimes, aggression, crimes against humanity, enslavement, and other crimes affecting human rights and fundamental freedoms. Legal rules based on custom have raised many problems, the most important of which is that these rules are not defined in terms of content, which means that it is difficult to prove them. Consequently, not relying on it in a consistent, clear, and just manner in deciding responsibility for it. Despite this reality that prevailed before the beginning of the International Criminal Court system, efforts have been made to expand the powers of the courts that are formed for this purpose. That is, giving a flexible interpretation of illegal behavior, which can be more just in the field of international trials. However, another viewpoint that prevailed in the doctrinal field sees adhering to the principle of legality of crimes and penalties in its practical meaning known in the Penal Code. So that no judiciary is entrusted to consider this type of crime unless its clear nature is determined as it falls within the jurisdiction of the court exclusively, and in a manner that does not raise ambiguity about the description of the crime (Awad, 1965: 240). Combined with its responsibilities under the provisions of international criminal law. The matter is towards defining the forms of crimes and punishments so that the same principle applies within the framework of the legal organization of the International Criminal Court. The court system

stipulated general principles that were enshrined in international treaties, including the rule of the legality of crimes and penalties.

The Non-Retroactivity of International Criminal Law

The principle of non-retroactivity of the rules of international criminal law comes as a logical result of the principle of legality of crimes and penalties. In other words, justice follows that a person is held accountable for a crime that society considers as such, and is not held accountable for behavior that was permissible at the time of its commission. Thus, it was observed that the rule of non-retroactivity of legal rules is a general principle in international criminal law, because the custom that represents a source of criminal rules originally reveals illegal behavior and thus does not create a rule that defines the elements of the crime, but rather unveils a crime that existed under an old custom or under a treaty that superseded the previous customs. The Nuremberg and Tokyo trials, although they seem to contradict the principle of legality, in essence, confirm other than what is apparent in reality. Since the texts of treaties and trial systems do not criminalize individual behavior as a crime, but rather remove punishment for that illegal behavior in the first place. As a result of this content, the crimes against humanity that were mentioned in the Nuremberg and Tokyo court system appear that the texts related to them are texts revealing those crimes that were considered such by international customs. Consequently, it did not confer a criminal character on a new act, and the rules of criminal law were excluded from the regressive rule of the law that is best for the accused. That is the application of laws that would achieve a better position for him, whether in terms of criminalization conditions, punishment, or other penal effects. Referring to the text of Article 24 of the court system, the previous principle was adopted with the establishment of the rule that states that a person is not criminally responsible under this system for behavior before the entry into force of this system. Paragraph (2) of the same article adds that in the event of a change in the applicable law in a particular case before the issuance of the final judgment, the law that is best suited to the person subject to investigation, prosecution, or conviction shall apply. That means at any stage of the case is a condition before the issuance of the final judgment. It is a judgment that is not subject to any of the methods of appeal established in the law dealing with this type of case. Or in the case in which the judgment is issued unfairly or arbitrarily against the foreigner, where this situation appears through the judgment issued. Plus, it is not considered such an error in interpreting the text, or its interpretation is also not considered a breach of the national judiciary. Except after exhausting the means of appeal established in the law in order to correct the defect that may affect the judgments issued by it. Furthermore, negative behavior may also include refraining from implementing an obligation imposed by international treaties. In these cases, the state cannot invoke the provisions of its internal legislation to get rid of the implementation of its international obligations, since international treaties are superior to national legislation. In case of contradiction, states must resort to an amendment. Still, the search for the legal nature of the international crime is based mainly on the sources of public international law, such as custom and international conventions, in that the international custom is among the features of this crime on the one hand. On

the other hand, international agreements as revealing their existence. Hence, researching the legal nature of international crime means searching for the source of the prohibition of the act considered a crime, which is the international custom in the beginning and then the international conventions based on it, as it is the source that reveals the illegal character of the act.

Types Of International Crimes

There are several international crimes, which are divided into four categories: crimes against humanity, genocide, war crimes, and aggression, which are the crimes identified by the Rome Statute of the International Criminal Court stipulated in Article V as follows:

Genocide

The crime of genocide is one of the most serious international crimes within the jurisdiction of the International Criminal Court under the text of Article 5 of its Statute, which is due to the seriousness of this crime. The crime of genocide can be defined according to Article 06 of the Rome Statute as "Any of the following acts committed with intent to destroy a national, ethnic, racial or religious group, as such destruction in whole or in part. Killing members of the group, causing serious physical or mental harm to members of the group, and deliberately subduing the group of living conditions denoting their actual complete or partial destruction. Imposing measures aimed at preventing childbearing within the group, and forcibly transferring the children of the group to another group (Awad, 1965: 1031, and Ibid, 1994:93)." Accordingly, it is in connection with the crime of genocide if any of the previous acts were committed against a particular group because of its racial, religious, or ethnic character, intended to destroy it in whole or in part, whether it was committed in wartime or peacetime.

Crimes Against Humanity:

Crimes against humanity are considered among the most serious crimes, as they involve a flagrant violation of laws and customs of Humanity. To avoid impunity for perpetrators, the Criminal Court stipulated it in the statute of Article 5, as a crime within its jurisdiction. The term crime against humanity did not appear until after World War II, but its origins go back much further, as Grosius referred to it when he touched upon the idea of a punitive war against peoples who are fed from human flesh, ignoring the teachings of God Almighty and society. The jurist Vattel also permitted the legitimacy of military intervention for humanitarian motives. The interest in these crimes increased after World War II after the flagrant and serious violations by the Germans. Therefore, it was obvious that the statute of the Nuremburg Court included a definition of it in paragraph (c) of Article VI, which is the same concern that was stipulated in Article II of Law No. 10 on the punishment of persons who commit war crimes and peace crimes, issued in Berlin on (62) 20/12/1945. The ferocity of these crimes against humanity was of interest to the International Criminal Tribunal for the former Yugoslavia, which falls within the jurisdiction of this court in Article 5 of its statute. The same applies

to the Rwandan court, which was established in 1994 by a decision of the Security Council in Article 3 of its Statute of the International Criminal Court. Including a precise definition of crimes against humanity, which stipulated "acts of willful killing, extermination, destruction, enslavement, deportation, torture and sexual slavery. However, any other inhumane act committed against a particular group, and persecution based on political, racial, tribal, cultural, or religious grounds based on gender, whether such acts are committed in peacetime or in time of war, constitutes a crime against humanity (Sawsan Tamrakhan Bakkah, 2004:44) Oppenheim defined war crimes "as acts of hostility committed by soldiers or other members of the enemy when it is possible to punish him or arrest the perpetrators." The jurist "Leutricht" defined them as crimes that violate the laws of war and that are considered criminal acts according to the usual and accepted concept of the rules of humanitarian war. Besides, the General Principles of Criminal Law for Brutal Motives Article 06/b of the Nuremberg Tribunal Statute sets out violations of the laws and customs of war, including but not limited to willful killing, ill-treatment, the exclusion for hard labor, or any other purpose. In addition, Article 2 of the Statute of the International Criminal Tribunal for Yugoslavia referred to the jurisdiction of the Court to prosecute persons who committed or were ordered to commit grave breaches of the Geneva Conventions of 1949. Article 8, in its second paragraph of the Rome Statute, specified violations that would be considered war crimes as follows; Grave violations of the 1949 Geneva Conventions, and Other serious violations of the laws and customs applicable to international armed conflicts within the established scope of international law. Besides, serious violations of Common Article 3 of the four Geneva Conventions of 1949 in the event of armed conflicts are not international. Other serious violations of the laws and customs applicable in armed conflicts are not of an international character within the scope established by international law. Therefore, the court is competent to consider the rules regulating the conduct of military operations, whether they are written or customary, and whether the armed conflict is international or non-international.

War Crimes (Les Crimes De Guerre)

International jurisprudence had a role in codifying war crimes and limiting them to Article 5 of the Rome Statute, where the jurisprudence of jurists and philosophers had an important and prominent role in this area. They are those crimes that are committed against the laws and customs of war. "Oppenheim defined war" as acts of hostility committed by soldiers and other members of the enemy when it was possible to punish him or arrest the perpetrators. The jurist "Lauterpacht" defined them as crimes that violate the laws of war and which are considered the actions of criminals per the normal and accepted natural concept of the rules of war and humanity, and the general principles of criminal law, for brutal motives (Fakir, 2015:39)Article 60 (b) of the Nuremberg Tribunal Statute specified violations of the laws and customs of war, for example, but not limited to, such as willful killing, ill-treatment, hard labor, and exclusion to perform hard labor or for any other purpose. In addition, Article Two of the Statute of the International Criminal Tribunal for Yugoslavia referred to the jurisdiction of the Court to prosecute persons who

committed or gave orders to commit grave violations of the Geneva Conventions of 1949. The Rome Statute, Article VIII, second paragraph specifies violations that, if they occur, are considered war crimes, namely:

- Grave breaches of the 1949 Geneva Conventions
- Serious violations of Common Article 3 of the four Geneva Conventions of 1949 in the event of armed conflicts not of an international character
- Other serious violations of the laws and customs applicable in armed conflicts not of an international character within the established scope of international law
- Other serious violations of the laws and customs applicable in international armed conflicts within the established scope of international law

The Crime of Aggression: (Crime D'agression)

After the amendment to the statute of the International Criminal Court in 2010. Article 5, in its first paragraph, added the crime of aggression among the crimes within the jurisdiction of the Court as one of the four most serious crimes. Even though aggression is one of the important issues in jurisprudence Public international law, the Charter of the United Nations and the Covenant of the League of Nations ignored this issue, despite their agreement to criminalize aggression. The problem of defining aggression has remained the subject of great debate between two main trends, the first rejecting its definition, led by the United States of America and the United Nations. Whereas the second trend supports the definition, which the majority of countries consider appropriate, especially the Soviet Union, and all its arguments are of a legal and political nature. To make the matter more complicated finding a definition of aggression for the dispersal of opinions into three directions, the first of which goes to set a general definition of aggression, and the second to give an exclusive definition that defines the forms of aggression. While proponents of the third opinion go for adopting a double definition between the two definitions. Finally, United Nations General Assembly in 1974 reached a definition of aggression after a long series of discussions and deliberations within the framework of the Legal Committee on Defining Aggression. To be referred to the United Nations General Assembly, which approved it by Resolution No. 3314 of 14/12/1974, so that the Assembly has thus closed the curtain on discussions on this subject. This definition will be strong support in its rooting and stipulation in Article VIII bis of the Statute to the International Criminal Court. The first paragraph of the same article stipulates that: For this Basic Law, the crime of aggression means that a person is in a position that allows him to control the political or military action of the state or direct him to plan. Prepare, launch or carry out an act of aggression that by its characteristics and danger would and its scope represents a clear violation of the Charter of the United Nations international crime in the light of the provisions and rules of international criminal law.

THE SECOND REQUIREMENT

The Legal Nature of The International Crime

The Customary Nature of International Crime:

The legal nature of domestic crime is determined by a legislative text that has previously clarified the types of crimes and the penalties prescribed for them. The source of criminalization and punishment in them is legislation. However, the matter is different in public international law, and international criminal law in particular. It is known that international criminal law is concerned with determining the legal nature of the international crime, and as long as it is a branch of public international law, it must have the same characteristics, the most important of which is the customary character of its rules (Majid Ibrahim Ali, 2005. 20; Ibid, 1995:340). Accordingly, international crime is of a special legal nature, based on customary rules in the first place, then international conventions, and what has been approved by international criminal court projects. A part of international criminal jurisprudence believes that relying on customary character alone makes it difficult to identify an international crime. Hence, in the absence of written legal texts for international crime, the concept of international crime remains vague, which makes it subject to interpretation and interpretation. This ambiguity makes it difficult for the jurist or judge to verify the conformity of the committed behavior with the specific customary model of the crime (Abdullah Suleiman, 1992: 101; Ibid and Claude, 1994: 52-341).

International Crime in International Criminal Law

It was necessary to search for other mechanisms that facilitate the process of determining the legal nature of an international crime, which can be deduced from those international efforts that have been made in this context. Especially since the Second World War, which resulted in the conclusion of many international conventions on the control and enumeration of international crimes. It has been ended with the adoption of the Rome Statute of the Criminal Court, which codified international crime and the punishment prescribed for it. Thus, they became codified crimes, which have their elements and specific penalties, and the provisions related to punishment and responsibility are stipulated in this system (Fattouh Abdullah Al-Shazly, 2000:209; Muhammad Abdel-Moneim Abdel-Khaleq, 1988: 81-83). In addition to the above, it has been decided - and since the Nuremberg trial - that it is not considered an international crime every act that is permissible according to international custom, whether this act is not considered a crime in the first place. Or because certain circumstances made it permissible, such as acts committed using the right of reciprocity, or acts of resistance carried out by the peoples occupying their lands against the occupying forces. As well as what the people are doing against the state authorities in resistance to racial discrimination, the right of legitimate defense, and the right derived from the law of war concerning acts of murder committed on the battlefield, striking fortified cities with bombs and shooting down planes with missiles and bombs. It follows from this that international crime is considered an attack on

international interests, which generates global jurisdiction, that is, the universal right of punishment, Meaning giving every state the right to punish the perpetrators of international crime, regardless of their nationality or place of committing their acts, by trying them before internal courts, giving the right to this state. In trying the perpetrators before its internal courts. It is also self-evident for the state affected by international crime, especially when it is threatening global peace and security, to exercise its right to legitimate defense, taking into account the restrictions mentioned in Article 51 of the Charter of the United Nations in this regard. It may also submit the matter to the United Nations, which has the right, if it is proven that aggression has occurred, to exercise its powers stipulated in Chapter VII of the Charter and within the scope of the collective security approach. These rights include the imposition of penalties, as mentioned, and the state, in addition, has the right to request the restoration condition and circumstance in which the crime was violated. In addition to providing appropriate guarantees for the non-repetition of the act. It may also request the aggressor state to apply the penalties stipulated in its internal laws. Including prosecuting the person or persons who committed a crime or its contributors and obligating them to compensate the damages that befall the other state or one of its nationals. The state that caused the damage is obligated to correct the wrong conditions that resulted from the crime by taking the necessary measures to satisfy it, such as an official apology or an admission of the mistake (Jaafar Abd al-Salam Ali, 1988:45).

The International Character of International Crime:

International jurisprudence differed about the interest that constitutes an international crime. This is due to two directions: On the one hand, there is a narrow traditional approach to the concept of international crime. It is required that the state have the main role in the illegal act for the crime to be described as international, so the crimes committed by individuals in their capacity are not considered international crimes, but rather are national taboos. International crime is realized, whether it is against a state or individuals, and they limit the number of international crimes to war crimes, and crimes against peace. Besides, crimes against humanity include the crimes of genocide and the crime of international terrorism. The specialist of this trend demonstrates - with their two views on their position, that Article Two of the draft legalization of crimes against international peace and security, stipulated to give an international character to acts of armed aggression, and threat. Combined with the preparation for the use of force, aggression, and the organization of armed gangs, it was committed based on a plan directed by one state against another state. In crimes that threaten the security of humanity, such as the crime of international terrorism, the international element is achieved based on the contribution, encouragement, instigation, or arrangement of the state. But if these crimes are committed without the intervention of the state, then they are considered a national crime within the jurisdiction of the national judiciary. As for the crimes that occur during peace, the most important of which are genocide, acts of torture, and racial discrimination, they have a special nature. Since they are by themselves, encouraged, or acquiesced by an illegal act against another country or several countries that threaten the public order of the international community (Awad,

1965: 461). International crime in international criminal law is mostly committed against a certain sect belonging to a particular race or religion, and not against a state. Yet it was considered international in that project. As for the second trend, which depends on the criterion of the victimized interest. Considering that the international nature of international crime is achieved given the illegal behavior that involves prejudice to the interests and values of concern to the international community, without stipulating that the act be issued by a state against a state. International crime is considered as such whether it is committed in the name of the state or at its request with its encouragement or with its consent. Or if it is committed by individuals working for themselves, criminal responsibility arises regardless of the state's contribution to the crime from his knowledge. Accordingly, if the authors adopt the criterion of the infringed interest, which was supported by our point of view. The international character is investigated in many crimes, so the international character in the crime of international terrorism, for example, lies in what the international conventions saw as a threat to global security. Also, in the multiplicity of nationalities of the perpetrators, or in the escape of the perpetrators of the crime to a country other than the one in which the act took place. The lesson in prohibiting behavior and describing it as an international crime lies in the international agreements that consider it an international crime. Especially if the act was behind it by a state, such an act is an international crime. This meaning is seen in the reports of the United Nations International Law Commission in its codification of the issue of international responsibility, and the issue of crimes against humanity. It was mentioned in the text of Article (19) of the draft of the International Law Commission at its thirtieth session, May 18-28 July 1978 AD, when distinguishing between international crime and international misdemeanor. The criterion for discrimination, on which it was based, was the gravity of the act issued by the state that committed the crime, and the decisiveness of the victimized interest. Once dealing with the subject of international responsibility, international violations were divided into types according to their severity, as the acts that require responsibility are divided into two parts: The first category: is international crimes, and the second category: is international misdemeanors. These categories include actions taken by the state, which breach an international obligation necessary to protect the basic interests of the international community. Moreover, Article 7 clarified in its second paragraph that every serious violation of an international obligation related to international interests is an international crime, the last article entrusted the international community with the task of defining what can be described as an international crime. However, it did not specify the penalty for this crime or the punishment and responsibility of its perpetrator, whether it was an order or a plan to commit it or the perpetrator of the act. The draft of the International Law Commission did not specify the authority competent to charge the perpetrator of the international crime on behalf of the international community, and the body that specializes in investigating and adjudicating this crime. The International Law Commission did not show the main difference between crimes and misdemeanors except based on limiting crimes and defining the term misdemeanor for everything else. based on a general criterion that is the extent to which a fundamental interest of the international community is affected, and by comparison either to the extent of the harmful

effects resulting from the act or the extent of the sector characterized by it or both. Additionally, the international nature of international crime made the criminal behavior that constitutes it liable to escape from criminal accountability, as the perpetrator of the international crime may prepare for it in one country or may implement it in another country and then succeed in escaping to a third country. The nationalities of persons accused of international crime or victims may also have multiple nationalities? In addition to that, international jurisprudence, in its definition of international crime, referred to the element of gravity as one of the main features of international crime. Spiropolis, the rapporteur of the International Law Commission, in a report on the draft legalization of crimes against the peace and security of mankind, stated that international crime does not apply to acts of special importance, and that may cause disturbance to the security and public order of the state group. The jurist "Harafen" also held the same opinion "that international crime is only concerning acts of special gravity, which, cause disturbance and disruption to the public security of the international community." (Ramses Behnam, 1996:10 and Mohamed Mounis Moheb El-Din, 1987:1-2).

THE SECOND TOPIC

Elements Of International Crime

The First Requirement: The Physical Crime

The elements of physical element in an international crime consist of criminal behavior, whether that behavior is represented by positive action or through omission. Most crimes are characterized by positive, illegal behavior, as the state or group seeks to achieve a result and the consequent destruction of a particular group, in whole or in part, such as genocide (Article 6). Along with, the crimes against humanity (Article 8), which is concerned with grave violations of the Geneva Conventions and all the charters that decide to protect civilians in times of war. The crime is based on negative behavior by the state's reluctance to perform an act imposed by the law, whether it leads to a physical result prohibited by law, or is merely refraining from an act that does not lead to a result. For example, the case in which the state refrains from the procedures imposed by internal charters, such as the crime of denial of justice, and includes every text that mars the organization or the exercise of the function of the judiciary for its task. So that the state's breach of its duties appears by abandoning the provision of legal protection, especially for foreign citizens. Similarly, the case in which the national judiciary refrains from deciding the issue of the dispute raised by a foreigner even though the jurisdiction of the national courts deals with such types of cases. In the same role, in the case in which an unfair or arbitrary judgment is issued against the foreigner, where this situation appears and through the judgment issued, this is not considered an error in the interpretation of the text. Likewise, it is not considered a breach of the national judiciary except after exhausting the means of appeal established in the law to correct the defect that may affect the judgments issued by it. Negative behavior may also include failure to implement an obligation imposed by international treaties. In these cases, the

state cannot invoke the provisions of its internal legislation to get rid of the implementation of its international obligations, since international treaties transcend national legislation, States must resort to amending the texts of national legislation in line with the rule of laws imposed in the texts of treaties in case of contradiction. Such is the text of Article V of the Genocide Convention issued on December 9, 1948, which stipulates that the contracting parties undertake to take legislative measures to ensure the implementation of the provisions of the Convention. As well as the texts contained in the Geneva Conventions of 1949 to protect the rights of civilians in times of war. Article 2 of the International Covenant on Civil and Political Rights (1966) states the obligation of states parties to take measures that allow the rights contained in the treaty to be effective. In addition to ensuring that every person whose rights and freedoms have been violated, Submitting a claim to a competent authority and that the state guarantees proper implementation of their decisions The occurrence of negative behavior occurs in the domestic sphere may also be achieved at the international level, such as cases of preventing services and food from prisoners to annex or with the intent of destroying them in whole or in part. The Geneva Conventions (the first and the fourth) contained an absolute prohibition on the protection of civilians in times of war, which equalizes between an act or omission that leads to the death of a prisoner of war or endangers his health. Plus, the first and second conventions prohibit deliberately leaving persons under protection without medical treatment, exposing them to the dangers of infection or infection with diseases. These crimes entail a legal obligation to work to avoid them despite their negative nature, which is clearly defined by the conventions.

The Moral Element in International Crimes

An Embodiment of The Human Will in Determining Criminal Responsibility:

The moral element constitutes the driving force of human behavior, and thus the person alone is subject to penal responsibility. Thus, the responsibility of the legal person remains unstable in its content. Rather, the natural person who assumes the administration remains the subject of accountability, whether this is embodied by his representation of the legal person or as an agent on his behalf working in his name and for his benefit, whatever its forms. International treaties since the First World War have recognized this responsibility. Article 227 of the Treaty of Versailles included the responsibility of German Emperor Guillaume II for causing that war. The military courts of the Nuremberg and Tokyo trials also stipulated the responsibility of the natural person. The Convention on Combating and Punishing the Genocide of Mankind in 1948 included the same concept, as adopted by the legislator related to crimes against the security of mankind.

First Branch

Moral Element Forms

First, intent: that is, the offender's knowledge of the elements of the crime and his will to achieve it, whether that is direct intent or probable intent, where the latter takes on a broader meaning in international crimes if the situation is compared with local crimes. For crimes against peace and crimes against humanity, the perpetrator of these crimes can be held accountable based on the probabilistic intent equivalent to the direct intent. So that it is one of the requirements for providing criminal justice, as can be imagined, the idea of premeditation, as this image of penal intent appeared in the Nuremberg and Tokyo regulations. It is also possible in the field of the moral element that some crimes require a special intent to commit them. For example, it was stated in Article Two of the Convention against Genocide that one of the stipulated crimes be committed with the aim of destroying a national, sectarian, or religious group, in whole or in part. Secondly, the unintended error: can summarize the unintended error in the following two forms: - The first: where the offender expects the result and does not want it, but seeks the second: where the offender does not expect the result and was able or able to prevent its occurrence and his duty to avoid it and most crimes are committed intentionally, as it may be mistakenly committed. Various crimes can only be imagined intentionally, such as provoking a war of aggression, capturing hostages, and genocide, and according to this consideration, crimes of the international type are overshadowed by the intended nature and with this description, it is possible to realize the extent of its dangers and harmful effects on the interests protected in the international framework through custom or treaties Or the laws adopted by the Statute of the Permanent International Court (Rome Statute of 1998).

Second Branch

Absence Of the Moral Element

The basic elements of the penal intent consist of knowledge and will. If this knowledge is not fully realized or is achieved in a way that does not conform to the law, the penal intent is absent. Thus, the coercion, in its physical and moral forms, negates the penal responsibility, as in the case of a state's invasion of another state through a third state that was unable to stand in the way aggressor country. Or as is the case in the order issued by the superior to the subordinate, such as the order to launch aggression or genocide to achieve the desire of the superior, the principle that presupposes knowledge of the law and its ignorance may not be invoked is also applied in the field of international crimes. Knowing that the provisions of the latter are recent in origin and their basis is international norms and covenants, which makes this rule characterized by some flexibility in the international field. It is the responsibility of the subordinate to prove that he was under compulsion to carry out his illegal behavior, and his lack of knowledge, which negates the moral element and consequently negates the penal responsibility accordingly. Errors in facts or errors in the law do not constitute a reason for excluding

criminal responsibility unless it results in the absence of the moral element, which is one of the basic elements for establishing criminal responsibility for the crime (Article 32 of the International Criminal Court Law).

The Third Requirement: The International Element

The international criminal law jurists tended to consider that the international element is the only element that distinguishes an international crime from the rest of the ordinary crimes criminalized by law in national positive laws, even though jurists have differed about determining the specifications of this element (Muhammad Abdel-Moneim Abdel-Khaleq, 1988: 292). There is no doubt that defining the characteristics of this international element is one of the most complex, accurate, and even the most difficult challenges that a researcher in international criminal law can face. International crime combines with a domestic crime in all its elements, but the differentiating factor is limited to the "international element" to distinguish international crime with special provisions and topics that differ from national crime. The international element of international crime is achieved if this crime affects the interests and values of the international community or its vital facilities, or else if the perpetrators belong to more than one country. The international element means the establishment of international crime either based on a plan orchestrated by a state or a group of states, and implemented by it, depending on its forces, capabilities, and means, which are capabilities that ordinary people inevitably do not have. The majority of jurisprudence has tended to consider international crime to be a violation of international law. Proponents of this view believe that the state is the only person in international law, and therefore it is a subject of international criminal accountability. However, several see that international crime is the one that fall under the supervision of one or more states that are prejudicial to the interests of the international community. With this description, the presence of the international character in the crime requires the presence of a foreign element, such as the nationality of the perpetrator, the nationality of the victims, or the interests that have been damaged as a result of the criminal behavior. Many jurisprudences directed the arrows of criticism against the requirement of the foreign element, as mentioned in this study to say that the international element is exist. Then, the crime is classified as international instead of domestic crime, which is not acceptable as some believe.

What is the ruling on the genocide crimes committed by the Nazi German government against the German Jews? Both the original perpetrator and the victims in that crime are of the same nationality and from the same country and belong to the German state (Abdullah Suleiman, 1992:148). Some jurisprudence has also tended to adopt another criterion to say that there is an international distinguishing element of international crime, which is the commission of international crime based on an international conspiracy or planning. But this proposition has not escaped criticism because the idea of conspiracy or international planning is vague on the one hand. In addition to the fact that certain national crimes are committed according to the method of international criminal planning such as espionage and counterfeiting currency. The alternative criteria that they see as valid to distinguish between

international crime and domestic crime are the criterion of prejudice to the "international interest" (Al Sayed Abo Attia, 2015:43-44) As the real criterion in the international element is the attack on international interests regardless of the perpetrator and the victim. Thus, it can be seen with certainty that the criterion that can be taken as a criterion that distinguishes an international crime from a national crime is the criterion of prejudice toward the international interest. The presence of the three elements is necessary for the international element of crimes against humanity to be a widespread or systematic attack directed against a defenseless and civilian population so that their criminal acts become part of a widespread attack. This has happened in many countries, such as the crimes committed in Syria, including murder, torture, rape, and deportation, all of which are crimes against humanity that fall under the subject matter jurisdiction of the International Criminal Court. But the Court cannot exercise its jurisdiction over the civilian issue in Syria unless the Security Council refers the issue to the Prosecutor under Chapter VII of the UN Charter. The Syrian Republic has not ratified the Statute of the Court, and therefore even if the Prosecutor of the Court was able to start an investigation into the crimes committed in Syria based on the complaints submitted by the states parties to the Court. They would not be able to complete it as a result of the Security Council's right to decide to defer considerations submitted Before the Court (48) 10/20 (Qala Farid Ibrahim,2014: 159 Based on Chapter VII of the Charter of the United Nations and based on the Statute of the International Criminal Court and because of the events that took place in the Darfur region. these crimes were classified as international crimes, this file was referred to the Prosecutor of the Court, to investigate all the crimes committed even though the Republic of Sudan is not a party to the Primary law. However, at the request of the Prosecutor, the Pre-Trial Chamber issued a warrant for the arrest and detention of Sudanese President Omar Hassan Ahmed Al Bashir on charges of war crimes and genocide, as the United States of America exerted all pressure on the Court to issue a warrant of arrest. Although it is not a member of the court and has a national law that expressly states not to cooperate with it in any way. Although the Republic of Sudan as mentioned above is not a party to the court, the accused and victims belong to a country that is not a member that has ratified the court system. Some believe that subsequent developments have proven beyond doubt that the goal is not to solve the problem of Sudan, but rather to use it as a pretext to interfere in the affairs of this country. In order not to confuse the reader, it can say that what occurred in this contrary is considered a war that was between the government and the Justice and Equality Movement, which resulted in the loss of a huge number of lives and property and flagrant violations of human rights, just like wars. Hence, the Darfur region issue was exploited to serve purposes unrelated to reconciliation, but rather it may have torpedoed the stalemate of reconciliation that was led by some Arab parties in the past, such as Qatar and Saudi Arabia (Linda Bishoy, 2019:39-57)

CONCLUSION

It can be concluded at the end of this research that international crime is a very serious and important crime. Then, its perpetrators must be punished severely, because it is a crime of great danger to the international community, and the

warring countries must study it and not carry out criminal acts because of its dire consequences. This research explained the significance of international crime through its definition, identification of its elements, its legal nature, its rooting, and the identification of crimes that fall under the name of international crime. The development of crimes necessitates that do not lose sight of international crime and its importance and redress to prevent its occurrence and its commission, especially during the international war as well as the non-international represented by internal armed conflicts. Accordingly, the authors reach these findings as follows

1- Urging the development of the national legislation of countries, and linking their coordination with other countries to achieve very important goals. The most important of which is facilitating security cooperation and the development of legislative systems, with the presence of integration between the legislation of countries. Besides that, dealing with international crime from the national judiciary like any other crime is a big mistake that most national legislations fall into.

2- The result that the perpetrator achieves in the criminal crime is aggression against the interest of another individual or the interest of the state. In contrast, the result that the perpetrator of the international crime reaches is aggression against an international interest, and among international crimes that occur in peacetime, some of them occur in the time of war. There are likewise forms of them that can take place both during wartime and peacetime, including crimes against humanity.

3- Whatever the form of international crime, the law applicable to it is international criminal law, even if the perpetrator was a state. Besides that, it cannot be said that the penal law will be applied between countries in this case, as it is not possible to imagine the existence of a law in this sense. Though, there is no higher authority than countries that can apply deterrent sanctions to them in case they violate international law.

4- Strengthening the bonds of international cooperation with other countries in the judicial, legal and technical fields, especially in the field of extradition, through the conclusion of bilateral or multilateral agreements.

5- International crimes must be stipulated within national legislation while encouraging the universal jurisdiction mechanism, which will always make the criminal fearful and always cautious during his movements. This in itself is considered a punishment for isolating the criminal and making the deterrence of international crimes between the international judiciary and the national judiciary.

6- It is necessary to reconsider and contemplate the penalties prescribed for perpetrators of international crimes, at the national and international levels. Especially the latter, which was widely criticized that made criminal law jurists doubt the seriousness of this punishment, which is not commensurate with the crime. Establishment of special courtrooms at the level of national courts, whose task is to prosecute the perpetrators of international crimes or everything that would take these crimes through infringement and violation of human rights. Deterring international crimes requires great experience in the field of investigation and a qualitative strategy in prosecution. Moreover, raising awareness at the national level, starting from schools to other facilities,

to educate people about the dangers of the repercussions of insecurity and intolerance, while learning patriotism to generations.

REFERENCES

Abdullah Suleiman: Basic Introductions to International Criminal Law, Algeria, 1992.

M. Cherif Bassiouni, Crimes against humanity in international law (2nd edn). The Hugue kluwer international law, publisher, 1999, p66.

Muhammad Mohieldin Awad. Studies in International Criminal Law. Journal of Law and Economics, December 1965 - Issue Four - Thirty-fifth Year - From pp. 1031-1102 “Types of Special International Crimes”

the Nuremberg Statute, Article VI

the Tokyo Statute, Article V

the Rome Statute, Articles 25 and 77 of

.G. Graven: Cours de droit penal international - le Caire, 1955.

Fakir Polonwar bin Al-Siddiq. War Crimes in the Light of the Provisions of International Humanitarian Law, Edition 1, Dar Al-Ayyam for Publishing and Distribution, Jordan, 2015.

Jaafar Abd al-Salam Ali: International Crime and its Consequences, Issued by the Arab Lawyers Union, No. 1 and 2 in 1988,

Hassanein Ibrahim Saleh Ibid: Ibid., op. cit, p. 21, and Claude lombois: Droit Pénal International, op - Cit, n.51,.

Sawsan Tamrakhan Bakkah, Crimes against Humanity in the Light of the Provisions of the Statute of the International Criminal Court, Ph.D. thesis, Faculty of Law, Cairo University, 2004.

Ramses Behnam: International Crimes, Research Presented to the First Conference of the Egyptian Society of Criminal Law, unpublished, p. 10.

Mohamed Mounis Moheb El-Din: International Crimes and the Egyptian Penal Code, working paper presented to the first conference of the Egyptian Society of Criminal Law, unpublished, 1978 AD.

Abdullah Suleiman: Basic Introductions to International Criminal Law, p. 101.

Fattouh Abdullah Al-Shazly International Criminal Law Fundamentals of International Criminal Law. The General Theory of International Crime. 2016

Muhammad Abdel-Moneim Abdel-Khaleq: international Crimes - an introductory study of crimes against humanity and peace and war crimes. 2014

Muhammad Abdel-Moneim Abdel-Khaleq: The General Theory of International Crime, 2000

The Polish jurist “Labkan”, which consists of two syllables, the first of which is Greek genos (origin or race), and the second is Latin, cide (murder). See: Abbas Hashem al-Saadi, op. cit., p. 93.

Majed Ibrahim Ali: The Law of International Relations, previous reference, p. 340. Hussein Ibrahim Saleh Obaid: International Crime, p. 20.

38 Daniel Dupras, Resolving Conflicts Between Treaty Provisions And Domestic Law, and government Division, February 1993, P.8.

Qala Farid Ibrahim, The International Criminal Court and its Jurisdiction for Crimes against Civilians in Syria, Journal of Human Sciences (Zanco), Salahaddin University (Erbil, Iraq, 2014, p. 159).
Linda Bishoy, Arrest Warrant of the Sudanese President between the Statute of the International Criminal Court and the International Reality, Al-Bahith Magazine, First Issue, Muhammad Sharif University Assistants (Souk Ahras), 2019, pp. 39-57.