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INVESTIGATING THE ELEMENT OF CRIMINAL JUSTICE IN THE LIGHT OF INTERNATIONAL CRIMINAL COURTS

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ABSTRACT

Universal jurisdiction of criminal law is one of the important principles in determining jurisdiction of states and criminal law. According to this principle, any country may prosecute and punish an offender without prejudice to his or her nationality in respect of the offender's or nationality's crime, place of crime or the interests of the injured State. . In the twentieth century, several specialized international criminal courts were formed on a case-by-case basis in connection with the burden of numerous international crimes. The parallel and symmetrical jurisdiction of these courts clearly identifies the relationship between national courts and international criminal courts. All international documents and domestic laws have recognized these rights and spoken about them in various places. On the other hand, protecting the rights of the citizen in the process of justice demands that every person be brought to justice for the wounded so that the accused can be comforted and hopes for a fair trial in the fullest sense. At the international level, criminal authorities Permanent and occasional are good options for using the international community to fight international crime. Therefore, the International Criminal Court is the only permanent and competent jurisdictional authority for dealing with international crimes, but some restrictions, such as the need to refer the situation of international crimes to the Security Council, preclude achieving that goal which we have discussed this in this article.

INTRODUCTION

International criminal law is a set of rules governing the interpretation of international crimes, the establishment of principles and procedures governing the investigation, prosecution and punishment of such offenses. International criminal law will impose the responsibility of individual and direct criminal justice on perpetrators for international

crimes. International criminal justice, at its highest level, is a pale legal entity embedded in domestic, regional and global criminal justice systems. Although international criminal justice operates in a different territory from the domestic criminal justice and criminal justice systems, it relies on arresting the perpetrators, gathering evidence, and executing opinions and verdicts. Domestic and international criminal justice systems are intertwined in different ways [1]. The subject of crime in criminal law is social values, whose violation by criminal's results in formal social responses to punishment. One of the topics that have recently attracted the attention of lawmakers is the criminal justice process or the administration of criminal justice. On the other hand, the criminal justice process is the subject of criminal behavior that disrupts the course of justice. With the commission of the crime, the criminal justice process begins, and all those involved in the criminal justice system try to prosecute and prosecute the perpetrator. With the establishment of the International Criminal Court, hope for the implementation of criminal justice internationally flourished, but it is clear that such hope will not materialize without the guarantees necessary to support the prosecution process [2].

It is for this reason that the Statute of the International Criminal Court (hereinafter referred to in Articles 70 and 71 as "Offenses against the Administration of Justice" and "Misconduct in Court") support the criminal proceedings in this court. The passage of these articles was, on the one hand, the assurance of the judges to administer justice in a safe environment and, on the other hand, a warning to those who disturb the course of justice, who will be punished without any negligence [3].

The basis of competence in large legal systems

The term crimes against the administration of criminal justice encompass a variety of criminal behaviors, all of which have a common characteristic of disrupting the course of criminal justice. Examples of such offenses include false testimony, defiance of court orders, false and falsified evidence, concealment of criminal evidence, bribery, intimidation and jury threatening, etc. Undoubtedly, in all legal systems, such conduct is possible. They are punished. However, legal systems have different approaches to these crimes [4].

- **Common Law**

In the Common Law system, there is no such thing as "crimes against the administration of justice", but two sets of rules cover this area of the criminal system. The first category is the jurisprudence-based rules of the Common Law system, which are not rooted in the above-mentioned rules. These provisions include general headings and extensive references. Court of Contempt, Perverting justice of course and Perjury fall into this category [2]. There is no precise definition of these crimes in the Communal system, and judges have broad jurisdiction to impose punishment. In general, it can be said that insulting the court is any act or omission that is intended to humiliate the court or interfere with the course of justice or the administration of justice, and may include the following conduct: insult in court, contempt of court or prosecutor, and Interference

with the proceedings [3]. In another classification of this crime, they are divided into Criminal contempt and civil contempt:

A. Criminal insult involves criminal behavior that is committed to prevent the administration of justice.

B. Civilian insult involves conduct that leads to disobeying judges' orders. It is also a crime to divert the course of justice from the crimes under the Common Law system, and includes any current act or omission intended to distort the course of justice [4].

The crime of false testimony also involves telling the court all the important things that are considered to be effective in a hearing. The second category is subject to the rules of the law, where crimes can be prevented by the police from performing their duties and escaping or escaping from prison. In the pursuit of these criminal behaviors, the legal title of these offenses is first examined in the statutes of the subject and, if found, is subject to the jurisprudence of the Common Law system. That is to say, second-degree crimes take precedence over the first [5].

- **Civil Law**

In written legal systems, the legislator's approach to the issue of crimes against the administration of justice is somewhat different. In this system, the legislator is trying to clearly and explicitly criminalize criminal behavior that disrupts the administration of justice. In such systems, general titles are avoided, which have numerous instances and ambiguous territory. Such a procedure guarantees compliance with the principle of the lawfulness of the crime and punishment. That is, both the crime and the amount of punishment are determined by law. Such an approach would allow certain courts to have jurisdiction to investigate these crimes. In the Iranian penal system, for example, only public courts have jurisdiction to prosecute a false witness, although the accused has committed it in the Revolutionary Court. In this regard, we can mention the French Criminal Code, which has a chapter on crimes against the administration of justice [4].

The basis of jurisdiction in international criminal law

Because of territorial and extraterritorial jurisdiction and the involvement of individuals in activities that transcend political boundaries, criminal activity on the territory of a state, in terms of international elements, may result in a dispute between two or more governments or even international courts in the claim. Exercise competence based on different principles. However, which domestic or international court has jurisdiction? Although in international criminal law for the sake of preserving the sovereignty of governments, contrary to private international law, there is no definitive answer to this question and there is no conflict resolution rule, cases can be found where the court has abandoned its sovereignty and another. Declares it competent and will thereby resolve the conflict of jurisdiction, resolve or prevent such conflict. However, there are rules and solutions in the field of international criminal law that can be used to resolve a conflict or to prevent a conflict of jurisdiction from occurring [3]. The emergence of transnational crime necessitated a review of the principles of territorial and personal jurisdiction, followed by universal

jurisdiction as the legal basis for dealing with international crimes. Regardless of the origin (customary or contractual) and the nature (mandatory or optional) of universal jurisdiction, the exercise of universal jurisdiction requires conditions that can be extracted from various sources of international law [6]. These include presence of the accused, legality of the offense and punishment, prohibition of double punishment, reciprocal punishment, knowledge of the law and observance of international obligations. While there is no doubt that some conditions, such as the principle of reciprocity, the principle of the rule of law, the principle of the existence of a private plaintiff, face certain challenges. The exercise of universal jurisdiction can help maintain international public order, provided that the requirements of national jurisdiction are met [7].

It can be argued that the jurisdiction of the case-law on criminal cases against the administration of justice is a matter not stated in their statutes; rather, it is one of their findings when dealing with cases; Those who interfere with the administration of justice; the scope of this jurisdiction is to a degree that guarantees the exercise of jurisdiction granted by the Statute; the content of that jurisdiction is also clarified by reference to conventional sources of international law [8].

Establishing an international judicial body from wish to fulfillment

As countries resorted to war overseas to provide for their needs and to access gold, diamonds and oil reserves, phenomena such as murder, looting and rape internationally became widespread [6]. With the passage of time and the rise of human rights concepts, the pervasive actions against human beings, especially women and children within countries and the international arena, have been heavily criticized and a view has emerged that human rights violators should to bring justice. With the passage of time and consideration of the Balkan events and the result of the trials of the criminals in these two countries, the perspective of counter-punishment came closer to being fulfilled than in 1980, when Latin American countries proposed the International Criminal Court to the UN General Assembly. They gave. The proposal was finally finalized in 1998 after much scrutiny and the statute of the precious body was ratified and signed by 120 countries [9].

The Tribunal can be attributed to the centenary efforts of the international community to disrupt the international order [3]. The most important feature of the Tribunal is that its establishment is the result of a worldwide partnership with the United Nations and was not based on a five-member Security Council decision. One of the features of the Divine Statute is that the offenses foreseen are the result of past events, and the criminalization of these acts in the Statute means that these offenses have acquired the character of customary law and that the world has been subject to genocide, murder, looting, Rape and torture have been marred and call for non-discriminatory treatment of the main perpetrators of these crimes [10]. Some authors believe that the International Criminal Court is a fragile and weak institution and may be a preliminary and short-sighted plan like that of the United Nations. He believes that although the Court has been backed by states and its existence suggests a worldwide passion, its success with the current mechanism is unlikely to succeed [11].

Factors Influencing Countries' Foreign Policy

In formulating their foreign policy, countries take into account several factors, including geographical location, geopolitics, and the structure of the international system. Accordingly, they adopt three types of policies: 1) cooperation, 2) competition, 3) chivalry, which seems to be of little importance to the Security Council members compared to Syria's geopolitical position. It is also the structure of the current international system in a way that unlike Syria, Libya did not define its foreign policy in a cooperative manner with Security Council members, in addition to the foreign policy of Security Council members in referring the Syrian situation to a militant court. The policy has led to a dispute between the court and the court. Thus, the Security Council cannot fully guarantee the administration of justice in the Tribunal, and in cases where a State's referral to the Tribunal is in conflict with its members' foreign policy strategy, the Security Council will be an obstacle to non-punishment [12].

Establishment of a mixed court

The formation of a mixed court could be the result of the international waiting for criminals to be tried in one area. In some circumstances, we see that not only does the national effort for peace fail and the peace talk’s lead to failure, but the criminals become so ruthless in the crime that there is no other way than to punish the perpetrators [13]. The people of the land are not cruel. In such a case, the International Criminal Court will be the first authority to prosecute these criminals, but assuming that there is no adverse situation in the tribunal, one solution would be to establish a mixed court. As with the solution above, it has its drawbacks [14].

The establishment of a mixed criminal court in Syria will be subject to non-punishment and the administration of justice in the absence of trials in Syrian domestic courts and tribunals. One of the features of these courts is the combination of national and international judges and staffs in such a way those international judges and advisers can work alongside domestic staff. In fact, the participation of international judges not only makes the judges of this tribunal more specialized in the presumption of formation (rather than national judges because international judges have greater expertise, knowledge and expertise in prosecuting human rights abusers). Rather, it ensures that the principle of impartiality is guaranteed in better proceedings [15].

Although the foregoing acknowledges the benefits of forming a mixed criminal court for Syria, the formation of such a court would have disadvantages. The first negative feature of this tribunal would be the involvement of the dominant group in the pursuit of the defeated group and could lead to trials that, in some view, violate the principles of fair trial, as was the case for the Cambodian Extraordinary Branches [16]. The second negative feature of these courts is the challenges such as financial instability, lack of government cooperation internationally, lack of cooperation by local authorities. In addition, one of the pillars of these courts is the Security Council resolution. Therefore, it is unlikely that the Security Council will issue such a resolution, because if such a will exists

within the Council, this will be done in the form of a referral in accordance with Article 13 (b) of the ICC, rather than an institutional constitution [17].

Proceedings in the domestic courts of a third country

The rationale dictates that, even if domestic courts in one country and an international criminal body have tried to prosecute violators of human rights, it is not reasonable to refer to other courts in the country. But when the two institutions said before that they could not do justice for some reason, it makes human reason to believe that a different mechanism must be chosen to counter the punishment. But the question is, is there such a mechanism? What are the limitations or deadlines of this mechanism? Can a mechanism be found to get out of this impasse? In answer to the first question, it should be noted that there is a mechanism in international criminal law called universal jurisdiction. The reference to universal jurisdiction is to be heard in a domestic court in a country where neither the accused nor the victim is a national against its nationals or the crime in its territory [8]. In justifying this type of jurisdiction, states have stated that when the punishment of certain criminal acts by the International Criminal Court is practically seriously impeded by legal or even legal impediment and the national courts of a State are willing or able to prosecute perpetrators. Not having international crimes is the inherent mission of countries to fulfill the high goal of international criminal law, namely the fight against non-punishment of society [18].

Various countries around the world have laws in place that none of them alone can guarantee the proper implementation of universal jurisdiction and act in non-punishment. Although these countries have also conducted trials under these laws, they have failed to prosecute perpetrators of international crimes without restriction. Among these laws, Belgium had a law that was a vanguard of international criminals [19]. The above points to the fact that in addition to the national courts in one country and the International Criminal Court, there is another mechanism called universal jurisdiction. It is obvious that the implementation of this principle, as encountered in Belgian law, may be subject to restrictions such as the impunity of officials and political representatives of countries [20].

It should be noted that the absence of immunity from non-international authorities and the absence of a country that applies comprehensive law and a barrier to universal jurisdiction in the face of non-punishment in Syria indicate that this principle cannot currently be applied. For there must first be a country whose domestic law has prescribed universal jurisdiction by the national courts of that country in respect of serious human rights crimes, which in the present situation appear very unlikely to exist [21].

Establishment of a court with the conclusion of a treaty

A treaty or treaty is an international agreement concluded between countries and international organizations that are subject to international law [2]. A treaty or treaty is a generic term and encompasses convention, international agreement, agreement, protocol, treaty, covenant, etc. The name chosen for an agreement is not by itself significant and has no legal effect. Although the Vienna Convention on the Law of Treaties defines a

treaty as a written agreement, verbal statements are sometimes considered binding [5]. The treaty or treaty in the field of domestic law is comparable to the laws of the legislature. But the important difference between the two is that the provisions of the treaty are applicable to the states that have agreed to them and usually do not apply to the public. Indeed, in domestic law, individuals are not allowed to choose and escape the law but members of the international community have this right [11].

In principle, states can work together through agreements between governments to combat international crime. In general, government cooperation in combating criminal offenses has the following characteristics: (a) because it is contractually based; (b) the crime considered in the legal systems of all parties to the crime is criminal. (C) The offense in question does not have any of the features of impartiality of cooperation by the State; (d) the requested State Party itself is unwilling or unable to deal with the crime in question [16].

Nowadays, this type of cooperation encompasses a wide range of measures, including criminal investigation, trial, interrogation, witness testimony, inspection, and investigation and prosecution services [17].

The process of administering criminal justice in mixed courts and the International Criminal Court

One important argument in favor of the mixed courts over the purely national courts is the capacity of both the tribunal and the tribunal itself. From the point of view of member states, a country may be so devastated by war or violent conflict that its judicial capacity to deliver meaningful justice after a conflict is greatly weakened [13]. Then there should be a mixed international criminal court, and it will also be useful for the future capacity building and judicial development of the country. As an example of this, and argue the capacity of a very important logic advocate of the planning of the International Criminal Tribunal for the Interior in the Democratic Republic of the Congo for the prosecution of international criminal offenses. It is only a small fraction of human rights violations to be heard in any particular situation [15].

Moreover, the Office of the Prosecutor General's Office has incorporated its policy of surveillance and prosecution of those most responsible for the most serious crimes in its most sophisticated pursuit strategy. In this regard, we should consider the use of interlocutory instruments as a complement to the International Criminal Court. Often referred to as fairness as one of the most important features and justifications of the international criminal justice project and in the exclusive jurisdiction of the various tribunals [19].

At a practical level, there are, of course, significant benefits to addressing the masses in the internal context. Proximity to evidence and witnesses will certainly facilitate speedy trials. From a cooperative perspective, countries have easier access to domestic proceedings because countries do not have to surrender their jurisdiction to prosecute their own nationals, and this is often seen as a critical aspect of sovereignty. However, national courts deal with a variety of cases. Given the fact that international crimes are often government-sponsored crimes, domestic mechanisms will be unreliable and biased [16]. In the meantime, there is a risk of

demonstrative trials and greater justice if the government is replaced after the conflict. This danger is reflected in the biased prosecution and justice of the conqueror with the subsequent prosecution of two domestic courts specifically designated to deal with international offenses outside the jurisdiction of the International Criminal Court [20].

In relation to the offenses committed in situations falling within the jurisdiction of the International Criminal Court, for reasons of fairness and equity, there may be arguments in favor of the establishment of mixed courts. A State may, by enabling internationalization of its internal judicial system, institute a genuine and fair internal hearing to prevent the hearing of a case or situation before the Criminal Court under Article 17 of the Statute. The Court is obliged to distinguish acceptance in accordance with the principles of due process of law recognized in international law [21].

CONCLUSIONS

Changing International Criminal Policy Procedures from the International Criminal Tribunal to the International Criminal Tribunal In fact, using the experiences of international criminal justice system developments, the international community, the challenges and challenges faced by the international community. The role of such courts in the progress of international criminal policy has become increasingly important, and the effective components of such courts, including the flexibility and composition of regulations that have led international courts to carry out their duties and duties in accordance with their duties and responsibilities. The mixed courts are the most prominent manifestation of a holistic, pluralistic and global approach to international criminal justice. These courts transcend the traditional dichotomy of international and domestic courts, both of which are introduced as two legal systems where justice is exercised in accordance with international law. Sometimes they present content, they lack this duality. Sometimes, a legal policy tailored to their structure and manner of action must be adopted to resolve the non-punishment gap that is felt due to the limited capacity of the domestic courts and the International Criminal Court in international courts.

However, despite the importance and belief in interference in international courts, its shortcomings cannot be denied. Before examining the formation of new mixed courts, we must first examine the shortcomings and drawbacks that the mixed model has had to date. Therefore, given the uncertainty of international judicial authorities over the jurisdiction of countries where international crimes occur and the complete lack of trust of governments in judicial matters, both of these points are manifest in the principle of supplementary jurisdiction of the International Criminal Court. It may be possible to establish mixed international criminal courts as a point of peace and a credible focus of both domestic and international judicial systems.

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