Obligatory International Co-Operation in the Field of Internal Justice

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Abstract

The study entitled Obligatory International Co-Operation in the Field of Internal Justice aims to clarify the existing co-operation between many countries directly within the framework of the international community, and this is also done through international bodies of various kinds whether global or regional or political or technical, according to many articles that have achieved the principle of co-operation as a legal basis for international organization at the present time. The study also tackles the issue of reducing crimes and how to punish those who commit these crimes. This is the main goal whether for international courts or for the internal courts. The study also attempts to reveal the common principles between the international court and the courts through the foundations relating to the accused, the foundations related to the crime and the principles relating to the punishment.

Introduction

Law in general aims to organize the social relations. There fore it should accompany the different passive phenomena which appear in the different societies, whether internal or international. For this purpose it attempts to comprise the criminal phenomenon. The modern states work to lay down the rules of the criminal policy. It is a strategy prepared according to ideological choices in order to meet the cases preventing the crime and suppress it. The states are obliged to pursue all the violations to humanitarian international law. It is clear that this law was formulated only to protect the society and to secure its stability. The task of the local law is not formulated to the necessary rules to solve the violations take place in another society, because the legislations of each state rely on the establishment of means to guarantee the respect of the laws issued by the state . According to these rules, the national courts do not have the benefit of the specialization to look into struggles which occur outside the state.

Moreover, and after getting the encouragement of the internal legal establishments to practice their specialization, they establish international legal establishments or they resort to them. The national judges are called to reveal the objective rules which can be implemented before setting up the most active mechanism for reconciliation.

In order to point out that, we will deal with the penal custody in the first chapter. The second chapter is allotted to the study of the bases which govern the cases put in front of the international justice.

The study aims to:

- Clarify the co-operation of the states with each other directly within the frame of the international society. Throughout the different international corporations , international and regional or political or technical and in accordance with the numerous texts which lay down the principle of co-operation as a lawful basis for modern international organization.

-The revelation of the role of the legal , penal custody for the national courts on the crimes of mass killing, kidnapping and others which violate the laws of the people or the local laws.

-The study of the joint principles between the international court and the national court through the bases related to the accused and those related to the crime and the principles related to the sanction.

Significance of the Study

The significance of the study lies clearly in the fact that limiting the crimes and looking for the criminals forms the prime goal whether for the international courts or the internal justice. To achieve this, it is felt necessary to find an international

justice system. Moreover there should be an international co-operation to achieve the internal justice. This will be revealed throughout this research.

Problem of the Study

The problem of the study lies in the emergence of the organized crime on both national and international levels as a phenomenon which threatens the security of the society. One of the international lawful principles becomes a representation of the co-operation which is in the front of the goals covered by these corporations .

Quevies regarding this study:

1. What are the reasons that led to the emergence of the organized crime ?
2. What are joint principles between the international court and the national courts ?
3. What are the bases related to the accused and what are the bases related to the crime and the principles related to the punishment ?

Methodology

The descriptive approach has been used, which is among the methods used to solve the humanitarian and social problems, for it has many characteristics which represent the characteristics distinguishing a group of individuals.

The Hypothesis

The intervention of the role of the penal legal custody of the national courts on all the crimes and mass killing and kidnapping and other crimes which violate the laws of the people or the local laws.

Chapter one
The Penal Judicial Custody

The national courts have an international judicial custody on the crimes and mass killing and kidnapping and other crimes which violate the laws of the people or the local laws.

The national courts are still having the right to punish the criminals of the international crimes. The principle is not to follow the criminals , but the judicature, therefore it still has the original judicial custody and the general custody, on the exception of the inability to transfer of what is not possible to deal with matters out of its task such as the international court of justice , because it is not in the realm of the judicial custody. Since it is impossible to sentence a person according to the rules, therefore we will treat this subject in this chapter through two requirements.

The International Crimes in the Internal Judicature

The judicial custody of the national courts exists to follow up the international crimes. In many cases the accused and the deed refer to the same place, in other cases external factors exist. We do not find an opposition between two national courts or between a national court and an international one. To restrict a country on its lands is relative, because the arbitrary or the international will except the judicial regional custody. In this case it is possible to replace it by a judge from the place where the crime is committed.

It is possible to look clearly at the actual reality that the application of the principle of the region of the law does not conform with modern world. There are problems related to the human beings . Thus the emergence of the principle of the character appears in the national judicial custody. The law specialization gives the state the authority of applying the penal law on the state itself, regardless of nationality of the criminal or the place where it occurred Any crime which touches the criminal's interests or the internal security may be a case of non-confidence in another country or there is no use of chasing the person.

According to this principle, the national courts have the ability to stop and pursuing the crimes which form a threat to its security on the precautionary principle, because of the protection principle or the safety principle. This will be dealt with in this section through the following:

The Characteristic Base for the Judicial Custody in the Region

The characteristic principle lies in the penal law to the nationality restrains and it applies the text of the national penal law on any crime committed by the citizens of the country regardless of the place. On concentration on the foreign criminals, and the victim is a citizen regardless of the culprit and where, the negative part will be applied on the crime event. The character principle puts the base for the

eradication of the crime in the field of the international co-operation. Thus it is found necessary to apply it on the international crime and to review the intervention as a characteristic principle in the national penalty law. Does the state take into consideration the norm of the nationality to apply the principle of the penal law's character?

It is possible to have one of the struggling parties with the nationality of the international judicial custody for the national court on the defendant who holds a national nationality, and he is an individual not regional , and it is lawful based on the character of the person who is careless to the laws of the zone , for he bases his matter on lawful principles. Thus he is lawful because he is not restricted to a certain conflict(1).

Some of the legislations exaggerate this sense and make the nationality officer a general

Criterion for the court specialization whether he is on the opposition or he is accused or victim

Such as the French legislation. This legislation is confronted with the criterion in the Jurisprudence because the study of law nationality privilege is one of the obsolete things which.

Does not cope with the modern view.

The comparative legislation is submitted to the rules of judicial custody , because of the

Difficulty of taking the defendant to the court and the imitation of the defendant from a citizen Contradicts the traditional concept that.

The citizen is innocent, for those who defended the opposite request the claimant and adopt Other measures. Putting the defendant under the mercy of the claimant, this may consider the Judgeas bad, and makes the defendant to adopt a difficult mission finally.

One of the important features is the sovereignty of the judicial state on its citizens, the sovereignty Is a responsibility of the judicial state i .e, to sentence its citizens without an external intervention.

Regardless of the criminal deeds of the foreign countries, only under special circumstance

Called by some persons the active personal judicial custody when the participant in the international Crime carries the nationality of that country.

To compare it with the positive character,the principle of the negative principle is connected to the victim. It states to follow the culprit, this principle is to protect the foreigners. It is called the victim's law. A case of a person who was supposed to be sentenced in Mexico and a punishment issued against him when he was there , but the United States of America objected this trial and insisted that he should be sentenced in his country according to the law of the defendant, but Mexico refused

(1) Khalid Jawad Al-Jash'ami , International treaties and the national sovereignty 1edition Zain Bookshop , Beirut, 2o14, pp. 24-23.

according to the principle of the passive character. A meeting, nearly condemning, was held only because the nationality of the victim is connected To the victim himself, because it carries political bases. In the historical stage it was believed that.

The arrival to the judicial system is restricted to the stat, but this contradicts with the new

Concept of the judicial custody regardless of whether he is a citizen or a foreigner, it is An idea of the judicial justice(2).

Some states exaggerate to extend their privilege on the crimes taking place out of its places , which is called The passive nationality principle. The United States of America is one of the states which confirm This principle i.e., to extend its privilege to sentence persons who carry a nationality of other countries, On crimes committed by citizens abroad(3). It is possible to have an attack against a second country As in the war raged by The United States of America against terrorism.

The Sameness Principle

The protective principle is represented by the spread of the national custody on crimes which Violate the basic privilege of the state or the security of the homeland. It is possible that the State punish independently anything which threatens its basic privileges(4)

We notice that there is a connection between the actual judicial custody and the passive personal judicial custody .It demonstrates the penal custody to be one of its basic elements to begin the international penal Custody, it is different from the goal of the international court which protects the basic privileges Of humanity at large regardless of the nationality of the victims Jurists refer to the principle of the protection of the state privileges as “an objective text” or “an active Judicial specialization”, because it is related to the kind of the committed crime not the doer of the Crime(5). It is often that the lawyers use the term –the general direct judicial custody which is called The general specialization , because it is found in the state courts without specifying a special Court. The judge, therefore, will apply their local law regardless of the parties of conflict or the Nature of it, as far as the court specialization is in conformity with the norms of the judge,and without Limits or obstacles to the custody putting into consideration the conflict submitted to the general custody.

Maybe described by some people as a contradiction to the judicial specialization and some others Consider it as international specialization . The case ,then, is

(2) Jihad Al-Quthat, Dar Wa’il for publishing and distribution , Jordan , 2010,p..47

(3) Muneera Su’ood Mohammed Abdalla Assiba’l – the guarantees of the accused –Cairo, 2010,pp. 74-73.

(4) Abu Al-Khair Ahmed Attiya , The international penal court, Cairo, 2006, p. 30.

(5) Nisreen Abdulhameed Nabeeh, “war crimes”, New university offce, Alexandria, 2010, p.123.

called indirect general specialization[6].

The specialization of the judicature is to bestow the authority of the state lawfully i.e., the members of the judicial corporation. All these measures are taken and the decision becomes final .

If the judge gives a judgment which trespasses the general specialization of the state , it is considered A dictator judgment when he appointed in a position outside the judicature , and his position becomes absent and without an authority[7].

The majority of states adopt the principle of expanding its custody in order to protect its privileges. It imposes that all the agreements and protocols should be within

Judicial frames , therefore the individual states in the lawful system may put the custody on the culprit in its districts . The international agreement in each state does

Not allow to sentence the persons on its districts , those who are not of its citizens, to be sentenced of a crime committed outside its districts, simply speaking that do exist on its districts, except in the case of banishment[8].

The concept of sovereignty is the essence of the traditional structure in international relations and the basis for states to exercise their relations in accordance with international law. In recent years, the world has witnessed several major changes that had a profound impact on the formation of current international relations, and led to a qualitative deterioration in the status of sovereignty in international law against new principles on the international scene(9)

The concept of sovereignty is relatively new in its contemporary concept, as it has witnessed a historical background. At that time, it was common for kings or rulers to have only sovereign rights, which were then passed on to priests. This was in support of the Pope's ambition to seize power and then he moved to France and formulated the theory of sovereignty around the fifteenth century.

And in the struggle between the French monarchy in the Middle Ages, to confront the Emperor and the Pope to achieve external independence, and to achieve the supreme internal rule of the feudal lords.

The Charter of the United Nations stipulates the principle of sovereign equality, that is, every state is equal in enjoying rights and fulfilling obligations with other member states, regardless of its origin, the size of the government and the form of government, but the five major powers retain and accordingly, the power is inconsistent with the principle of equal sovereignty, In modern customs, the term

(6) Mahmoud Sharif Basuni, The international penal court, AL shuooq House,,Cairo, 2004, p.18.
(7) Khayati Mukhtar ,the role of the penal judicature in the protection of human rights,M.A Thesis ,Algeria,2011, p.156-155.
(8) Salwa Youssef Al-Akibi, "Referral to the International Criminal Court", 1st edition, Dar Al-Nahda Al-Arabiya, Cairo, 2011,p.43.
(9) Muhammad Talaat Al-Ghunaimi, Mediator in the Law of Peace, Mansha'at Al-Maaref, Alexandria, 1982, p.318.

sovereignty has been replaced by the term national independence.

There are two aspects of sovereignty: External appearance: It manages relations with other countries according to the internal rules of the country to manage its foreign affairs, determine relations with other countries, the freedom to sign contracts with them, and the right to declare war or maintain neutrality. External sovereignty is synonymous with political independence, according to this independent country, sovereign states are not subject to any foreign state. All sovereign states enjoy equality, and therefore the organization of diplomatic relations is based on independence(10).

As for the internal appearance: He will extend his authority over all subjects by extending his authority within his territory and his mission, and applying his regulations to all subjects. For them, this is a privilege and does not limit or limit the power or sovereignty of the state, it must be redeemable, and within the country there should be no power more powerful than that of the country. With regard to sovereignty, the state is divided into two parts: Section One: Fully sovereign states are not subject to the supervision or control of other states in internal or external affairs, are not subject to their jurisdiction, and are free to draft or amend their constitutions. The second section: A state that lacks sovereignty cannot enjoy the basic authority of the state because it is subordinate to another state or to an international institution that has certain capabilities, such as a country that is subject to protection, authorization or guardianship, such as a colonial state, and this independence or dependence does not affect the actual existence of the country, it is It is not a permanent division, but it will change according to the changing circumstances of each country(11).

Accordingly, there is no dispute over territoriality It is implemented within the limits of the national Districts(12) All will be submitted to it whether they are in the land, sky, or sea, and whether that of the National or foreigner or those described as refugees or displaced(13).

The first who called for the theory was the jurist Jerosius(14). Punishments on the international Crimes according to the saying: the national punishment or the principle of regionalism . In some other cases Such as the marine piratical actions the custody is for the state which detained the criminals in the high seas .

It is to be imagined to impose the punishment with the resort to the delivery of the criminals.

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(10) Abdul Karim Alwan, Mediator in Public International Law, 1st Edition, House of Culture for Publishing and Distribution, Amman, Jordan, 2007,p.10.

(11) Abdul Karim Alwan, Ibid, p.13.

(12) Munasir Said Hamooda , Human Rights during the Armed Struggles New university offce ,Alexandria , 2008, p.155.

(13) Ahmed Mohamed Abdel Latif, "The International Criminal Court", The Egyptian General Book Organization, Cairo, 2012, p.299.

(14) Mohammed Dhari Khalil , Yousif Baseel , The International Penal Court, Alexandria , 2007,p.43

There is An agreement in this affair, or from an international penal court[15].

Limits of the National Judiciary Custody

There are stages in the national judicature. This will be dealt with in the following sections:

The Pardon

Pardon is considered one of the vital factors in ascertaining the national reconciliation. Its effect Abolishes the punishment i.e. the society overlooks its right in revenge upon a criminal who violates The rights which were protected by the law. It is one of the deeds of the inaccessible free sovereignty From resuming It may take other forms such as the national reconciliation[16] Pardon is considered one of the reasons To avoid punishment.

Pardon from the punishment exempts the sentences from the implementation of the fault or to Change the severe punishment to lighter one. In order practice this right , it should be issued By the president . In case of the special pardon , it will consume all other sentences. It is a personal Measure given to a person or more , not as a kind of crimes. Pardon used to be an obstacle in front of the achievement of justice and investigation in the big Crimes especially it is mentioned in the local law, therefore different intentions are found. Contrary to the public pardon which is applied with a retroactive effect, the pardon is valid in The future with effect from the date of judgment . Therefore the condition of the pardon is Necessary for the issue of judgment. This is a final judgment[17].

As regards pardoning a crime according to the acceptance principle, its implementation Requires the issue of a law according to constitutional bases ,and according to the principle: the law cannot be abolished except by a law. The original punishment should be stopped[18].

The public pardon is accepted in any ongoing case before raising the case even spontaneously Because rejecting the case is considered a general policy . Naturally the public pardon is on the political Crimes or the political coups.

The Obsolescence

It is the elapse of time which hinders looking into the case i.e., the passing of the time specified Lawfully according to crime committed on the basis of forgetfulness , therefore, there is benefit In recalling the action .As the culprit suffers from a moral pain which will force him to improve his conduct, and the punishment is

(15) Ahmed Fanar Al-Ubaidi, Guarantees of the Accused during the Trial, Dar wayil lilnashr waltawzie, Jordan, 2012, p.43.

(16) Khalaafi Sufyan , the international specialization of the penal courts, war crimes, mass killing , Ph.D. Dissertation Mawlood Mu'mari University ,Algeria 2014, p.457.

(17) Shareefa Traiki ,the mixed penal courts, M.A thesis , Algeria, 2010, p.213.

(18) Barra Munthir Kamal Abdulattif , the judicial system for the international penal court, Amman, 2008, p.238.

not obligatory which deprive him the lawful text for the Implementation of the punishment or not judging the culprit throughout raising a case against him([19]).

There are two kinds : obsolescence of the crime, and obsolescence of the judgment.

This is followed by an elapse of considerable time which will be enough for the efface of the proofs Of the crime and consequently the criminal will be punished mentally. We can imagine a punishment Heavier than the hesitation, fear which deprive the criminal from the night comfort and the Part of the day. The theory of forgetfulness means that the society will forget its sensitivity To the crime. It is better to the social security to forget the crime and the theory of negligence.

The state loses the right for judgment and punish the culprit for the elapse of a long time

And also for the theory of lawful balance . As a result the period of obsolescence which ends the struggle This balance has priority on justice[20].

This is the period of obsolescence and the punishment on the crimes of war and anti-humanity Crimes. The law of obsolescence does not apply on these two crimes whether short or long Periods. It is a matter which prevent the criminals from escaping from the justice[21].

Not Punishing the Person Twice on the Same Action

The salient idea in the past was that the punishment does not trespass the same country. Thus it has a Passive or active meaning abroad , though a foreign country had already issued a punishment on The same action. This concept changes after the application of the internationality of the penal Law and the obligation of the international co-operation in the judicial field to eradicate the International crimes. It is not possible to confine the country within its region in a way which will Lead to the penal and regional organization.

Co-Operation Among the Countries

The international agreements and the regional agreements state that the countries are obliged To co-operate in the field of the security field such as the exchange of information and investigations Taking into consideration their interests and protecting their citizens through the surrender to Each other , with the exception of the harmed countries which are not involved by the agreement. The differences of the interpretations was according to the different legislations which are reflected directly In the national legislations which enable these establishments

(19) Salahuddin bu Jalal , the transitional justice in the Argintina sample , World experiments Days 15 ,14 April .2015, p.11.

(20) Anbdulwahab Homid, the detailed in the discussion of law of punishments ,Damascus Syria, 1990, p.1008.

(21) Ahmed Abdulrazaq Hadhum Nsayif Al-Mu'ni , the philosophy of the punishment Ph.D Dissertation , University of Tikrit, College of Law , 2014, p.152.

from expanding or lessening the Concept which forms a factor to run away from the punishment through the employment and the Gaps incarnated in the internal legislations[22].

Qualifications of the Judge

The judges should have high ethics , they should not be biased and be true . They should be of wide experience. They should be independent in their duties, they should not ask for instructions from Any government or another source[23].

The Inaccessibility

The state has the judicial custody on its land and on every person whether he is citizen or foreigner, but it is possible to make an exception and give inaccessibility for certain persons . This inaccessibility Enables them to raise penal cases against foreign countries presidents and members of the diplomatic Cadre [24].

Since the inaccessibility is restricted to the purpose of it, the constitutional accessibility should be restrained either openly or implicitly to do the deeds related to the position, especially what is related to the parliamentary inaccessibility which enables the person to do his job in the council[25].

The judicial inaccessibility was admitted for the president to enable him to do his position well which copes with the theory adopted by Vienna agreement, while the French jurisprudence to the idea of courtesy not to the idea of independence and sovereignty in the international society . Jurists are not in agreement whether the accessibility of the president is absolute or limited.

The English jurisprudence grants an absolute inaccessibility to the countries and their presidents to distinguish the general activities related to the life from the private ones[26].

The international organization is characterized by the judicial inaccessibility unless the organization will give it up frankly in a certain case on condition that this abandoning does not involve expirations elements ,except that the buildings of the organization are protected and whoever owns them will be exempt from inspection and confiscation and dispossession or any other measure whether it is administrative, judicial or legislative[27].

(22) Ali Jamil Harb, "The Theory of Contemporary International Punishment", Part One, 1st Edition, Al-Halabi Human Rights Publications, Beirut, 2013, p.433.
(23) Emanuel Dike , article of the definition of traditional penalties , the bulletin of red cross,21870 2008/12/31 p. 38.
(24) Ramses Bahnam, Criminal Procedures Rooting and Analysis, Mansha'at al-Maaref, Alexandria, 1984, p.124.
(25) Shadia Rihab , the Judiciary inaccessibility, Ph.D thesis –Al-Akhdar Batne University, 2006,p.95.
(26) Linda Muammar Yashwi, "The International Criminal Court and its Jurisdictions", 1st Edition, House of Culture for Publishing and Distribution, Jordan, 2008, p.222.
(27) Ziyad sa'ad Mahmoud Abu Taha , the specialization of the penal court , PH.D thesis in Law , university Of Ain Shams, Cairo, 2014, p.95.

In case of disagreement among the countries which form a system or organization , the principle of non-inaccessibility , in this case it is possible for the state where foreign workers work, to issue a lawful Legislation which limits the inaccessibility for the international workers, but from the juristic, it isFound that the international custom is considered a source of the inaccessibility. This means that the International custom rules are put in lieu of the privileges granted to international Organizations[28].

Due to the important role done by these organizations in the field of the international relations, the Lawful principle of the inaccessibility is correct to begin doing its duties , and the enjoyment of the Inaccessibility does not come from a private right , but it is based on the reflexive effect of the Limited privileges and the inaccessibility of the organization .

The Non-Delivery of the Criminals.

The extradition system, its provisions, rules, and effects are still not collected by a unified law that all countries are bound by, but rather is subject in its original capacity to the provisions of treaties in this regard between countries.

The most important crimes for which extradition is not permitted are:

A - Purely political or military crimes and non-exclusion in these crimes is considered one of the basic principles stipulated in treaties between states as well as internal laws and constitutions such as the treaty between Iraq and Egypt of 1931 as well as the Constitution of the Republic of Iraq in 2005, and the reason for that is the necessity of treating a political criminal with special and excellent treatment In addition, the possibility of extradition may give the requested state an opportunity to interfere in the political affairs of the requesting state, in addition to the lack of interest of the requested state in responding to the request for extradition in purely military crimes[29].

b- Crimes that are not punishable under the law of the two countries because there is no interest for the requested state to respond to the extradition request as long as the crime does not exist in its legislation.

C- Crimes that do not reach a certain degree of gravity, because petty crimes do not have a seriousness that justifies the procedures and expenses required for extradition. Therefore, the crime must reach a degree of gravity that the law specifies in order for the extradition to be permissible.

Persons who may not be extradited:

A- Nationals of the state from which extradition is requested: because the state is not allowed to extradite its nationals if it is requested to do so. This principle is followed in many treaties, internal legislation and constitutions, for fear of unfairness

(28) Abu Al-Khair Ahmed, Attiya, p.(28) -.22

(29) Abd al-Rahman Fathi Samhan, Extradition under the rules of international law, Dar al Nahda al-Arabiya, Cairo, 2011,p.139.

of the foreign judiciary towards its nationals, although the modern trend is moving towards abandoning this principle being It is based on the factor of selfishness and skepticism about the judiciary of the country that demands extradition.

b- Foreigners who are subject to the crime for which extradition is requested by the judiciary of the requested state, because there is no fear that the offender will escape punishment as long as he will be tried in every case.

C- Those who enjoy judicial exemption, such as heads of state, political agents, and the like.

D- Fugitive slaves: they may not be extradited, whether he has escaped to recover or get rid of responsibility for the crime of committing it as a slave to get rid of slavery and that this matter is justified by humanitarian factors. Caused[30].

The introduction rules to the courts result in some practical problems which impede the judiciary of The judiciary parties themselves , such as the priority of delivery and judgment . The non-priority will lead to The overlooking of the punishment as far as the defendant is concerned, especially because of the disrespect of the agreement among the countries .

The escape of the states and the non-enrolment in the international agreements make them reclusive According to the international law. Normally this escape is due to political reasons, especially when we notice that countries which escape the agreements make international crimes in both countries([31]).

Chapter Two: The Principles Governing the Cases Submitted to the International Judicature The penal justice office and the internal offices participate actively to adopt some rules and lawful Principles. In order to that we deal with the bases in the first requirement, while those related to the crime will be dealt with in the second requirement. The third requirement is allotted to the bases of punishment.

The Bases Related to the Accused

1-The Non-Necessity of the Penal Responsibility

The material execution of the crime does not always lead to the punishment of the culprit, If the Judge does not approve his penal responsibility, he will not punish the culprit. The penal responsibility Is the person who will carry the consequences of his criminal conduct. Thus the penal responsibility Is not the backbone of the crime. The penal responsibility is set up on : the sin, and the ability or support.

2-The Right in the Just Judgment

This means that any accused in an international crime has the right to submit all the evidences which Confirm his innocence or the limit of the field of responsibility The court is obliged to review these evidences before issuing the judgment The procedures of the judgment will done in an understood language by the defendant

(30) Abd al-Rahman Fathi Samhan,Ibid, p140.

(31) Muhammad bin Hassan Al-Harthy, "The Legal and Security Dimensions of the Arab State's Relationship with the International Criminal Court", 1st Edition, Center for Studies and Research, Riyadh, 2013,p.124.

after seeing all the evidences so as to have the chance Of answering and enables him to allot a lawyer to defend him [32].

3-The Origin in the Human Being Is the Innocence

The principle of innocence means that any person accused of committing a crime, regardless to the degree of the crime, is considered innocent until it comes clear to the court that he is criminal. If the origin of the innocence is an emphasis to the freedom of the criminal , therefore it comes that it is not possible to proceed doing the investigations in the procedures which do not respect his freedoms and rights, except in the case of treating the innocent , he should enjoy all the rights offered by the law to the degree that it does not make violations to public affairs.

Bases Related to the Crime

There are many bases on which the international court depends on . Some of these are[33].

The Principle of Legality The penal law is obliged by the principle of legislation ,,because the law adopts the necessary procedures To limit the crime and the punishment to limit the procedures of the state until the execution.

Non-Possibility of the Punishment on a Certain Crime Twice:

The inadmissibility of prosecuting a person for an act twice is one of the legal principles on which the criminal procedural legitimacy depends; It is justified by the application of justice and the stability of legal conditions and positions.

The application of this principle does not raise any problems in the national penal law because it has become one of the constitutional principles, as it is stipulated in many constitutions, including the current Iraqi constitution, as well as most of the national penal laws have taken this principle and some of them contain exceptions to this principle.

Many international legal instruments and texts stipulated this principle, but its application in the field of international criminal law raises certain problems related to states' adherence to their sovereignty towards some foreign judicial decisions. In more than one international charter, old and new, especially the Rome Charter of the International Criminal Court, this principle is on the way that guarantees its wide application.

Applying the principle of not prosecuting the accused for the same act twice:

Most of the international penal legislation has adopted this principle in one way or another.

There is a great difference between countries on how to implement this principle.

(32) Ra'ad Fajr Arrawi , The Discussion of the Penal Judgments ,Al-Hashimi Bookshop, Baghdad, 2016, p.35.

(33) Essam Afifi, "A set of criminal rules in criminal justice", Dr. Al-Kitab Al-Hadith, Cairo, 2008,p.2

Some countries forbid taking legal procedures for the same act after a final decision of conviction or innocence, including the possibility of a retrial when new facts or evidence emerge about the act or in the event of a serious and fundamental mistake in the first trial of the act There are also countries that allow retrial, but forbid punishment twice for the same act[34].

The focus of the application of this principle is the authoritativeness of criminal judgments or the strength of the res judicata, because the principle of the inadmissibility of trial for the act twice is the negative legal effect of the judgment acquiring the status of the final and final judgment.

Exceptions to the principle that the accused should not be tried for the same act twice:

This principle has been built on the basis of the requirements of justice and legal stability, but there are those who argue that absolute justice is impossible to exist, and it is not known whether the amendments that the ruling is likely to obtain will bring him closer to achieving justice or distance him from it more.

Confirmation of the judgment issued to convict a person who was innocent of the crime is not related to justice, neither near nor far, and accordingly some law permits in certain cases a retrial for an act twice called cases of retrial or appeal with a request for reconsideration, because it is a flagrant aggression against justice. Leaving the verdict attributing the crime to the innocent on a case by saying that it is no longer possible to consider the case again.

Most of the legislations that allowed re-trial permitted it only in judgments of conviction and did not permit it in judgments of acquittal, because the justifications for permitting consideration of judgments of conviction and punishment in cases specified by law[35].

The Non-Resume of the Laws

In the local penal law the principle of the non-resume is applied to the definition or limiting

The crimes or misdemeanors, therefore this principle (known also that there is no crime without A law) confirms the idea that his crime was done before the issue of the law, consequently it is Possible to impose a punishment bigger than the applied one at the time of committing the Crime. Nevertheless if a new law is passed which says that there is a lighter punishment , the Culprit makes use of it [36].

The Bases Related to the Punishment

(34) Abd al-Rahman Muhammad al-Kashef, International Monitoring of the Implementation of the International Covenant on Civil and Political Rights, Dar al-Nahda al-Arabiya, Cairo, 2003, p. 210.
(35) Muhammad Abdel-Moneim Abdel-Khaleq, "International Crimes (An original study of crimes against humanity and peace and war crimes)", 1st edition, Dar Al-Nahda Library, Cairo, 1989,p134.
(36) Ahmed Mohammed Al-Muhtadi Billah , The General Theory of the International Legislation, Dar Al-Nahda Library ,Cairo, 2010, p.790ff.

- The Legitimation of the Punishment Rule The tenor of this principle is that there is no punishment except those related to lawful rules prior To the crime happening, unless the crime is limited by the text before its occurrence. It is not Possible to deal with a certain crime. The punishment is imposed. This is very important principle It gives a lawful base to the punishment for each individual , therefore it is applicable on everyone

Obliged by the text. This principle is a important to limit the judge's authority who follows the lawful base at the time of the occurrence of the crime. This is not plausible . It makes the principle is a restraint to the culprits and it offers a protection to the victims.

The Tenor of the Rule

Legislation is one of the penal legitimation. This principle means that only the procedures have the privilege of raising the cases or sentencing , therefore it is not possible for the judges to raise a case

In reality unless it is condemned by the law, and not imposing other punishments except those mentioned In the law.

The Principle of Legitimation in the Penal Field Has Three Forms:

A. The Penal Legitimation

It is the constitution of the law of punishment which aims to the interpretation of the penal law. The famous precept which says: no crime and no punishment except by a text. It protects the human being from the danger of condemning and punishment in the absence of the legislative means. The legislative authority alone has the authority to limit the form of the crime And the punishments regardless of its kind or amount, for it is one of the guarantees to protect the freedom of the individual.

B. The Procedural Legitimation

The formal rules or the procedurals of the penal law are governed by the guarantee of the respect of the personal freedom of the defendant. Each source of the penal procedure is limited and the nature of the legitimation on the supposition of the innocence.

All penal procedures should be submitted to the Judicial supervision prior to the entire procedures.

C. Legitimation of the Implementation of Penalties

This is the third view of the penal legitimation dominant on the stage of the punishment execution. this means that the execution agency is obliged to the implementation of the penal rules of the sentenced In the limited place and manner

. The legitimation of execution is only an extension to the penal legitimation. This is what is emphasized by the fourth international conference of the penal law held In Paris, 2005. The penal law is the base of implementation. This requires the interference of legitimation In the implementation of the punishments and the preventive means . In fact what is of concern to us here is the first image of the penal legitimation and crime and punishment.

The Defaming of the Punishment

The appeal is the guarantee to the defendant and the legitimate justice . The second class judge tries to avoid the mistakes and to amend them. The judge of the primary court is more enthusiastic of his rules . These rules could be defamed in front of the second class judge. This requires a precise examination and objectivity, and the correctness of the evidences and the appropriateness of the Punishment. The crime and the appeal can be considered the actual incarnation for the principle Of the judge from two sides : from the internal legislation , because it purports to evoking the

Struggles, and secondly, it is supposed the rule is not final and it satisfies the time condition. The Court of appeal has all the privileges to refute or amend the judgment, or appoint a new primary Judge and the management of the court orders to renew the judgment. The room of the appeal Considers the view of the majority and announce that these judgments are documented[37].

The submission of a second appeal to the legitimate party which issued the resolution, because it Changes its decision in the case of those sentenced to life prison or execution in the right of the spouse or the parents or the children during the punishment, on condition the defendant should receive clear written instructions. It is possible that the attorney general to do the mission in lieu of him.

(37) The International Penal Court(Discussion of Rome Agreement) , Homa House for Publication And Distribution , Algeria , 2008, p..127

Conclusion

It is possible to say that the crime in the law is any deviation from the common norms which are Characterized to a great deal of power, quality and comprehensiveness . It is not possible to have a crime only when there is a value which can be estimated by the group and respect it, and the cultural reclusion from a group in side that community.

The international penal legitimation has a role in the eradication of the international crime. There is an International concern of these crimes . The work which the society aims to do is to lighten the pains which could be ensued from committing horrible crimes after the world war I and II and followed of Civil wars and racial and racial discrimination , the humanity suffered from and still suffering , in addition To the wars against the innocents in every part of this world.

Due to the international security co-operation in its wide use, it involves many domains such as the Police, and the lawful and legitimate fields . The reason is that ascertaining the security requires the Implementation of the related measures.

The international security co-operation is not restricted to the measures and sentencing the wanted only, It exceeds it to the inclusion of the eradication of the crime in its preventive and repressive fields including Keeping the rights of the accused and victims and the respect of the rights of the states and their sovereignty.