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Abstract The principle of legality in criminal law is considered one of the most important fundamental principles in criminal laws, which the International Criminal Court adopted in its statute to embody justice and ensure the rights of all parties in criminal proceedings. However, the improper legal formulation of this principle has affected the court's strength, especially in the absence of deterrent executive mechanisms. This issue constitutes a fundamental problem that our study seeks to highlight and address within legal frameworks, which concluded the necessity of amending the court's statute provisions related to the principle of legality in a manner that truly leads to its proper formulation and application, thereby achieving the court's objectives. The principle of criminal legality has developed significantly under international criminal law, especially after the adoption of the Statute of the International Criminal Court, where it transitioned from the framework known as customary legality to written legality. This change came after various criticisms of this principle during the trials witnessed by the ad hoc international tribunals.	
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Introduction

The statute of the court addressed the principle of legality, providing us with the understanding that the concept of crimes in international law is linked to legal texts, and that the elements constituting the crime are clear in the sources of this law. This statute also specified the penalties that the court applies to individuals who commit crimes within its jurisdiction.

But upon closely examining the texts of the court's statute related to the principle of legality in criminal law, we find that they indeed raise serious questions that can be expressed thru the following issue:

Has the International Criminal Court correctly embodied the application of the principle of legality?

To address this issue, we relied on the analytical method by analyzing various legal texts included in the court's statute that relate to the principle of criminal legality.

The first axis: The principle of legality in the Statute of the International Criminal Court:

With the entry into the new phase, related to the statute of the court on the principle of written criminal legality, there is no longer any room to discuss the conflict of this principle with the idea of international crime, where the latter has become clearly and precisely defined, with its elements and components outlined in a way that has removed the ambiguity that surrounded it under the principle of customary legality before the adoption of this statute, although to a lesser extent regarding the principle of legality of penalties.

First: Principle of Legality of Crimes

The court's statute addressed the principle of legality of crimes thru Article 22, which is found in the third chapter titled "General Principles of International Criminal Law." Its first paragraph states, "A person shall not be criminally liable under this statute unless the conduct in question, at the time it occurred, constituted a crime within the jurisdiction of the court".

This article is considered an embodiment of the principle of no crime without a law, which means in criminal law that no act is considered an international crime, regardless of its severity and harm, unless there is a legal text¹. Therefore, the word "text" in the principle of legality of crimes should not be understood as referring only to the court's statute, but rather that behavior may be criminalized based on texts found in sources outside the statute, as indicated by Articles 10 and 21 of the statute².

The court, according to these last two articles, exclusively defined the sources and the law it applies in a hierarchical order, starting with the statute, the elements of crimes, and its procedural rules and rules of evidence, extending to other sources such as international treaties, international custom, and general principles of law.³

The conduct that is considered a crime is that which is stipulated by the statute at the time it is committed. Therefore, mere literal non-compliance with a treaty is not sufficient to constitute a crime unless the treaty is applicable to the accused either by virtue of its provisions or because it does not legally apply to their conduct.

For example, if a person commits a crime on the territory of a state party to a treaty, and this treaty is in force in its territory, then claiming that the state to which the accused belongs is not a party to this treaty is unacceptable⁴.

According to the court's statute, the latter is competent to adjudicate the most serious crimes, namely genocide, crimes against humanity, war crimes, and the crime of aggression. Any of these crimes, wherever they are committed in the world, fall under the court's jurisdiction⁵.

It is clear from the above that Article 22 of the Court's Statute provides an important settlement, whereby the text of paragraphs 1 and 2 aligns precisely and well with the essence of the principle of legality of crimes⁶ in most domestic criminal laws, especially those that adopt the Latin system, which does not accept custom as a source of criminalization or the use of analogy in criminalization or the interpretation of the elements of crimes⁷.

¹ Farouk Muhammad Sadiq Al-Araji, *The Law Applicable to Crimes Before the International Criminal Court*, 1st ed., Dar Dafaf, Iraq, 2013, p78.

² Nasreddine Bousmaha, *The International Criminal Court, Explanation of the Rome Statute Article by Article, Part One*, 2nd ed., Dar Houma, Algeria, 2016, p136.

³ Article 10 and 21 of the statute of the court criminal law.

⁴ Ziad aitani, *court criminal international and the development of international criminal law, first edition, al-halabi legal publications, Beirut, 2009, pp362-365*.

⁵ Ahmed mohamed boua, *statute of court criminal international, no edition, modern university office Libya, 2009, p5*.

⁶ Article 22, paragraph 2, of the statute of the court states: "the definition of a crime shall be strictly construed and may not be extended by analogy, in case of ambiguity, the definition shall be construed in favour of the person being investigated, prosecuted or convicted".

⁷ Sawsan tamerkhan bakkah, *crimes against humanity in light of the provision of the rome statute of the international criminal court, first edition, al-halabi legal publications, Beirut, 2006, p139*.

While it is evident from paragraph 3 of the previous article that it recognizes customary law as a primary source for criminalizing actions concerning the determination of international crimes that fall outside the statute¹.

However, in all cases, the court cannot rely on sources characterized by customary nature mentioned in Article 21 of its statute as one of the applicable laws for criminalization, although it is possible to do so to fill some gaps related to the application or interpretation of issues that may arise concerning the elements of crimes within its jurisdiction².

We must finally point out that paragraph 2 of Article 22 mentioned above is in conflict with paragraph 3 of Article 31 of the Statute³, as the latter allows the court to rely on any reason other than those mentioned in paragraph 1 of Article 31, which is derived from the applicable law referred to in Article 21 of its Statute to exclude criminal liability. This implicitly means the possibility of resorting to analogy to refrain from the latter⁴.

Second: principle of legality of punishment

Article 23 of the court's statute addresses the second aspect related to the principle of legality in criminal law, which is the principle of no punishment without law. It states that "no one shall be punished except in accordance with this statute."

According to this article, the international criminal judge cannot impose any penalty on a person convicted by the court except based on the provision of its statute and no other texts.

Thus, the court has embodied the principle of written criminal legality with the following wording "no crime and no punishment except by law", similar to what is found in the internal criminal laws of countries.

This principle serves as a procedural constraint on the international judge, who is obligated to respect it; otherwise, their rulings would be deemed unlawful, necessitating their annulment. It is also considered a fundamental guaranty of individuals' rights and freedoms.

The principle of legality of punishment, which was adopted by the court's statute, has put an end to the era of blank penalties that were practiced by the temporary international criminal tribunals such as the Leipzig court and the Nuremberg and Tokyo tribunals.

The international criminal court has the authority to determine the appropriate penalty against defendants for the crimes within its jurisdiction⁵ based on the fundamental general rules of applicable penalties, as stipulated in article 77 and 78 of its statute.⁶

However, the principle of legality of punishment under international treaties, such as the court's statute, has not yet reached the level of perfection and maturity found in domestic criminal law, although it has made significant strides in the field of international criminal law.⁷

¹ Article 22 paragraph 3 of the statute of the court criminal law "this article shall not affect the characterization of any conduct as criminal under international law outside the framework of this statute".

² Sawsan tamerkhan, op.cit, same page.

³ Article 31, paragraph 3, of the Statute criminal law: "The Court may consider at trial any ground for excluding criminal responsibility other than those referred to in paragraph 1 where such ground is derived from applicable law as provided for in article 21. The measures relating to the consideration of such grounds shall be provided for in the Rules of Procedure and Evidence."

⁴ Article 31, paragraph 1, of the Statute of the Court stipulates the grounds for excluding international criminal responsibility, which are: "The person suffers from a mental disease or defect which prevents him from realizing the wrongfulness of his conduct; the state of intoxication which also prevents him from realizing the wrongfulness of his conduct; the state of lawful self-defense or that of another; the state of duress resulting from the threat of death or serious harm."

⁵ Abdelkader Khannatha, Criminal Legitimacy and its Applications in National and International Law, PhD Thesis, Department of Law, Faculty of Law and Political Science, University of Mostaganem, 2018-2019, p151.

⁶ Sawsan tamerkhan, op.cit, p140.

⁷ Ali Abdul Qader Al-Qahouji, International Criminal Law, the Most Important International Crimes, International Criminal Courts, 1st ed., Al-Halabi Legal Publications, Beirut, p 82.

This is because the penalties included in the statute are less clear and specific, as each penalty and its corresponding crime were not defined individually but rather generally without specifying their minimum and maximum limits, and they are subject to the judge's discretion.

It was supposed that "the penal texts should be formulated in a clear and specific manner without concealment or ambiguity, so that these texts do not become a trap set by the legislator to ensnare those who fall under them or misinterpret their scope, and they should serve as a guaranty aimed at ensuring that those addressed by the penal texts are aware of their true nature, so that their behavior does not deviate from it".¹

Thired: the consequences of the principle of legality in the court's statute

With the entry into force of the statute, the criminal rules became non-customary after previously being characterized by it. Thus, the principle of legality in criminal law transitioned to a textual or codified stage, similar to internal criminal law.

Consequently, the results of applying this principle with its new development were clearly different from what existed before the adoption of the statute.

1. non-retroactivity of the court's statutes

non-retroactivity of the court's statutes provisions based on the aforementioned adoption of the principle of written legality by the court's statute, it is logical for the court to determine the consequences of this principle, including the rule of non-retroactivity, which requires that a person not be criminally prosecuted under the provisions of the statute for actions committed before its enforcement. This is what article 24 of its provisions indicates.²

Except in the case where a positive change in the applicable law occurs before the final judgment on the convicted person, which is in their favor, here the exception to this rule is the application of the more lenient criminal provision to the facts that preceded the moment of the statute's enforcement.³

But with the necessity of meeting two conditions:

A. the more favorable law for the accused must be related to the crime for which they are being prosecuted.

B. the amendment must occur before the final judgement in the case is issued.

2. prohibition of extensive interpretation and analogy

prohibition of expansive interpretation and analogy, since the application of legal texts requires their interpretation first to understand the intent of their drafters, paragraph 2 of article 22 of the aforementioned statute stipulated that the definition of the crime must be interpreted precisely in a manner that does not allow for its expansion through analogy, so as not to create new crimes not specified in the court's statute.⁴

This paragraph, therefore, prohibits expansive interpretation and supersedes the previous texts in the court's statute, which explicitly or implicitly referred to the possibility of resorting to expansive interpretation of the penal rule.⁵

¹ Ashraf Fayeze Al-Lamsawe, *Constitutional and International Criminal Principles in Arab and International Legislation*, 1st ed., National Center for Legal Publications, Egypt, 2009, p 95.

² Article 24 of the Statute of the Court states that "No person shall be criminally responsible under this Statute for conduct prior to the entry into force of the Statute. If there is a change in the law applicable to a particular case prior to a final judgment, the law more favourable to the person being investigated, prosecuted or convicted shall apply"

³ Farouk Muhammad Sadiq Al-Araji, *The Law Applicable to Crimes Before the International Criminal Court*, 1st ed., Dar Dhifaf Al-Iraq, 2013, p 79.

⁴ Nasreddine Bousmaha, *op.cit*, pp 137, 141.

⁵ Farouk Muhammad Sadiq Al-Araji *op.cit*, p 80.

However, what can be observed about this paragraph is that it did not specify the mechanisms or methods used to determine the intent that the drafters of these texts intended during the interpretation process, whether literal or through analysis, except for analogy, whose mechanisms and methods are well-known and commonly used.

And in the case where the interpreter is unable to ascertain the intended meaning of the texts, and it is shrouded in ambiguity and doubt regarding its content, this doubt is interpreted in favor of the person under investigation, prosecution, or conviction, knowing that "this provision does not affect the characterization of any conduct as a criminal act under international law outside the scope of this statute."²

Finally, we must point out an important issue related to the problems that may arise in this field, such as the criminalization of certain acts under the court's statute, even though they are not considered as such under the internal criminal laws of the states.

And the outcome of this issue will be the interference in the political and religious organization of each state, which constitutes an infringement on its sovereignty, especially since the court's statute allows its jurisdiction to be exercised without a request from any state in the event that the case is referred by the security council or if the prosecutor initiates investigations on his own after obtaining permission from the pre-trial chamber.

And perhaps this concern about expansion led the drafters of the court's statute to impose two additional constraints, along with other restrictions, to ensure that the interpretation does not fall under subjective standards, which are:

A. this first restriction is represented by the provision that the court relies on the elements of crimes in interpreting and applying articles 6, 7, and 8 of its statute.

B. the second restriction is that the court's statute stipulates that the definition of the crime is interpreted precisely, and in case of ambiguity, the definition is interpreted in favor of the person under investigation, prosecution, or conviction.³

Second Axis: Evaluating the Principle of Nullum Crimen, Nulla Poena in Light of the Court's Work

The results stemming from the principle of legality in the court's statute reflect the extent of the development that this principle has undergone, after it was once widely criticized by critics due to the difficulties associated with its customary nature. This led to doubts about the legitimacy of the trials held during World War I and II

The development that this principle has undergone, bringing its concept and application closer to what is found in domestic criminal laws, has placed the court in a new challenge regarding its commitment to respecting it according to the new form it has reached, which is represented by written criminal legality.

First: Examples of criminal cases that the court has handled

1. Case of the Republic of Uganda The case of the Republic of Uganda

The case of the Republic of Uganda, as a state party that ratified the Rome Statute of the International Criminal Court on June 14, 2002⁴, is the first case referred to the Court after the Office of the Prosecutor received a referral from the Ugandan government in December 2003, concerning serious and heinous crimes committed by a rebel group known as the Lord's Resistance Army based in the northern part of the country.

¹ Nasreddine Bousmaha, op.cit, p. 137.

² Paragraph 3 of Article 22 of the Court's Statute.

³ Farouk Mohammed Sadiq Al-Araji, op.cit, p80.

⁴ Steven D. Dubriska, op.cit, p106.

This led the Office of the Prosecutor of the court to inform the Ugandan government that, according to the principle of justice that governs the court, the referral must include all crimes committed in the territory, not just those committed by the Lord's Resistance Army.

These crimes were directed against the Tutsi minority, who suffered violations of international human rights law, resulting in the displacement of approximately one million seven hundred thousand people to the Acholiland region. This rebel movement has been accused of committing several crimes such as mass murder, rape and sexual violence, destruction of property, looting, child abduction and recruitment, among others.

The investigations conducted by the court's prosecutor concluded with the conviction of five senior leaders of the Lord's Resistance Army, namely Mr. Joseph Kony as the supreme commander of the movement, Dominic Ongwen, Vincent Otti, Raska Lukwiya, and Okot Odhiambo.¹

On May 6, 2005, the prosecutor submitted a request to the Pre-Trial Chamber to issue arrest warrants for all of them on various charges, where the leader of the movement, Joseph Kony, was accused of committing crimes against humanity and war crimes, while the others were charged with several offenses, including issuing orders to kill civilians, sexual slavery, and forcibly recruiting children into the armed forces.²

2. The case of the Democratic Republic of the Congo

The referral of the Democratic Republic of the Congo case is considered the second case brought before the court, as the origin of the conflict in this country dates back to August 1998 when President Laurent Kabila ordered the withdrawal of Rwandan troops from the Congo, which led to a widespread mutiny within the army that sought to overthrow the current government.

The conflict quickly escalated to an international level, with both Uganda and Rwanda providing assistance to the rebels under the pretext of border concerns, while the government received support from Angola, Namibia, Chad, and Zimbabwe.

In July 2003, a transitional national unity government was formed based on power-sharing among the parties, aiming to achieve security and stability in the region and promote development.

However, this government did not achieve any significant progress and continued to suffer from weakness and lack of control over the situation, especially in the eastern part of the Democratic Republic of the Congo, where various armed groups held sway. Serious human rights violations continued unabated.

South Kivu also witnessed military confrontations in June 2004 between government-aligned forces and soldiers from the Congolese Rally for Democracy, known as Goma, whose flames quickly spread throughout the country. Facilities belonging to UN peacekeeping forces and the government were targeted, and ethnic tensions escalated significantly, leaving behind more than 150 dead, most of whom were Tutsi refugees in a massacre in the Gatumba area of Burundi.

In eastern Congo, UN peacekeeping forces continued to strive to contain the violence and protect civilians from crimes committed by rebels, most of whom were from the Democratic Forces for the Liberation of Rwanda led by military commander Sylvestre Mudacumura, with others from Burundi and Uganda. Serious human rights violations were committed, and the situation remained alarming in the eastern regions of the country, such as North Kivu, Maniema, Katanga, Kasai, Oriental, and especially Ituri Province.³

¹ Youssef Mouloud, *The International Criminal Court: Between the Law of Power and the Power of Law*, unpublished, Dar Al-Amal Algeria, 2013, pp 200-202.

² Farhati Sabrina, *The Role of the International Criminal Court in Embodying International Humanitarian Law*, PhD Thesis, Department of Law, Faculty of Law and Political Science, University of Biskra, 2017-2018, p267.

³ Farhati Sabrina, *ibid*, pp 254-257.

The Office of the Prosecutor has dispatched missions to support its investigations into allegations of crimes committed by the Democratic Forces for the Liberation of Rwanda in the Kivu province, as well as other crimes. On March 14, 2012, the Trial Chamber of the International Criminal Court issued its first preliminary ruling, convicting Mr. Thomas Lubanga Dyilo to 14 years in prison for committing war crimes in the context of an internal armed conflict in the Ituri province of the Democratic Republic of the Congo.

These crimes included the commission of mass killings against ethnic groups, death sentences without legal basis, acts of torture, rape, looting, forced recruitment of children, and their use as soldiers during the period from September 1, 2002, to August 13, 2003.

This first case, which the court addressed, took about 9 years since the defendant's surrender in March 2006, and it has not yet concluded in terms of compensation for the victims. The defendant, Thomas Lubanga, who was sentenced to 14 years in prison, has the opportunity to benefit from a reduction of this sentence, and thus be released from prison starting from July 2015 if the provisions of Article 110 of the court's statute are applied¹.

On December 19, 2015, Mr. Thomas Lubanga was taken to prison in his country to serve the sentence issued against him, where he remained until March 15, 2020, the date of his release².

At the time when preparations were being made for Luyanga's trial, the court's prosecutor assigned another team to investigate the crimes committed by other rebel forces. After gathering and thoroughly examining the evidence, they convicted the leader of the National Resistance Army in Ituri Province, Germain Katanga³.

He was charged with only one count of committing a crime against humanity, namely intentional murder, and four counts of war crimes during the attack on Ituri Province. He was sentenced to 12 years in prison, with 7 years deducted for the time he spent in detention by the court⁴.

The court also convicted Bosco Ntaganda, the leader of the National Congress for the Defense of the People, for committing crimes against humanity in the Ituri region in the northeast of the country during the period of 2002-2003⁵.

On March 29, 2017, the prosecution officially concluded its main arguments after summoning a total of 71 witnesses since the trial began on September 2, 2015, against Mr. Ntaganda, and listening to the victims' testimonies.

The trial chamber rejected the defense's request to halt proceedings against their client, who is in detention, and the latter began presenting his evidence to the court starting from May 29, 2017.

And with two other appeals at the Court of Appeal level, the first on March 8, 2017, related to the communications made by the accused while in detention, and the second on June 15, 2017, concerning the jurisdiction regarding the charges against their client, related to war crimes such as rape and sexual slavery.

As for Mr. Sylvester Mudacumura, the military commander of the Democratic Forces for the Liberation of Rwanda, he has also been convicted by the court for the crimes he committed in the Kivu region in the east of the country. So far, the request for his arrest and extradition to the court is pending, and there have been no significant judicial developments regarding him⁶.

¹ Gilbert bitti, op.cit, p 499-500.

² lubanga case, < <https://www.icc-cpi.int/drc/lubanga>> (day visited : 10/05/2022 hour 12 :00).

³ Farhati Sabrina, op.cit, p261.

⁴ Katanga case, < <https://www.icc-cpi.int/drc/katanga>> (day visited : 10/05/2022 hour 12 :25).

⁵ Farhati Sabrina, op.cit, p 262.

⁶ Report on the Activities of the International Criminal Court, op. cit, pp 10-11.

3. The Darfur case in Sudan

The Darfur region is considered one of the regions located in the west of Sudan, and it includes several African tribes, the most important of which are the Fur, Zaghawa, Masalit, Berti, Tama, Bergho, and Galta, as well as Arab tribes such as the Aisha, Banu Halba, Zaghawa, Misseriya, and Maalia.¹ The former rely on agriculture and are stable in their conditions, while the latter depend on herding, moving from time to time in search of green pastures and water.²

Several different parties played a role in the emergence of the Darfur crisis in Sudan, whether those loyal to the Sudanese government or those belonging to the rebel movements, such as the Sudan Liberation Movement, the Justice and Equality Movement, the Janjaweed militias, and the Popular Congress Party.

In the midst of the unfortunate dramatic events that occurred in the Darfur region between 2002 and 2003, the United Nations Security Council issued several resolutions³, the most important of which was Resolution No. 1593 issued on March 31, 2005, which referred the situation in Darfur, Sudan, to the Prosecutor of the International Criminal Court based on Chapter VII of the United Nations Charter.

The issuance of this decision came based on the investigations conducted by the International Commission of Inquiry in Darfur, established by the Security Council under its resolution No. 1564 issued on September 18, 2004, for the purpose of ascertaining the truth of the situation and monitoring cases that constitute violations of human rights and international law⁴.

The International Criminal Court's stance on the Darfur crisis became clear two years after the issuance of Referral Resolution No. 1593, as evidenced by its issuance of a series of arrest warrants that included Sudanese government officials, as well as a group of leaders affiliated with well-known rebel movements in the region.

On February 27, 2007, the Prosecutor of the court submitted a request to the Pre-Trial Chamber to issue a summons to appear against Ahmed Muhammad Harun in his capacity as Minister of the Interior and Security Chief in Sudan, based on Article 58, paragraph 7 of the court's statute⁵.

The arrest warrant for the accused Ahmed Haroun included 42 charges, encompassing war crimes and crimes against humanity, based on his individual responsibility⁶ under Article 25, paragraph 3(b) of the Statute⁷.

And also the provision of paragraph 3(d) of the same previous article, which considers that the deliberate contribution by a group of individuals in any manner to commit a crime or attempt to do so with the aim of promoting criminal activity, with knowledge and intent, also necessitates criminal accountability⁸. In addition to the

¹ Ayman Mustafa Abdel Qader, War Crimes in Africa, 1st ed., Arab Bureau of Knowledge, Cairo, 2015, p 176.

² Farhati Sabrina, op.cit, p 309.

³ Among these issued resolutions, we find Resolution (1422) issued on 7/12/2002, Resolution (1487) issued on 7/12/2003, Resolution (1547) issued on 7/11/2004, Resolution (1556) issued on 7/30/2004, Resolution (1564) issued on 9/18/2004, and Resolution (1591) issued on 3/29/2005. See all these resolutions on the official website of the United Nations:

<https://www.un.org/securitycouncil/ar/content/resolutions>

⁴ Khalfan Karim Wasam Elias, "The Legal and Political Framework of the Arrest Warrant for Sudanese President Omar Hassan al-Bashir Issued by the International Criminal Court," Legal Studies Journal, Al-Basira Center for Research, Consulting and Learning Services, Algeria, Issue 12, August 2011, p 127.

⁵ Ghada Kamal Mahmoud Sayed, The African Position on the Decisions of the International Criminal Court Regarding Africa, First Edition, Arab Arab Bureau of Knowledge, Egypt, 2016, pp 183-184.

⁶ Ghada Kamal Mahmoud Sayed, op.cit, pp 184-185.

⁷ Article 25, paragraph 3 (b), of the Statute of the Court states that "in accordance with this Statute, a person shall be criminally responsible and liable for punishment for any crime within the jurisdiction of the Court if that person: (b) Orders, solicits or induces the commission of a crime which in fact occurs or is attempted."

⁸ Article 25, paragraph 3(d) of the Statute states that "according to this Statute, a person shall be criminally liable and subject to punishment for any any crime within the jurisdiction of the court if that person does the following: d." "Contributing in any other way to the commission of this crime or the attempt to commit it by a group of persons acting with a common purpose, provided that this contribution is intentional and made either with the aim of promoting the criminal activity or the criminal purpose of the group if this activity or purpose involves the commission of a crime within the jurisdiction of the court, or with knowledge of the group's intention to commit the crime."

arrest warrant against Ahmed Haroun, the order also included the arrest of the accused Ali Muhammad Ali Abd-Al-Rahman, known as Ali Kushayb, after he refused the option of voluntary surrender¹.

The charges against him included 50 counts related to war crimes and crimes against humanity, of which 28 were linked to the former and 22 to the latter, as stipulated in Article 25, paragraph 3(a) of the Statute.

Based on the request submitted by the court's prosecutor on December 2, 2011, to the Pre-Trial Chamber, an arrest warrant was issued against Mr. Ali Abdel-Rahim Mohamed Hussein, the Sudanese Minister of Defense, on March 1, 2012, for his alleged commission of several crimes, including war crimes and crimes against humanity, during the period between 2003 and 2004 in the villages of Bandisi, Kadom, Arula, and Mukjar, among other areas².

The tension between the court and the Sudanese government continued to escalate until it reached its peak when the prosecutor submitted a petition to the judges on July 14, 2008, aiming to issue an arrest warrant against Sudanese President Omar Hassan al-Bashir, accused of committing war crimes and crimes against humanity against rebels in the Darfur region with the support of the Arab-origin Janjaweed militias.

Indeed, the first decision from the court to arrest the Sudanese president was issued on March 4, 2009, after the Pre-Trial Chamber of the court requested the Prosecutor's Office to provide additional elements to support some of the elements in its previous request regarding the international arrest.³

The issuance of the arrest warrant against the Sudanese president was based on a series of elements that included some evidence and reports provided by the prosecutor against him, such as testimonies from eyewitnesses and victims of the attacks launched in the Darfur region, testimonies from individuals aware of the activities of the Sudanese government and the Janjaweed militias, as well as reports from the Sudanese National Investigation Committee and the international investigation committee established by the Security Council.

The charges against President Omar al-Bashir, as an indirect accomplice in committing war crimes and crimes against humanity, included murder, extermination, forcible transfer, torture, and rape, as well as looting and directing attacks against civilians who are not directly participating in hostilities.

Finally, I would like to point out that the latest development in the case of President Omar al-Bashir is the statement made by the Sudanese government thru its Foreign Minister, Ms. Maryam Al-Sadiq Al-Mahdi, regarding the imminent handover of the accused and others to the court.⁴

Secondly: Evaluating the principle of criminal legitimacy in light of the cases handled by the court

Regarding the Uganda case, the court's conviction of the leaders of the Lord's Resistance Army for war crimes and crimes against humanity committed against Ugandan government forces is acceptable if the investigations were conducted fairly and independently. However, I believe it would have been more appropriate to address the case at the level of the Ugandan national judiciary first before the court took it on.

This leads me to interpret the Ugandan government's behavior in preemptively initiating the criminal proceedings on its own as an attempt to appear as the victim, despite forgetting the crimes it also committed, especially in light of the court's silence and lack of condemnation of it.

Regarding the actions committed by the leaders of the Lord's Resistance Army, which the court has claimed, they fall under war crimes and crimes against humanity according to Articles 7 and 8 of its statute.

¹ The arrest warrant issued against Ali Kushayb on 27/04/2007 is being reviewed, document (ICC-02/05-01/07, pp. 2-4).

² Ghada Kamal Mahmoud Sayed, op.cit, pp186-194.

³ Khalfan Karim and Issam Elias, The Legal and Political Framework of the Arrest Warrant for Sudanese President Omar Hassan al-Bashir Issued by the International Criminal Court, Journal of Legal Studies, Al-Basira Center for Research, Consultation, and Educational Services, Algeria, Issue 12, August 2011, p128.

⁴ déclaration de la chaîne d'information france24, a propos de son site web : www.france24.com (day of déclaration le :11/08/2021 hour 16 :00).

humanity, but we cannot assert that the principle of legality of crimes has been embodied as long as the investigations were not conducted by the Ugandan judiciary, and it was not given the opportunity. However, if we assume the accuracy of the investigations conducted by the court, the material elements of these crimes are fulfilled, and thus the principle of legality of crimes is embodied.

Regarding the extent to which the principle of legality of punishment is realized, we find that the court's imprisonment of Mr. Ongwen for committing crimes against humanity and war crimes, in my opinion, this punishment does not match the level of the crimes he committed. As for the punishment of the other defendants, it should be proportionate to the crimes they committed.

As for my assessment of the Democratic Republic of the Congo case, the Congolese government's referral of the situation in the country to the International Criminal Court is unacceptable, especially after the formation of a transitional national government that includes the conflicting parties. Even if it failed in its duties, this does not justify internationalizing the case and referring it to the court, as there are alternatives and solutions that can be found at the local level thru serious political dialog.

The court's conviction of a group of leaders of the rebel movements based on the investigations conducted by the prosecutor, without doing the same against the leaders and officials at the head of the Congolese government, is also unacceptable, even if the latter referred the case. This does not negate the possibility of their representatives being investigated and held accountable if their involvement in committing crimes is proven.¹

Regarding the extent to which the court applied the principle of legality of crimes in the case of Mr. Thomas Lubanga, I can say that his conviction for committing war crimes and crimes against humanity due to the criminal acts he carried out was based on the provisions of Articles 7, 8, 25, and 30 of the Statute, as the material elements of these crimes were established in accordance with the definitions of crimes in the interpretation and application of Articles 7 and 8 of the Statute.

As for the extent to which the court applied the principle of legality of punishment in his case, we find that the 14-year prison sentence imposed on him is completely disproportionate, considering the severity of the criminal acts he committed. This judgment does not take into account the provisions of Article 78, paragraph 1 of the Statute, which outlines the basic criteria that the court must consider when determining the sentence.

Considering the judgment issued by the Second Trial Chamber of the court against Mr. Katanga, which was based on the review of the factual and legal basis provided by the Trust Fund for Victims (TFV), the recording, and the legal representative of the victims (LRV) mentioned in the order regarding the reclassification of documents,² I can say that it does not correspond to the severity of the acts committed by the accused, and I also question the conformity of the sentence reduction decision with Article 110 of the Statute.³

Regarding the case of Sudanese President Omar al-Bashir and his aides, who are accused of indirectly committing war crimes, crimes against humanity, and genocide added to the president alone in the Darfur region based on the evidence and reports submitted by the prosecutor to the court, as well as the international investigative committee established by the Security Council, we find that the statements of Prosecutor Mr. Luis Moreno-Ocampo that his decision to charge President Omar al-Bashir was based on the principle of complementarity are incorrect for the following reasons:

1. -The court had previously rejected the investigations conducted by the Sudanese government in this case, despite the latter's acknowledgment of its judicial system's ability to perform its duties normally.

¹ The establishment of criminal responsibility for any natural person committing international crimes within the jurisdiction of the court is individual and subject to punishment as stipulated in Article 25 of the court's statute.

² Corrigendum of order on the reclassification of documents, ICC-01/04-01/07-3897-corr, 09february2022, trial chamber2 decision <https://www.icc-cpi.int/court-record/icc-01/04-01/07-3897-corr_09> (day of visited: 08/4/2022 hour 12 :36).

³ The order relating to the reclassification of documents referred to above stated that the Second Preliminary Chamber, in issuing this order, had taken into account the provisions of Article 75 of the Statute of the Court, Rule 96 of the Rules, and Article 23 bis of the Agenda.

2-The findings of the international investigation committee established by the Security Council under resolution 1564 in its report issued on January 31, 2005, which confirms the inability of the Sudanese judicial system.

This contradiction between the prosecutor's statements and the course the Sudanese case has taken leads us to conclude that there have been pressures exerted on the court's prosecutor to reject any investigation coming from outside the court or the Security Council.

Based on this, the charges against the president and his aides, such as Ahmed Haroun, Ali Kushayb, and Abdel-Rahim Mohamed Hussein, are seen as questionable as long as there is a dismissal of the role of the Sudanese judiciary and a lack of recognition of the investigation committee established by the government in this regard.

Therefore, the determination of the court's application of the principle of legality of crimes depends on the validity of the investigations and charges against these individuals, which I believe are not based on a legal standard, namely the principle of legality, but rather on a political standard imposed by major powers.

As for the extent to which the court applies the principle of legality of punishment concerning the cases of these convicted individuals, this is not possible since their arrest warrants are still pending and they have not been tried by the court. Even if we assume otherwise, we cannot talk about the application of this principle as long as we doubt the validity of the investigations and the charges stated.

As for the case of Abu Qarda, accused of committing war crimes during the attack on the African Union peacekeeping mission in the town of Haskanita on September 29, 2007, it is not possible to discuss the court's application of the principle of legality in this case because the case was closed due to insufficient evidence presented by the prosecutor until new evidence appears.

As for the case of Mr. Abdullah Banda, the commander of the Justice and Equality Movement, accused of committing criminal acts that fall under war crimes during the attack carried out in the town of Haskanita on September 29, 2007, which include violence against life thru murder, whether committed or attempted, assault on individuals, units, or vehicles belonging to the peacekeeping mission, and also looting property.¹

I believe that after theoretically reviewing the case and the parties' ²arguments, the court has considered the principle of legality of crimes in Mr. Banda's case, awaiting his future arrest, and will subsequently assess the application of the principle of legality of punishment.

As for the case of Mr. Saleh Mohamed Jerbo Jamus, the former Chief of Staff of the Sudan Liberation Movement, who is also accused of committing war crimes during the attack on Haskanita, it is not possible to discuss the court's application of the principle of legality in his case due to the case being dismissed upon his death.

Conclusion

In conclusion, it becomes clear to us that the principle of legality in criminal law adopted by the International Criminal Court is a point of strength for it. However, it has not been surrounded by a sound legal formulation, which has led to the erosion of the court's power and cast doubt on its credibility in embodying justice. This is reflected in a series of results that this study has yielded.

A- Although the court has adopted the principle of written legality, it has not embodied it in the correct manner that ensures real protection for the rights of victims and defendants. This is evident in the penalties imposed by the court, which are generalized without specifying their minimum and maximum limits and without linking them to

¹ Banda case<<https://www.icc-cpi.int/darfur/banda>>,(day of visited :13/05/2022 hour 17 :33).

²To view the arguments of both parties, please visit the court's official website:

<https://www.icc-cpi.int/court-record/icc-02/05-03/09-632-red>, see the document (ICC-02/05-03/09OA),(day of visited :13/05/2022 hour 19 :40).

corresponding crimes, especially with the exclusion of the death penalty, which should have been included due to the severity of the criminalized acts.

B- The selectivity adopted by the court in addressing international issues, with a strong focus on African cases compared to others, as well as its political handling of these cases, is another indication of the court's deviation from adopting a purely legal approach based on the application of the principle of legality throughout its judicial process, from the investigation stage to the issuance and execution of the judgment. This confirms the role of political considerations in influencing its work.

C- The decisions issued by the court against the Israeli Prime Minister for crimes beyond description in Gaza have significantly clarified that the court lacks deterrent mechanisms to punish the perpetrators. Therefore, it has become necessary and urgent to correctly reform the principle of criminal legality, extending beyond the court's operational mechanisms as a whole.

Ethical Considerations. The study involves no human or animal participants and uses publicly available legal and academic sources. Research integrity, objective analysis, and citation accuracy were maintained. The work complies with academic ethics and intellectual property regulations.

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References list:

1. Farouk Mohammed Sadiq Al-Araji, *The Applicable Law on Crimes Before the International Criminal Court*, 1st edition, Dar Dhefah, Iraq, 2013..
2. Nasserline Bousmaha, *The International Criminal Court, Commentary on the Rome Statute Article by Article, Part One*, 2nd Edition, Homa Publishing, Algeria, 2016.
3. Ziad Aytani, *The International Criminal Court and the Development of International Criminal Law*, 1st ed., Halabi Legal Publications, Beirut, 2009.
4. Ahmad Muhammad Bouna, *The Statute of the International Criminal Court*, PhD, Modern University Office, Libya, 2009.
5. Susan Tamrakhane Baka, *Crimes Against Humanity in Light of the Statute of the International Criminal Court*, 1st ed., Dar Al-Halabi Legal Publications, Beirut, 2006.
6. Abdelkader Khenatha, *Criminal Legitimacy and Its Applications in National and International Law*, Doctoral Thesis, Department of Law, Faculty of Law and Political Science, University of Mostaganem, 2018-2019.
7. Ali Abdelkader Al-Qahouji, *International Criminal Law: Major International Crimes and International Criminal Courts*, 1st edition, Halabi Legal Publications, Beirut, 2001.
8. Ashraf Faiz Al-Lamsawi, *The Constitutional and International Criminal Principles in Arab and International Legislation*, 1st edition, National Center for Legal Publications, Egypt, 2009.
9. Farouk Mohammed Sadiq Al-Araji, *The Applicable Law on Crimes Before the International Criminal Court*, 1st edition, Dar Dhafaf, Iraq, 2013.
10. Steven Dubriske, *International Criminal Court: Is it a case of the United States having the cake and eating it too?* Fairchild, Air University Press, julio de 2005.
11. Youssef Mouloud, *The International Criminal Court between the Law of Power and the Power of Law*, unpublished edition, Dar Al-Amal Algeria, 2013.
12. Ferhati Sabrina, *The Role of the International Criminal Court in Realizing International Humanitarian Law*, PhD Thesis, Department of Law, Faculty of Law and Political Science, Biskra University, 2017-2018.
13. Gilbert Bitti, *International Law, International Criminal Court, Criminal Science and Comparative Criminal Law Review*, Dalloz Edition, 2015/2, No. 2.
14. Lubanga case, <<https://www.icc-cpi.int/drc/lubanga>>
15. Katanga case, <<https://www.icc-cpi.int/drc/katanga>> Caso Katanga,< <https://www.icc-cpi.int/drc/katanga>>

16. Ayman Mustafa Abdelkader, War Crimes in Africa, 1st ed., Arab Knowledge Office, Cairo, 2015. Ayman Mustafa Abdelkader, War Crimes in Africa, 1st ed., Arab Knowledge Bureau, Cairo, 2015.
17. <https://www.un.org/securitycouncil/ar/content/resolutions>
18. Ghada Kamal Mahmoud Said, "The African Position on the International Criminal Court's Decisions Regarding Africa," First Edition, Arab Knowledge Office, Egypt, 2016.
19. Khalfan Karim and Osama Elias, The Legal and Political Framework of the Arrest Warrant for Sudanese President Omar Hassan al-Bashir Issued by the International Criminal Court, Legal Studies Journal, Al-Basira Center for Research, Consultation, and Educational Services, Algeria, Issue 12, August 2011.
20. www.france24.com