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International Criminal Punishment between Respecting the Principle of Legality and Achieving the Elements of International Criminal Justice

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Abstract:

International criminal punishment has evolved through distinct stages, each shaped by specific circumstances that influenced the progression of international criminal jurisprudence. Initially, this jurisprudence was shaped by the political context accompanying the creation of temporary international criminal tribunals, which generated extensive debates over the legitimacy of the punishments they imposed. Eventually, the international community established a permanent judicial mechanism entrusted with addressing the gravest international crimes, holding perpetrators accountable irrespective of their status, and preventing impunity. This development resulted in a framework for international criminal punishment founded on adherence to the principle of penal legitimacy and the promotion of international criminal justice based on equality and fairness.

Keywords: International Criminal Punishment, the principle of penal legitimacy, Statute of the International Criminal Court, international criminal justice.

Introduction:

The authority to define and impose criminalization and punishment constitutes a core aspect of a state's legislative sovereignty, with national law being the principal foundation for such measures. Nonetheless, the ratification of an international convention that criminalizes particular acts elevates the convention's legal authority above that of domestic law. Since criminal legislation is anchored in the principle of legality, international conventions generally function as an indirect source for establishing criminalization and punishment.

A significant example is the Rome Statute, which establishes the International Criminal Court 's legal structure.

To what degree did the international legislature maintain the norm of legitimacy in establishing international criminal sanctions under the Rome Statute?.Moreover how effective are these sanctions in deterring international crimes and ensuring that perpetrators are held responsible, therefore achieving the objectives of international criminal justice?

The Nuremberg Trials, in particular, were criticized for allegedly breaking numerous established criminal law principles, most notably the legality of crimes and punishments. The designers of the ICC Statute attempted to steer clear of many of these criticisms.

Hypotheses for the Research:

- The international legislator's dedication to maintaining the norm of legality in the enforcement of criminal punishments corresponds with its acknowledgement and implementation in most national legal frameworks.
- The complete realisation of international criminal justice, as advocated by the United Nations and pushed by the drafters of the Rome Statute, depends on the enforcement of the criminal sanctions stipulated in the Statute.

Methodological approach to research

In order to answer the question posed, and to confirm or deny the research hypotheses, we adopted the tools of the inductive method. The purpose of this approach was to investigate the extent to which the international community adheres to the concept of international criminal legality in its punitive aspect. This involves an examination of the legal stipulations contained in the statutes of international criminal tribunals, specifically the Rome Statute.

Furthermore, particular aspects of the study necessitated the utilisation of descriptive and historical methodes. These methodes were utilised to analyse and monitor the evolution of the principle of criminal legality, specifically regarding the legality of international criminal sanctions. They were subsequently employed in the latter segment of the study to examine the proceedings conducted by international criminal tribunals and assess the efficacy of the punishments imposed in achieving the aims of the proposed world justice.

Research Plan:

To familiarise ourselves with the study elements, we examined the legality of sanctions in international criminal justice in the initial portion, where we addressed the concept of international criminal sanctions by defining its definition and forms (first), then assessing the degree of the international community's dedication to its legitimacy prior to the formation of the International Criminal Court (ICC), followed by an examination of the Court's Statute texts. In the second section, we tackled the efficacy of international criminal sanctions in deterring perpetrators of international crimes by assessing their proportionality to the gravity of these crimes (first), and assessing their actual role in curbing them (second).

I.The Principle of Legality of Criminal Punishment in International Judiciary

The phrase "No international crime without criminal punishment" summarizes the principle of legality in international law, anchored in its varied origins, comprising both treaty law and customary law. When these sources designate an act as an international crime and prescribe a penalty, that act is considered part of international criminal law. However, if the act is not recognized as an international crime and no penalty is outlined for the offender, it is excluded from the domain of international criminal law, even if the unlawful act may lead to civil international liability.

Customary international law and international humanitarian law accords did not specify penalties for perpetrators of international crimes. They only classify certain acts as criminal without prescribing a punishment. However, international criminal jurisprudence, whether in temporary or permanent courts, has been instrumental in establishing criminal punishment for individuals who breach international legal standards. This will be addressed in this section, subsequent to a discourse on the notion of international criminal punishment.

1.The Notion of International Criminal Punishment

Criminal punishment is regarded as the main pillar on which the law is based, as they impart a sense of obligation towards its rules and make them respected and followed by the persons to whom they are addressed. The punishment is an essential

component of the legal system due to its role in public and private deterrence, as well as the promotion of social justice, resulting from the interplay of the elements of the offence[(1)].

In domestic law, lawmakers define the legal framework of a crime, specifying the punishment (penalty) to be imposed on offenders, and provide judges with considerable discretion to ascertain the penalty according to the gravity of the offence and the extent of the perpetrator's culpability. Conversely, international criminal law varies in that criminal punishment lacks the same degree of clarity and precision[(1)] as in domestic law. This is attributed to the conventional nature of the rules that regulate international criminal law[(2)].

In order to better understand the concept of international criminal punishment, we will first present its definition and then we will deal with its forms.

a. Definition of The International Criminal Punishment

The matter of punishment in international law presents several challenges, particularly in defining its concept and identifying the responsible authority for its execution, due to the unique characteristics of the worldwide community. Moreover, there is the problem of interpreting punishment in international law from the viewpoint of domestic law, despite the inherent differences between the two systems where each form of punishment is applied. Another challenge is the rejection by certain legal scholars of the legal character of international law's regulations and the assertion that they lack obligatory force, which has obstructed the examination of the issue of punishment and impacted its definition in international law[(3)]. As a result, no scholar has offered a precise and definitive definition of international criminal punishment. Instead, it has been described based on the concept of punishment as understood in national laws, where punishment is commonly defined as: "A social action intended to ensure the effective implementation of a legal rule by imposing

[(1)]Nasri Meriem, ***The effectiveness of punishment for serious violations of international humanitarian law***Dar Al-Fikr Al-Jami'i for Publishing, Alexandria,1st ed, 2011, P. 222.
[(1)]For further details, see: Cataleta, M. S. ***Profils juridiques de la peine dans la pratique pénale internationale, entre sanction sic et simpliciter et réinsertion sociale***. *Revue électronique de l'AIDP*, 2015, A-05, p. 2.
[(2)]Matar, I. A. F ,***International criminal justice, its principles and substantive and procedural rules***,Dar Al-Jami'a Al-Jadida for Publishing, Alexandria, w.ed, 2008, P. 304.
[(3)]For further details on the doctrinal foundation of the concept of international punishment and the debate surrounding its emergence, see: Harbe, A. J,***The theory of contemporary international punishment: The system of international sanctions against states and individuals***, Vol. 1, Dar Al-Halabi for Legal Publications,Beirut, 1st ed, 2013, P. 57 and what follows.

penalties on those who breach it."[4]In most national laws, criminal punishment is also defined as: "The legal expression of society's response to offenders, which manifests either as a penalty imposed for the committed crime or as a precautionary measure aimed at those deemed to have criminal potential, with the goal of achieving the intended objectives of each."[5]Some define it as: "The legal consequence borne by the offender as a result of the crime committed, which may take the form of a penalty or a precautionary measure. It is imposed through a judicial ruling following a criminal trial, with public prosecution as its means, and enforced by the public authority through coercion."[6]

The absence of a clear definition of international criminal punishment arises from the fundamental dispute among legal scholars over whether such punishment exists in international law. Despite the ongoing debate, it eventually resulted in the recognition of international punishment, which has been classified into several types[7].

One of the most recent classifications is international criminal punishment, applied to individuals who commit acts that international lawmakers have designated as "international crimes."[1]

b. Forms of The International Criminal Punishment

The concept of criminal punishment in domestic laws includes a range of forms. However, in international law, punishment is the conventional and dominant form of international criminal sanction, serving as the direct result of breaching its rules and regulations. Additionally, precautionary measures have developed as a newer form of this punishment[2]. Both forms will be briefly discussed below.

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[4]See: Badr al-Din Muhammad Shibl,***Substantive international criminal law: A study of the structure of the international criminal law norm, international crime, and international criminal punishment***, Dar Al-Thaqafa for Publishing, Amman- Jordon,1st ed, 2011,P. 199.

[5]See: Abd El-Ghani, M. A. M, ***nternational criminal law: A study in the general theory of international crime***, Dar Al-Jami'a Al-Jadida for Publishing, Alexandria, w.ed , 2010,P.329.

[6]See: Badr al-Din Muhammad Shibl, ibid, P. 264.

[7]Various criteria have been used to classify international sanctions. For further details on the most important of these, see:Badr al-Din Muhammad Shibl, ibid, pp. (226- 263).

[1]These crimes are specifically mentioned in Article (**5**) of the Rome Statute of the International Criminal Court, which includes: genocide, crimes against humanity, war crimes, and the crime of aggression.

[2]Recent criminological studies have shifted focus towards the individual offender rather than the criminal act itself, highlighting the limitations of punishment—traditionally viewed as the primary form of criminal sanction—in effectively combating criminal behavior. This shift has led to the emergence of a new form of social response to the criminal potential inherent in the offender, namely, precautionary measures. For further details, see: Badr al-Din Muhammad Shibl, The previous reference, p. 264.

- **International Criminal Punishment:** Criminal law jurisprudence, as usual, has not agreed to adopt a unified definition of punishment, and there are several definitions of the term, depending on the different points of view and the criteria on which each approach is based[(3)].

Criminal law scholars describe punishment as: "A legal sanction imposed on individuals found liable for an act recognized as a crime under the law, affecting their liberty, property, or honor." In this context, punishment is viewed as a corrective action that intentionally causes suffering to the offender, based on a judicial decision supported by legal provisions[(4)]. The key characteristics of punishment derived from this definition are:

- It is governed by the notion of legality.
- It constitutes a rehabilitative punishment[(5)].
- It involves the intentional infliction of pain on the offender, without which the punishment loses its most important characteristic.
- The punishment is individualised, applying solely to the offender.
- It is judicial; that is, there is no punishment without a judicial judgment issued by an independent, specialised and impartial court.

In the realm of international criminal law, international criminal punishment is characterized as the sanctions imposed by an international judge or court on individuals[(1)].

[(3)]For further details, see:T.Al-Issa, ***"The Principle of Legality in the 1998 Rome Statute"***, *Journal of the Arab Universities Union for Arts*, Faculty of Law, Ajloun National University, Jordan, Vol.12, No.01, 2015, pp. (132-134).

[(4)]Shirawan Ali Mahmoud, ***"Sanction within the Legal Framework of the International Criminal Court"***, *Legal and Political Research Journal*, Mohamed Seddik Ben Yahia University of Jijel,Vol.6,No.02, December 2021, p.545.

[(5)]The principle of punishment lies in its nature as a **reformative punishment, w**hich is divided into two categories:**executive punishments**and**disciplinary punishments**. The former aims to restore balance to the interests disrupted by the failure of an obligated individual to comply with a legal rule specifically directed at them. Examples include annulment, nullification, compensation, and enforcement by coercion. On the other hand, disciplinary sanctions primarily address the mindset of the obligated individual and are determined based on the risks involved. Examples include administrative sanctions, disciplinary fines, and punitive measures. The reformative aspect of criminal sanctions is achieved by considering the psychological or moral danger posed by the offender. Punishments are scaled based on intentionality or negligence, with examples including imprisonment, incarceration, and fines. For further details, see: Sherwan Ali Mahmoud, *ibid.*, p. 546.

[(1)]See: Haidar Abdul Razzaq Hameed, ***The Evolution of International Criminal Justice from Ad Hoc Tribunals to the Permanent International Criminal Court***, Dar Al-Kutub Al-Qanuniya and Dar Shatat for Publishing and Software, Egypt, w.ed, 2008, p. 44.

It goes without saying that punishment in international criminal law, due to the customary nature of its rules, did not enjoy the same level of clarity and precision as in national criminal law until the entry into force of the Rome Statute.

- **Preventive Measures**

This pertains to a sequence of measures designed to mitigate the criminal threat posed by an offender, with the primary objective of safeguarding society by deterring the individual from committing further crimes. It is also described as: "A criminal sanction comprising legally established measures imposed by a judge upon an individual whose criminal threat has been substantiated, with the aim of addressing and neutralizing that threat."[(2)]

From the aforementioned definitions, the attributes of preventive measures may be discerned:

- The origin of law is invariably the law itself, and is consequently governed by the principle of legality.
- It is judicial on the premise that it must be adjudicated by a judicial judgment in accordance with the prescribed procedures.
- Its essence is to confront the criminal risk, it is not linked to criminal responsibility based on freedom of choice, and therefore it can be imposed on persons who are not criminally responsible, such as minors and the insane, as the basis for its application is different from the foundation for the imposition of punishment.
- It is customised, on the premise that it is directed primarily at the person who is found to be a criminal risk with the aim of eliminating it, but in some cases its impact may extend indirectly to the family of the person subjected to it.
- They are unique in that they vary in quantity and quality from one offender to another, based on the type of the offence and the severity of each offender's criminality, but this does not prevent them from being governed by the idea of legal equality[(3)].

Within the framework of international criminal law, there exist no provisions or texts specifically addressing precautionary measures, whether before or after the adoption of the Statute of the International Criminal Court. This absence is particularly fundamental, as such measures were originally intended to counter the criminal threat posed by individuals committing international crimes. Therefore, national judicial systems, pursuant to the principle of complementarity established in the ICC Statute,

[(2)]See : Badr al-Din Mohammed Shibl, op.cit, p. 292.
[(3)]See : ibid., pp. (292-293).

possess the ability to address this deficiency by exercising their primary jurisdiction to prosecute and adjudicate international criminals. This opens the door to the application of precautionary measures as provided for under the framework of national legal [(1)].

2. The Principle of the Legality of Criminal Punishment before and after the Statute of the International Criminal Court

In national criminal legislation, the idea of legality[(2)] restricts the sources of criminalisation and punishment to statutory law, granting the legislator sole authority to define punishable acts (crimes) and determine the corresponding penalties. However, applying this principle in international criminal law is far more complex, given the lack of a centralized legislative body within the global community and the somewhat unaltered character of its legal basis. In the framework of international criminal law, the principle of legality states that no act can be deemed a crime, nor can any penalty be imposed, except in accordance with a recognized international criminal legal norm. The term "legal norm" in this context refers to both written and customary rules[(3)].

The second component of this principle asserts that no individual may be subjected to punishment unless it is expressly provided for by a legal provision. This concept is codified in the Universal Declaration of Human Rights[(4)] and further reinforced by multiple international and regional legal tools[(5)].

The objective of the principle of legality for criminal punishments, or punitive legality, in international law is to draw limits, set restrictions, and provide guarantees to achieve international criminal justice, but has the international legislator been able to achieve this principle as applied in national legislation to achieve this justice? This

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(1)See: : Badr al-Din Mohammed Shibl, p. 301.

(2) Some Scholars have debated the appropriate terminology for this principle. Some have referred to it as the "Principle of the Legality of Criminalization and Punishment," which implies limiting the sources of criminalization and punishment to legal texts that define criminal acts, outline their elements, and specify the applicable penalties in terms of type and severity—all of which fall under the jurisdiction of the legislator. Others have preferred the term "Principle of Legitimacy," meaning that no penalty can be imposed for any act that was not criminalized by law, regardless of its severity. Another interpretation refers to it as the "Legality of Criminalization and Punishment." Notably, all these terms share the same underlying meaning. For further details, see: Zeinab Mohamed Abdelsalam, ***Arrest, Investigation, and Trial Procedures before the International Criminal Court: A Comparative Analytical Study***, National Center for Legal Publications, Cairo, 1st ed., 2014, p. 216.

(3)Some scholars propose renaming the principle of legality in international criminal law to the "Principle of the Legality of Crimes and Punishments." For further details, see: Ali Abdelkader Al-Qahwaji, ***"The Principle ofLegality (Lawfulness) of Crimes and Punishments in International Criminal Law"***, Kuwait International Law School Journal, Issue 2, First Year, June 2013, p. 78.

(4)See: Article 11/ 2 of the Universal Declaration of Human Rights, issued on December 10, 1948.

(5)See: Article 15/1 of the 1966 International Covenant on Civil and Political Rights, Article 7 of the African Charter on Human and Peoples' Rights, Article 7 of the European Convention on Human Rights, and Article 9 of the American Convention on Human Rights.

is what we will investigate by tracing the extent of the international legislator's commitment to this principle historically before and after the promulgation of the Statute of the International Criminal Court.

a- The Degree of Adherence to the Principle of Legality in Criminal Sanctions Before the Implementation of the Rome Statute

Prior to the establishment of the Rome Statute, the notion of criminal legality (punitive legality) in international criminal law was based on its established sources, specifically customary law and international treaties. An examination of these sources indicates that they primarily emphasized identifying the criminal nature of certain acts, without definitively specifying the penalties associated with such crimes. The responsibility for determining appropriate sanctions was instead entrusted to both international and national tribunals. The establishment of the International Criminal Court (ICC) via the Rome Statute provided an organised framework for penalties related to international crimes was introduced. The absence of such codification prior to this stems from multiple reasons[(1)].

The London Agreement of 1945, in conjunction with the charters of the Nuremberg and Tokyo Tribunals, failed to specify the exact punishments applicable to major war criminals of World War II, aside from the death penalty explicitly stipulated in Article (**27)** of the Nuremberg Charter[(2)]. Beyond this, the tribunals were afforded broad discretion to impose penalties they considered appropriate and just. Moreover, the charter did not provide any specific criteria or limitations to guide the judges, instead conferring upon them unrestricted authority in determining the appropriate punishments[(3)].

Both tribunals, in several of their rulings, relied on penalties derived from domestic legislation, as their statutes provided just the criterion of crime severity to assist judges in determining suitable penalties. The absence of explicit rules resulted in ambiguity concerning the basis of legitimacy of sanctions in international criminal law during that period. As a consequence, some critics claimed that the tribunals' structures

[(1)]See: Badr al-Din Mohammed Shibl, op.cit. p. 267.
[(2)]As stated in the text of this article: "The court shall sentence the convicted defendants to death or any other punishment it deems just." See: Hassanein Ibrahim Saleh Obaid, ***International Criminal Justice***, Dar Al-Nahda Al-Arabiya, Cairo, 1st ed., 1977, p. 169.
[(3)]See : Zainab Mohamed Abdel Salam, op.cit. p. 226.

contravened the norm of penal legitimacy.Conversely, others argued that the Nuremberg and Tokyo trials, although not strictly conforming to the formal stipulations of the principle of legality, they were aligned with the principle of fairness, notwithstanding the London Agreement of 1945 did not explicitly stipulate the applicable penalties.

This approach was embraced by the International Law Commission's draft for the codification of crimes against peace and the security of humanity, which also lacked explicit prohibitions on the penalties to be imposed on perpetrators of such international crimes. It conferred extensive discretion to the courts in assessing the harshness of the punishment, considering the gravity of the offence[(4)].

Concerning the International Criminal Tribunals for the Former Yugoslavia (ICTY) and Rwanda (ICTR), Article 24 of the 1993 ICTY Statute delineated a particular array penalties, including custodial sentences such as life imprisonment and fixed-term imprisonment, as well as financial sanctions, such as the confiscation of assets obtained through criminal activity for which the individual was convicted. Moreover, Rule 101(b) of the Rules of Procedure and Evidence delineated a framework of criteria for judges to consider when determining the appropriate sentence. Similarly, the 1994 (ICTR) Statute, under Article (**23)** prescribed penalties analogous to those established in the (ICTY) Statute[(1)].

It is noticeable that the systems of international criminal tribunals that preceded the permanent (ICC), whether military (Nuremberg and Tokyo) or temporary (Yugoslavia and Rwanda), violated the principle of the legality of sanctions in that they expanded the analogy and introduced the principle of retroactivity, and the Nuremberg and The Tokyo tribunals contravened the fundamental substance of the principle by not providing for penalties exclusively[(2)].

It is evident from the preceding discussion that the norm of legality concerning criminal sanctions in international criminal law prior to the establishment of the International Criminal Court did not manifest in the same manner as observed in

[(4)]See: Badr al-Din Mohamed Shibl, *O.p.cit*, p.269. For more details and further information on the International Law Commission's draft for the codification of crimes against peace and the security of humanity and attempts to establish penalties for such crimes, refer to: Houa Salem, ***"International Criminal Justice Through Judicial Decisions of Special International Criminal Tribunals"***, Master's Thesis in International Human Rights Law, Faculty of Law and Political Sciences, Hadj Lakhdar University Batna, 2009 –2010, pp. (186–187).
[(1)]See: Zainab Mohamed Abdulsalam, op.cit. p. 227.
[(2)]See: Ibid, p. 228.

national legal systems;however, it was included in an alternative version that aligned with the prevailing nature of international law at that time.

b- The Degree of Adherence to the Principle of Legality in Criminal Punishments as Established by the Rome Statute

The principle of legality of criminal sanctions is explicitly established in Article 23 of the Rome Statute, subsequent to the delineation of the principle of legality regarding crimes in Article (22)[(3)]. This denotes a substantial transformation away from the historical reliance on customary rules as the primary basis for punishment in international criminal law, a practice that dominated for decades. The adoption of this concept indicates the explicit intention of the drafters of the Rome Statute to strengthen the idea of punitive legality. Moreover, the Statute not only acknowledges this principle but also provides a detailed framework for the prescribed punishments in Articles (**77)** to (**80)**. Complementary provisions addressing this issue are further elucidated in the Rules of Procedure and Evidence, hence,reinforcing the (ICC)'s dedication to legal certainty and compliance with the notion of legality. This clause reaffirms the norm of legitimacy concerning criminal sanctions as delineated in the Rome Statute. By maintaining a focus on precision and clarity in its drafting, particularly regarding criminalization and punishment, and addressing critiques directed at prior tribunals, the Statute incorporates explicit safeguards. Article **(101/1)**, titled "Rule of Specialty," provides: "No proceedings shall be instituted against a person brought before the Court under this Statute, nor individual shall be penalised or confined for any actions undertaken previous to their surrender, except for the specific behaviour or series of actions that comprise the offences for which the individual has surrendered".A close examination of this provision underscores that any individual brought before the Court is subject solely to the Statute's regulations, which explicitly outline the act or series of acts classified as international crimes and forming the basis for that individual's prosecution.

Article (**77)** of the Law also stipulates the types of penalties that the court may impose on a person found to have committed one of the offences specified exclusively in Article (**5)**. These penalties are also specified exclusively:

- Deprivation of liberty penalties are of two types:
- Fixed-term incarceration not exceeding thirty (30) years.

[(3)]Article 23 states: "There shall be no punishment except as prescribed. No person convicted by the Court shall be punished except in accordance with this Statute." Article 22 stipulates that: "There shall be no crime without a provision."

- Life imprisonment is imposed owing to the grave severity of the offence committed and the unique circumstances of the condemned individual.
- Financial fines are categorised into two types:
- Fine: The application of which is governed by the standards established in Rule (146) of the Court's Rules of Procedure and Evidence[(1)].
- Seizure of assets obtained from crimes for which the perpetrator is convicted, without infringing upon the rights of legitimate individuals[(2)].

Article **79** of the Court's Statute mandates the creation of a trust fund to which proceeds are allocated from fines imposed and confiscated assets and property shall be allocated for the benefit of victims and their families, with the Court authorised to facilitate the transfer of monetary and other assets to the fund, contingent upon the States Parties to the Statute of the Court establishing the criteria for its administration[(3)].

Although the Rome Statute was better than its predecessors in terms of its commitment to the principle of penal legality, there are several remarks concerning the implementation of this idea, which we summarise as follows:

- Failure to specify a penalty for each criminal behaviour according to its severity may result in the inability to fulfil the aim mandated by the principle of legality, particularly concerning the legality of punishment or sanction, leading to inconsistent judgements regarding the severity and extent of penalties[(4)].
- The omission of the death sentence as a punishment under the Rome Statute, notwithstanding the grave nature of the offences listed in Article **(5)**, which have resulted in significant loss of life, creates a striking paradox. This inconsistency becomes particularly apparent when considering Article **(80)**, which provides: "Nothing in this Part of the Statute shall affect the application by States of penalties prescribed by their national law nor shall it affect the enforcement of penalties in States which do not provide for the penalties set out in this Part**".** This provision effectively Approves the

[(1)]**Rule (146)** outlines the criteria for determining the imposition of fines, as follows:
a.The financial capacity of the convicted person.
b. Whether the motive for committing the crime was financial gain, and the extent to which the crime was committed with such intent.
c. The harm and injuries caused by the crime, as well as the relative financial benefits the offender derived from committing it.The fine shall not surpass 75% of the total worth of the liquid or realisable assets and funds owned by the convicted individual, after accounting for a suitable amount to meet the financial requirements of the guilty individual and their dependents**.**
[(2)]See Article **77** of the Statute of the International Criminal Court.
[(3)]See Article **79** of the Statute of the International Criminal Court (ICC) for more details.
[(4)]See Talal al-Issa, op.cit. p. 137.

enforcement of the death sentence in jurisdictions where it is authorized under national legislation, notwithstanding its absence from the Statute. Such a structure raises problems concerning potential violations of the concept of the legitimacy of punishment, given the death sentence is not explicitly sanctioned within the Statute itself.

- A significant aspect concerning the legitimacy of punishments in the Rome Statute relates to the stipulation in Article 75, which delineates the process for granting restitution to victims.This article specifies that reparations may consist of restitution, compensation, and rehabilitation. This prompts the inquiry of whether such reparations should be regarded as a form of punishment and, consequently, fall within the scope of the penalties enumerated in Article (**77)**. The dominant view is that reparations are more accurately characterized as a measure rather than a punishment. This interpretation is grounded in the principle that judicial discretion is not permitted where the law is explicit. If reparations were intended to constitute a punishment, they would have been expressly included in Article (**77)**. Furthermore, the Statute authorises the Court to execute reparation orders using the Trust Fund created under Article 79, which is administered according to standards defined by the Assembly of States Parties. It would be unreasonable to interpret this as the Court imposing a "punishment" upon itself through the administration of reparations via this mechanism[(1)].
- The Rome Statute, concerning the legitimacy of punishment, neglects to address the escape of a convicted individual as an offence, and therefore does not provide for a penalty, although escape is regulated by the text of Article 111, as well as in Procedural Rule**(225)**relating thereto[(2)].

Notwithstanding the deficiencies in certain provisions of the Court's Statute, it is unequivocal, as previously indicated, that the principle of legitimacy regarding international criminal sanctions serves as a safeguard for both the accused and victims in the pursuit of criminal justice.

[(1)]See Talal al-Issa, o.p.cit. p. 138.
[(2)]Article 111 of the Court's Statute stipulates that: "If a convicted individual in custody escapes from the State of enforcement, that State may, after consulting with the Court, request the State where the individual is located to surrender them in accordance with existing bilateral or multilateral agreements." The State may additionally petition the Court to assist in the extradition of such individual. The Court may mandate the transfer of the individual either to the State where the sentence was being executed or to another State specified by the Court. Furthermore, Rule (225) of the Rules of Procedure and Evidence delineates the steps and procedures to be implemented in the occurrence of an escape.

II. The Efficacy of Criminal Punishment in Attaining International Criminal Justice

Criminal sanctions serve as a crucial mechanism for restoring the balance disrupted by the commission of a crime, providing compensation to victims, and ensuring the realization of criminal justice. While this goal is relatively easier to achieve within national judicial systems, due to the stability of their legal structures, the situation on the international level is notably more complex. Although penalties for individuals violating international law were included in various post-World War I international initiatives, it was only after World War II that actual convictions and the imposition of sanctions were effectively carried out through permanent international criminal tribunals. To evaluate the effectiveness of these criminal sanctions in deterring international crimes and delivering justice, two key aspects must be assessed. Firstly, the proportionality of sanctions relative to the gravity of the offences committed, and secondly, their practical implementation and the function they serve in attaining the desired aims of international criminal justice.

1. The Proportionality of Criminal Punishment to the Severity of International Crimes

The introduction of international criminal punishment has prompted numerous questions and challenges concerning its legal framework, including those related to its legitimacy, which we discussed in the first section of this study. While a comprehensive examination of all these issues is not feasible, we have aimed to concentrate on the most critical aspects, particularly the concern of the proportionality of international criminal sanctions relative to the severity of international offences, alongside the difficulty of guaranteeing justice and equity for both victims and defendants.

a. The Discrepancy in the Principle of Proportionality between International Criminal Punishment and International Offences

The proportionality between punishment and offence is a fundamental part of criminal sanction theory and a premise of the legality of crime and punishment in international law. It is the way to achieve international criminal justice by achieving justice between the suffering endured by the victim and the international community as a result of the crime, and the suffering to be imposed on the perpetrator.

The principle of proportionality in international criminal law mandates a logical correlation between the gravity of the international crime perpetrated by an individual and the associated international sanctions imposed[(1)]. The absence of this principle compromises the fundamental purpose and effectiveness of international criminal penalties. As such, several legal instruments stress the importance of adhering to this principle. A notable example is Article **(46)** of the Draft Code of Crimes Against the Peace and Security of Mankind, presented by

the International Law Commission during its 46th session[(1)] in 1994 to the United Nations, which states: "...**2**- In determining the penalty, the Trial Chamber must consider factors such as the gravity of the crime and the personal circumstances of the convicted individual".

A review of international criminal jurisprudence, reveals that most international criminal sanctions imposed by judicial bodies, according to their respective statutes, the Leipzig Court, Nuremberg and Tokyo Military Tribunals, ad hoc International Criminal Tribunals for the former Yugoslavia (ICTY) and Rwanda (ICTR), mixed tribunals for Sierra Leone and Cambodia, and the permanent International Criminal Court (ICC) frequently do not correspond to the severity and gravity of the crimes delineated in these courts' statutes. The penalties imposed by the Nuremberg and Tokyo Tribunals, although criticised for purported violations of legal principles such as the legality of crimes and punishments, were generally regarded as commensurate with the severity of the offences committed; conversely, the statutes of the ICTY and ICTR explicitly excluded the death penalty. This omission created a gap in

[(1)]See: Ali Jamil Harb, O.p.cit. p. 165.

[(1)]or more on some Of these sources that define the idea of proportionality between the offense and the sentence, see: Mohamed Ababsa, "The ***Proportionality of International Criminal Sanction - An Approach for a Rational International Criminal Justice"***, Journal of Law and Political Sciences, Ziane Achour University of Djelfa, Issue 23, Volume 1, June 2015, pp. (74-75).

proportionality, given the heinous nature of the crimes these tribunals were called to adjudicate[2].

While the Rome Statute grants judges wide discretion in determining sanctions that correspond to the gravity of international crimes listed in Article (**5)**, enabling the customisation of sanctions based on the gravity of the offence and the particular circumstances of the convicted person[3] as outlined in Article **(78/1)**. a closer look at the sanctions specified in Article (**77)** raises concerns about an absence of proportionality between the offences and the sanctions administered. The absence of the death penalty creates a disproportionate disparity given the serious nature and atrocities associated with the five crimes outlined in the Statute. Its inclusion would have aligned with the aims of international criminal sanctions, specifically general deterrence, the pursuit of justice, the restoration of legal equilibrium, and the prevention of personal retribution[4].

Needless to say, the writers of the statutes of international criminal tribunals, whether temporary or permanent, have gone along with the general trend in the international community to abolish the death penalty from domestic laws and settle for penalties of deprivation of liberty[5].

We also finally refer to the fact that the principle of proportionality between international criminal penalties and international crimes has, in contemporary times, become a key focus of international projects overseen by the International Law Commission, as well as within international reports concerning the fairness and effectiveness of international sanctions. However, it must be acknowledged that, to date, these international projects have not yet been implemented under the umbrella of the international legal system[1].

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[2]The subsequent section of this axis will elaborate on these punishments in the light of their practical implementation under international criminal law.

[3]Criminal jurisprudence calls this freedom for court judges to choose
and determine the sentence for the guilty individual from among the punishments established by either the statute or the national law. The word "judicial
individualisation of punishment". See: Ali Abdel Qader Al-Qahwaji, **Ilam al-Ijram wa al-Iqab**, Al-Dar al-Jamiya, Beirut, w. Ed, 1994, p. 200 and following.

[4]See: Abderrahmane Belalem, ***"Problems of Justice and Equity in International Criminal Sanctions"***, Academic Journal of Legal and Political Research, Amar Thaliji University of Aghouat, Issue III, Volume 01, Part II, March 2018, p. 126.

[5]They based their refusal to include the death penalty on a number of arguments and justifications. For more detailsSee: Ibid, pp. (128 -132).

[1]See: Ali Jamil Harb, op.cit, pp. (166-167) .

b. The Challenge of Attaining Justice and Equality between the Victim and the Offender

Judicial trials aim to achieve justice and equity between the parties involved through the judgments they render. However, what distinguishes criminal cases is that the plaintiff represents society collectively, whereas the defendant is the transgressor of the offence. The victim has no association with the criminal penalty assigned to the culprit[(2)] although such punishment may serve as a form of moral compensation for the victim and alleviate their desire for revenge or seeking justice on their own[(3)].

Within the framework of international criminal proceedings, the situation is similar to that in national criminal trials, with some minor differences, although the international criminal punishment system raises several issues about achieving equality between victims and perpetrators of international crimes and the degree of their equity, provided that international criminal judicial authorities serve as mechanisms for safeguarding human rights globally. They must also safeguard the rights of the accused. The architects of the Rome Statute endeavoured to equilibrate the rights of all stakeholders engaged in the judicial processes before the Court, unlike what was the case before previous international courts of justice, whether military or temporary, or even internationalised ones, which prioritised the rights of the accused, disregarding the legal standing of the victim, who became a crucial participant in the proceedings with the implementation of the ICC Statute. Furthermore, the latter underscored that the interests of international criminal justice and those of victims are inextricably linked.

The entitlements of victims of foreign offences can be classified into two categories: The initial category pertains to the procedural elements of commencing legal action, encompassing the right to protection, the right to engage in court procedures, and the right to legal representation[(4)]...

[(2)]See: Montaser Said Hamouda, ***International Crime - A Comparative Study with Islamic Law***, Dar Al-Fikr Al-Jami'i, Alexandria, 1st ed, 2011, p. 247.
[(3)]See: Abderrahmane Bellalem, op.cit, p. 132.
[(4)]These rights are fundamental and emphasized by the court system, providing essential guarantees for victims to ensure justice and redress. For a more detailed discussion of these rights, see: Gharssa Yacine and Brahmia Zahra, ***"The Role of the International Criminal Court in Establishing the Rights of Victims of International Crimes "****, Journalof Law and Political Sciences*, University of Djelfa, Vol.11, Issue 1, March 2018, pp. (678 –680).

The second category concerns reparations, as stipulated in Article **(75/1)** [(1)]; which outlines principles for providing compensation to victims. These principles apply only after a conviction has been issued against the individual or entity accused of offences within the Court's jurisdiction. This enables the Court to assess the damage sustained and address victims' reparation requests in a manner it deems appropriate.

Among these rights, the right to redress is paramount:

- Article **75(2)** creates the rights to restitution and compensation, authorising the Court to require reparations, including monetary compensation through the designated Trust Fund[(2)]established for this goal. The Trust Fund may be accessed only if the convicted individual is unable to meet the reparation requirement. Member governments of the Court or intergovernmental organisations committed to safeguarding victims of international crimes contribute to the Trust Fund.
- Among the most essential rights conferred to victims before the International Criminal Court following sentencing is the right to rehabilitation. This right encompasses the provision of sufficient material, medical, psychological, and social support to address the harm endured by victims due to the international crimes perpetrated against them.

Hence, the Court and its member states bear paramount importance and responsibility to safeguard the rights of victims and to endeavour to rectify the harm they have endured[(3)].

Regarding safeguarding the rights of defendants in international criminal cases, as established by the Court, it is widely recognized that there are numerous principles and legal safeguards that uphold this protection, from the initial suspicion to the final judgment containing the criminal sanction. While it is not feasible to cover all of them here, we will briefly outline the key aspects related to international criminal punishment. Due to its punitive nature, international criminal punishment is governed by the principle of legality in both its substantive and procedural dimensions. This implies that individuals must be informed of the rules of conduct that clarify what actions are prohibited or required. The core of this principle in criminal law is the

[(1)]Article **(75/1)** states:"The Court shall establish principles regarding the reparations for harm endured by victims or associated individuals, encompassing restitution, recompense, and rehabilitation. Consequently, the Court may, either upon request or sua sponte in extraordinary situations, ascertain the scope and magnitude of any damage, loss, or injury incurred by the victims...".

[(2)] This fund is established by Article (79) of the International Criminal Court Statute.

[(3)] For further information on victim involvement in proceedings before the International Criminal Court, see to: ***Guide to Victim involvement in the Proceedings of the International Criminal Court***, an unofficial translation by Ghaniya. Melhis, reviewed and edited by Al-Haq Foundation, published by the International Criminal Court, 2021, pp. (17-20).

obligation for the legislator to provide a warning before imposing punishment[4], which was absent in the post-World War II trials. Defendants at the Nuremberg and Tokyo Tribunals challenged the lack of written legal provisions that criminalized their actions at the time they occurred. Consequently, the international community took steps to rectify this deficiency by incorporating the idea of legality into the structure of the International Criminal Court, namely in Article 22, to protect suspects from vindictive prosecutions and judicial overreach.

Regarding the second aspect of the principle of legality, specifically the legitimacy of punishment or penalty, although international criminal courts and atribunals acknowledge their need to uphold the rights and freedoms of the accused, they neglect this requirement in their statutes and procedural norms and evidence failed to specify a penalty for each individual offence, permitting judges to exercise discretionary authority.

Moreover, the discretionary application of penalties in national courts, where some impose sanctions not provided for in the statutes of international criminal courts, such as the death penalty, while others impose life imprisonment or fixed-term sentences for the same offenses, has led to considerable discrepancies in rulings. This creates inconsistency, even within the same court, in cases involving similar circumstances[1]. Such disparities are viewed as an unacceptable form of discrimination in international criminal sanctions, as they inevitably affect the rights and freedoms of the accused. Moreover, the absence of a definitive hierarchy regarding the severity of international crimes has led to inconsistencies in sentencing for identical offenses, consequently infringing upon the rights and liberties of the defendants.

The system safeguards the rights of the accused during the enforcement of sentences. One such protection is the prohibition of extraditing, deporting, or forcibly returning any individual to a country where there are substantial reasons to assume they may endure torture or cruel, inhuman, or humiliating treatment while serving their prison sentence. Furthermore, Articles 103(3)(a) and 106 of the Court's Statute require that the conditions of detention enforced by the laws of the state must align with internationally recognized regulations for the treatment of inmates, as delineated in ratified treaties, including the United Nations First Congress on the Prevention of Crime and the Treatment of Offenders, convened in Geneva, Switzerland, in 1955[2].

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[4] See: Khoja Abdelrazak, ***"Fair Trial Guarantees before the International Criminal Cour"***, Memorandum submitted for the award of a Master's degree in International Humanitarian Law, Faculty of Law and Political Science, El Hadj Lakhdar University Batna, 2012-2013, p. 108.

[1]See: Abdelrahman Belalem, op.cit., p. 135.

[2]This conference set minimum standards for the treatment of prisoners, including:

2. Assessing the Efficacy of Criminal Punishment in Reducing International Crimes through the Applications of International Judiciary

The need for international balance has shaped the implementation of international criminal justice, which seeks to ensure justice and prevent perpetrators of international crimes from evading punishment through the imposition of criminal sanctions. This became especially relevant after international law acknowledged the lack of such sanctions within its framework and the extended absence of individual criminal accountability. Below, we will outline examples of how international criminal punishment has been applied through trials by both ad hoc international criminal tribunals and, later, through specific practical actions of the permanent International Criminal Court.

a. Practical Applications of Criminal Punishment before Military International Criminal Tribunals (ADHOC)

- **Judgments of Military Tribunals (Nuremberg and Tokyo Tribunals)**

The heinous crimes committed during World War II provoked the outrage of the victorious nations, who sought to deliver justice for the victims by taking steps to

- The prison system must not increase the suffering of the prisoner inherent in the deprivation of liberty.
- Prohibit collective punishments.
- Not to use solitary confinement for long periods of time.
- Not to impose any more severe punishment than that which was in force at the time the offence was committed... For more, see: Khoja Abdelrazak, op.cit. p. 165.

prosecute high-ranking Nazi political and military leaders accused of war crimes before a dedicated international criminal tribunal. In late 1942[(1)], the United Nations War Crimes Commission following considerable efforts, compiled **8,178** files on individuals suspected of committing war crimes, which served as the foundation for the trials conducted by the tribunal set up for this purpose, the Nuremberg Court. The court commenced its sessions on November 21, 1945, and continued until August 31,1946. During this time, the court held **403** sessions[(2)] and tried **24** defendants, including key leaders of the Nazi party in Germany. On October 1,1946, the court delivered its verdicts, condemning 12 defendants to death, 3 to life imprisonment, and 7 to jail terms of 10 to 20 years, while 3 defendants[(3)] were acquitted.

The Tokyo Tribunal, established by U.S. General **"Mark Arthur"**, Supreme Commander of the Allied Forces, following a decision on January 19,1946, to try Japanese war criminals, consisted of 11 judges representing 11 countries. The tribunal commenced its first session on May 3,1946, and concluded on November 12, 1948. **7** defendants, including the Prime Minister, were sentenced to death. **16** defendants received life sentences, **25** were acquitted[(4)]one was sentenced to **20** years in prison, and another to seven years.

The legal benefits attained by the Nuremberg and Tokyo trials, including the foundation of individual criminal responsibility under international law, do not diminish the practical shortcomings executed in the name of law and justice. The most significant of these will be outlined below:

- These trials were carried out with the aim of achieving political justice, which was more focused on retribution than on the pursuit of genuine international justice, thereby limiting their effectiveness in addressing international crimes. The justice of the victors, which focused on prosecuting individuals based on their identity and association with specific Axis powers, introduced a new criterion for accountability

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(1) See :M.Chérif bassiouni, ***L'expérience Des Premières Juridictions Pénal international***, In Droit international pénal,Hervé.Ascensio Et autres, Ed. A.pedone, Cedin Paris X, 2000, P..640

(2)See: Ali Yousef Al-Shukri, ***International Criminal Law in a Changing World***, Itrak Publishing and Distribution, Egypt, 1st edition, 2005, p. 30.

(3)The death penalty was carried out on 11 defendants, while the final convicted individual committed suicide in prison. As for the primary war criminals, such as "Hitler," "Himmler," and "Goebbels," the infamous Reich Minister of Propaganda, they committed suicide at the moment the Russian forces attacked the Reich Chancellery in Berlin. For more on this, refer to: Nizar Jassim Al-Anbaki, ***International Humanitarian Law*** Dar Wael for Publishing and Distribution, Jordan, 1st edition, 2010, p. 534.

(4)The execution of the sentences issued by this tribunal was governed by the will of the Supreme Commander of the Allied Forces, General Mark Arthur, who held the authority to reduce sentences or grant pardons. He issued an order for the release of the 25 defendants between 1951 and 1957, by which time all those convicted by the Tokyo Tribunal were released. For more on this, refer to: M.C. Bassiouni, *Ibid.*, p. 647.

and punishment based on the perpetrator's identity. This principle has continued to influence legal practices, albeit with some modifications[(1)], since that time.

- Noncompliance with the concept of legality in criminal law, as the offences for which the guilty defendants were charged were nonexistent before the Nuremberg Charter was concluded, which means that the legal element of the offence is absent. In addition, the punishment to be applied to the perpetrators of these offences was not determined in advance.
- Judges are permitted to decide all penalties save for the death penalty, as specified in the statutes of the two tribunals, which leads to arbitrariness in imposing punishment on defendants and disparity in the severity of punishment justified by discretionary authority, coupled with ambiguity over the execution of these penalties[(2)], which is no less important than the issue of penal legitimacy.

- **Judgments of the Provisional Criminal Tribunals (former Yugoslavia and Rwanda)**

The devastating events and severe violations that took place in the former Yugoslavia and Rwanda had a significant influence, leading the Security Council to establish two ad hoc international tribunals to prosecute these crimes. This decision was made to avert the criticisms faced by the Nuremberg and Tokyo Tribunals, which were perceived as representing the interests of the victors in prosecuting the defeated parties[(3)].

On February 22, 1993, through Security Council Resolution 808, the creation of a special international criminal tribunal was authorized to prosecute persons accountable for serious violations of international humanitarian law in the former Yugoslavia since 1991[(4)]. The tribunal commenced its operations under Security Council Resolution **827**, adopted on May 25, 1993. Between that date and December 31, 2007, the tribunal charged **161** individuals and adjudicated **108** cases, issuing sentences ranging from life imprisonment to fixed-term prison terms for **52** individuals. The tribunal's statute did not authorize the death penalty. Furthermore, **7** defendants were acquitted, and **13** were transferred to national jurisdictions for prosecution. **36** defendants passed away during the proceedings, including former Serbian president **"Slobodan Milošević"**,

[(1)]See: Ali Jamil Harb, Op.cit, p.386. For further details on the Nuremberg and Tokyo Trials, refer to:Didier Rebut, ***Droit pénal international***, Dalloz, Paris Cedex, 1st edition, 2012, pp. (494-509).
[(2)]See: Ali Yousef Al-Shukri, ibid, p. 34.
[(3)]See: Ashraf Mohamed Lashin, ***The General Theory of International Crime***, Manshaat Al Maarif, Alexandria, w.edit, 2012, p. 654.
[(4)]See: Hervé Ascensio, ***"Les Tribunaux ADHOC pour l'ex-yougoslavie et pour le Rwanda "***, in Droit International pénal, Hervé Ascensio et autres, Ed A.Pedon, cedin Paris, 2000, P.715.

who was facing the possibility of a life sentence on 66 charges of genocide, crimes against humanity, and war crimes[(1)]. However, he died in custody in March 2006 before a verdict[(2)] could be rendered.

The International Criminal Tribunal for Rwanda was formed by Security Council Resolution 955 on November 8, 1994, was tasked with addressing the genocide crimes committed in Rwanda between January 1 and December 31, 1994. Its statute was closely aligned with that of the Yugoslav Tribunal, sharing similar procedural and evidentiary rules, as well as penalties. Both tribunals operated under the same prosecutor and appellate division. Following the tribunal's orders, **74** individuals were apprehended and transferred to a detention center in Arusha, Tanzania[(3)], where **55** were placed under the tribunal's jurisdiction. Five individuals were exonerated, three were forwarded to national jurisdictions for prosecution, and six were transferred to Mali to serve their sentences. A total of **35** individuals, including government officials, were tried from 1994 to December 31, 2007[(4)], with sentences ranging from life imprisonment[(5)] to fixed-term imprisonment[(6)]. Like the Yugoslav Tribunal, the court's statute excluded the death penalty, notwithstanding the gravity of the offences and substantial breaches of international humanitarian law.

The two tribunals significantly contributed to establishing an international precedent in international criminal justice, particularly by emphasising individual criminal culpability and rejecting immunity for leaders of state and government. In addition, to lay the groundwork for the development of a permanent global criminal judicial framework, they have faced criticism, particularly concerning the application of penalties. These criticisms can be outlined as follows:

- Being the product of political will rather than an international treaty, this substantially impacted the trajectory of the proceedings and the appointment of judges. It is notable that the number of defendants who were sentenced to criminal penalties is small in comparison to the large number who escaped prosecution[(7)]. Additionally, the

[(1)]See: Mariam Nasseri, op.cit. p. 327.
[(2)]The (ICTY) heard its last case on 29 November 2017, and this body was finally closed on 31 December 2017.
[(3)]The Tribunal was set up in Arusha, Tanzania due to the lack of infrastructure in Rwanda. For more details, see: Ashraf Mohamed Lashin, O.p.cit, p. 660 margin 1.
[(4)]See: Mariam Nasseri, Ibid, p. 329.
[(5)]The Court pronounced its first sentence on 02 September 1998 against **"Jean-Paul Akayes"**, and a month later, on 02 October 1998, the same sentence was pronounced against **"Jean Kambanda"**, the former Prime Minister of Rwanda, who was charged with the crime of genocide. See: Hervé Ascensio, op.cit, p.721
[(6)]Many of those charged with the crime of genocide received prison sentences ranging from 6 to 32 years. For more details, see: Mariam Nasseri, Ibid., pp. (328-329).
[(7)]The temporary nature of these tribunals, along with their limited territorial and temporal jurisdiction, resulted in the failure to prosecute many crimes that were committed and the inability to arrest many of the responsible individuals. Refer to: Ashraf Mohamed Lashin, *Ibid*, p. 657. Also: Nizar Jassim Al-Anbaki, *O.p.cit*, p.549.

trial of perpetrators before their national courts may be distant from justice due to the lack of impartiality and neutrality in those courts.

- Penalties are disproportionate to the gravity of the violations committed, especially those for which the tribunals were established, namely genocide and ethnic cleansing.

These two judicial bodies remain temporary, and their work will cease once the purpose for which they were created no longer exists, and their role in the field of international justice cannot be compared to that of the ICC, which must avoid these criticisms.

b. Criminal Punishment and their Application in the Activity of the International Criminal Court

Since the implementation of the International Criminal Court (ICC) system on July 1, 2002, numerous cases have been referred to the Court. These referrals have come from several sources, including state parties to the Court's Statute, the Security Council, and requests from the Prosecutor.The cases pertain to breaches of international law that constitute international crimes within the Court's jurisdiction. We shall analyse the implementation of international criminal sanctions through the rulings rendered by the Court in particular situations, acknowledging that many cases remain unresolved[(1)].

- **Cases Brought Before the Court and Adjudicated with Criminal Penalties**

The Democratic Republic of Congo has referred a case to the Court, wherein multiple trials have been arranged for persons implicated in the recruitment of minors during the nation's armed war. The first of these trials concerns **"Thomas Lubanga Dyilo"**, aged **51** who was referred to the Court on March 17, 2006, following an arrest warrant issued on February 10, 2006. As the leader of a rebel militia, **"Lubanga"**was convicted by the Court for enlisting and employing minors under the age of fifteen in armed conflict during the Ituri crisis in the Democratic Republic of Congo, which transpired between September 1 and August 13, 2003. The conviction was delivered on March 14, 2012. On July 10, 2012, Lubanga was sentenced to 14 years in prison, a

[(1)]Since the start of its operations to the present day, the International Criminal Court (ICC) has reviewed **17** referrals, of which **12** are under investigation and **5** have had their investigations closed, totaling **32** cases currently under review by the judges. For more information on these cases, please visit the official website of the Court at*:* *http://www.icc-cpi.int/fr/cases*. Last accessed: 18/11/2024, at 8:15 AM

sentence which was upheld by the Appeals Chamber on December 1, 2014. This marked the first criminal judgment issued by the Court the beginning of its activity[(2)].

The second trial in the same case pertained to "Bosco Ntaganda," the Deputy Chief of General Staff accountable for military operations of the National Forces for the Liberation of the D.R. Congo. The prosecution submitted 13 counts of war crimes and 5 counts of crimes against humanity, all pertaining to offences committed between 2002 and 2003 in the Ituri region of the Democratic Republic of Congo. On July 8, 2019, the Court upheld all charges, and on November 7, 2019, Ntaganda was sentenced to 30 years of imprisonment. The Appeals Chamber ratified the sentence on March 30, 2021, rendering it definitive. On December 14, 2022, the convicted individual was transferred to Belgium and specifically to the **"Leuze-en-Hainaut"** prison to serve his sentence, with the time spent in detention being accounted for.

- In the case referred by Uganda in July 2004, the inaugural criminal conviction was against Dominic Ongwen, the commander of the Sinia Brigade under Uganda's Lord's Resistance Army. He was indicted and convicted of 61 offences, encompassing war crimes and crimes against humanity, perpetrated between July 1, 2002, and December 31, 2005. The trial began on December 6, 2016, and on February 4, 2021, the Trial Chamber upheld the charges. On May 6, 2021, he received a sentence of 25 years of incarceration. On December 15, 2022, the Appeals Chamber upheld the conviction, and on December 18, 2023, the convicted individual was sent to Norway to spend his time in a penitentiary facility.
- In the case filed by Mali in July 2012, which resulted in the initiation of a judicial investigation in January 2013, a warrant for arrest was authorized for**"Ahmad al-Faqi al-Mahdi"**, a member of the Ansar Eddine group linked to Al-Qaeda in the Islamic Maghreb in Timbuktu, Mali. He was tried, convicted of war crimes, and on September 27, 2016 sentenced to **9years** in prison. The sentence was subsequently shortened by **2years** due to the defendant's cooperation with the court, as he acknowledged the crimes attributed to him[(1)].

- **Commentary on Criminal Punishments Pronounced Before the Court**

The International Criminal Court (ICC) has clearly adhered to the norm of legality in the practical implementation of international criminal punishment as stipulated in its Statute. All penalties imposed or executed were explicitly defined by the Statute, and

[(2)]The convicted individual was transferred to a prison within the Democratic Republic of Congo on December 19, 2015, to serve his sentence. He was released on March 15, 2020, after serving 14 years in detention. For further details, please refer to the official website:*http://www.icc-cpi.int/fr/drc/lubanga*. Last accessed on November 18, 2024, at 16:37.
[(1)]See: Official website of the International Criminal Court,*http://www.icc-cpi.int/fr/cases*. Last accessed: 18/11/2024. At: 8.15.

the judges did not exceed the maximum limits prescribed. This approach has played a key role in using criminal punishment to achieve justice for the victims. However, a significant criticism of these penalties is that they do not correspond to the gravity of the crimes committed. Additionally, the anticipated sentences have failed to satisfy the expectations of the victims and the organisations committed to upholding human rights. Furthermore, the Court has faced criticism for issuing sentences solely against defendants from African countries, while disregarding significant breaches of international law taking place in other parts of the globe. The current circumstances in Palestine illustrate the selective character of international justice[(2)].

Conclusion:

This study sought to examine how international lawmakers maintain the idea of legality in criminal sanctions, particularly with the International Criminal Court. We have drawn several conclusions and proposed recommendations to strengthen the Court's role, ensuring that future penalties are more effective in realizing the core objectives of criminal justice pursued by the international community. These conclusions are summarized as follows:

Research Findings

- The customary nature of international law, particularly international criminal law, necessitates the enforcement of the principle of legality in criminal sanctions, commonly known as the principle of punitive legality, differs from its application in national legal systems. Nevertheless, it occupies the same fundamental role in international law as it does in domestic law, acting as the principal protection against any unjustified violation of individual rights.
- Although the criterion of legality concerning criminal punishment is explicitly articulated in the Rome Statute, in contrast to the statutes of preceding international criminal tribunals, the challenge of reconciling both the offence and the corresponding penalty according to its severity remains.
- Even though the Rome Statute excludes the death penalty, despite the serious threats posed by the international crimes it addresses to international peace and security, a paradox arises between the accountability of individuals before national courts, which may impose the death penalty as prescribed by domestic laws, and their

[(2)]Although the Prosecutor of the International Criminal Court issued arrest warrants for Israeli officials in May 2024, the likelihood of these being executed appears slim due to the threats posed by major powers against the Court, as well as Israel's non-cooperation and its refusal to allow investigators to carry out their duties.

responsibility before the International Criminal Court. This contradiction is evident in the tension between Article 23, which stipulates that no individual convicted by the Court shall be penalized except in accordance with the Statute, and Article 80, which allows states to apply penalties prescribed by their national laws.

Research Recommendations

- Incorporating the death penalty as a sentence outlined in Article 77 of the Rome Statute is crucial to maintain the idea of proportionality between punishment and the severity of the crime, as well as to guarantee justice and equity between the victim and the perpetrator.
- Article 80 ought to be abrogated as it contravenes the norm of legitimacy in punishment.
- It is crucial to establish penalties for each crime that are proportionate to its seriousness, as well as to create mechanisms for their implementation within defined limits to prevent excessive judicial discretion, which could result in substantial inconsistencies in criminal rulings. This is necessary to maintain the principle of legality in criminal sanctions and ensure the actualisation of authentic international criminal justice.

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7. **Victims' Participation in ICC Proceedings Guide,** unofficial translation by Ghania Malhis, reviewed and edited by Al-Haq Foundation, published by the International Criminal Court, 2021.

V. Electronic Websites

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