

The General Concept of International Criminal Protection of Human Rights

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Received
26/04/2026

Accepted
11/06/2026

Published
31/10/2026

Abstract:

International protection is no less important than other topics of international law, nor does it fall short in raising jurisprudential and legal disputes in order to determine the true meaning of this term and to understand its correct concept. International protection sometimes represents an action taken by the international community to prevent violations of human rights, and more often it is a reaction to the violation of these rights.

key words:

international protection, international law, international community, human rights, violating.

Introduction

International law has, since its inception and in step with international events and realities -particularly from the late nineteenth and early twentieth centuries to the present-undergone far-reaching development. It has increasingly assumed a humanitarian dimension, founded on the understanding that it can no longer remain indifferent to human rights and fundamental freedoms. Nor is it any longer acceptable to leave the protection of those rights and freedoms solely to states through domestic legislation, whether in times of peace or during armed conflict. The advancement of human rights and fundamental freedoms has also extended to the field of protection itself, which is now driven by an international effort aimed at safeguarding them both in peacetime and in situations of international and non-international armed conflict. This protection evolved through stages: first, their proclamation in the form of declarations; then the affirmation of their binding nature and the establishment of mechanisms to supervise implementation; and ultimately the emergence of international criminal protection, grounded in the rules of international criminal law as set out in its sources.

The significance of this research stems, first and foremost, from the vital importance of the rights that individuals must enjoy amidst rapidly changing international dynamics. It is not overstating the matter to say that respect for human rights is a prerequisite for domestic stability within states and for the consolidation and preservation of international peace and security. Within the state framework, nothing approaches the concept of sovereignty in its weight and firmness except those rights which-according to social contract theory-represent the very rationale for the existence, or creation, of states. A key point that must be emphasized at the outset is that rights serve a vital function: they are not a matter of luxury, but essential necessities without which neither human dignity nor free will can be achieved. For that reason, they stand as the ultimate purpose of the state's existence.

The General Concept of International Criminal Protection of Human Rights

In addressing this subject, it was necessary to begin with a core research question: what general concept have international instruments established with respect to the international criminal protection of human rights? And what principles govern international criminal justice in securing that protection?

To answer the principal question and the related hypotheses, the study is structured into two sections, preceded by an introductory part that lays the groundwork for the topic, and concluded with a final conclusion setting out the results reached and a number of recommendations.

Section I: The Nature of International Criminal Protection of Human Rights

Subsection One: The Concept of International Criminal Protection

Subsection Two: Human Rights Subject to Criminal Protection

Section II: Principles Governing International Criminal Protection of Human Rights

Subsection One: The Principle of Legality of Offences and Penalties

Subsection Two: Principles of International Criminal Responsibility

Subsection Three: Principles Ensuring the Protection of the Accused's Rights During the Trial Stage

Section I :The Essence of International Criminal Protection

International law scholars have not agreed on a single definition of international protection. Some have approached it in expansive terms, while others have confined it to a narrower scope (Subsection One). It is also observable that the conventions, treaties, and declarations addressing protection do not set out an express definition; instead, they lay down a series of rules that bind states, whether the commitment is legal in nature or merely moral. They likewise refer to the sources upon which international criminal protection is founded (Subsection Two).

Subsection One: The Concept of International Criminal Protection

The notion of international protection is still relatively recent in the field of human rights. The concept first emerged in relation to the protection of minorities under the Peace of Westphalia in 1648. Subsequently, various treaties and conferences dealt with criminal protection and endeavoured to articulate a definition for it (Paragraph One), alongside efforts to identify the rights that constitute the subject matter of such protection (Paragraph Two).

Paragraph One: Definition of International Criminal Protection

International criminal protection may be understood as a body of legal rules, general and abstract in character, which the international community has agreed to establish in response to the requirements of the international society in the field of human rights, through international conventions or binding treaties. Its purpose is to secure the application of those instruments at the international level by means of international criminal adjudication. The basis of this protection lies in the distinctive nature of the interest that the international community has resolved to safeguard: the human person, protected by reason of his or her humanity¹.

International protection has likewise been described as being grounded, in essence, in the adoption of a range of general measures carried out by the specialized organs of the United Nations, or by the bodies established under special international protection regimes tasked with supervising states' compliance with their obligations to respect human rights. Such bodies are created pursuant to the constituent instruments of the specialized agencies and the agreements concluded in the period following the adoption of the Charter of the United Nations. The dividing criterion between general measures exercised by the specialized UN organs and special protection mechanisms lies in the legal basis on which the action is taken: if it is taken under the UN Charter, it is deemed general protection; if it is

¹Taher Fatima Zahra, *International Criminal Protection of Human Rights during Armed Conflicts*, Doctoral Dissertation, Abdelhamid Ibn Badis University, Faculty of Law and Political Science, Mostaganem, 2017, p. 55.

The General Concept of International Criminal Protection of Human Rights

taken under specific conventions or treaties concluded by international agencies, it is deemed special protection. This formulation is more precise than the previous one, as it limits protection to measures of an international character, whether undertaken by the United Nations or by the specialized agencies¹.

Paragraph Two: Human Rights Subject to Criminal Protection

If the human being is both the object and the ultimate purpose of criminal protection within the domestic or international legal order-by reason of his or her humanity and by virtue of being a human person-then the rights inherent in that status constitute the subject matter of such protection. Among the most significant rights protected by international criminal justice is the right to life. This right is affirmed by all revealed religions and by most international instruments concerned with human rights. Article 3 of the Universal Declaration of Human Rights, adopted by the United Nations General Assembly under Resolution 217 A (III) of 10 December 1948, provides that everyone has the right to life, liberty, and security of person. Article 6 of the International Covenant on Civil and Political Rights, adopted by the United Nations in 1966, further stipulates that every human being has the inherent right to life; that right shall be protected by law, and no one shall be arbitrarily deprived of life².

The second right concerns the individual's entitlement to protection against torture. In this regard, torture is defined in Article 1 of the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted and proclaimed by a resolution of the United Nations General Assembly dated 9 December 1975, as any act whereby severe pain or suffering-whether physical or mental-is intentionally inflicted on a person by, or at the instigation of, a public official, for purposes such as obtaining from that person or from

¹ Nasser al-Din (Nabil Abdel Rahman), *Guarantees of Human Rights and Their Protection under International Law*, 1st ed., Modern University Office, Alexandria, 2006, p. 115.

² Jebari (Al-Taher), *Criminal Protection of Human Rights by International Justice*, Al-Baheth Journal, M'sila, Issue 06, 2016, p. 384.

Nesrine Safi

another person information or a confession, punishing him for an act he has committed or is suspected of having committed, or intimidating him or other persons. The definition excludes pain or suffering that results solely from lawful sanctions, is inherent in them, or is incidental to them, insofar as this is consistent with the Standard Minimum Rules for the Treatment of Prisoners.

A further protected right is the individual's right to be safeguarded from slavery, servitude, and forced labour. Under international law, slavery is regulated through a range of treaties, conventions, and declarations. Of particular importance is the Universal Declaration of Human Rights (1948), which stipulates in Article 4 that no one shall be held in slavery or servitude, and that slavery in all its forms must be eliminated¹.

Article 09 of the International Covenant on Civil and Political Rights likewise affirms the individual's right to the protection of liberty and personal security. It further provides that no one may be subjected to arbitrary arrest, detention, or imprisonment, nor to enforced disappearance.

Subsection Two :Sources of International Criminal Protection of Human Rights

International criminal protection of human rights is grounded in two primary legal frameworks: international human rights law (Paragraph One) and international humanitarian law (Paragraph Two).

Paragraph One: International Human Rights Law

International jurists have not been uniform in the terminology they adopt for this field. Some prefer the expression "international human rights law," whereas others use "human rights law," particularly on the view that the former is a relatively recent term. International human rights law was first articulated as an autonomous branch by

¹ Hegazy (Abdel Fattah Bayoumi), *The International Criminal Court: An In-Depth Study in International Criminal Law*, no edition number, Dar Al-Nahda Al-Arabiya, Cairo, 2009, p. 456.

The General Concept of International Criminal Protection of Human Rights

Professor Karl Vasak, who described it as “that type of international law with characteristics and features that set it apart from the other branches and subjects of that law”¹

International human rights law may likewise be described as a branch of public international law whose customary and treaty-based rules are intended to safeguard rights inherent in the nature of individuals, groups, minorities, and peoples-rights without which it is not possible to live a truly human life².

From another standpoint, it is defined as a body of legal rules of a general and abstract nature, endorsed by the international community and articulated through binding international treaties and protocols, with the purpose of safeguarding the human rights of the person-by virtue of being human and a member of society-against abuses by the governing authorities or their omission and failure to provide protection. It constitutes a minimum threshold of protection that member states may not, under any circumstances, fall below, nor may they derogate from any part of it except within the expressly recognized exceptions prescribed therein³.

Two of its most salient features are universality and breadth. It does not limit its protection to a particular right; instead, it is directed toward safeguarding all rights inherent to the human person. A further distinguishing feature of international humanitarian law is its dual conventional and customary basis: its principal foundations are found in a corpus of international conventions and treaties, reinforced by rules of customary international law. These norms have been accepted by the international community, which has affirmed the obligation to abide by them⁴.

¹ Abdel Ghaffar (Mostafa), Human Rights Guarantees at the Regional Level, no edition number, Cairo Institute for Human Rights Studies, Cairo, n.d., p. 14.

² Saadallah (Omar), Human Rights and the Rights of Peoples, no edition number, University Publications Office, Algeria, 2003, p. 19.

³ Al-Kabbash (Khairy Ahmed), “Criminal Protection of Human Rights: A Comparative Study in Light of the Provisions of Islamic Sharia, Constitutional Principles, and International Instruments,” no edition number, Dar Al-Jami‘iyyin, Cairo, 2002, p. 229.

⁴ Al-Kabbash (Ahmed Khairy), *ibid.*, p. 130.

Paragraph Two: International Humanitarian Law

International humanitarian law comprises a body of rules designed, for humanitarian purposes, to mitigate the consequences of armed conflict. It affords protection to persons who are not participating in hostilities, or who have stopped participating, and it further regulates by imposing limitations on the means and methods employed in warfare. It is also commonly known as the law of war or the law of armed conflict¹.

It has likewise been described as “that extensive part of public international law that draws inspiration from humanitarian considerations and is concerned primarily with the protection of the human person in times of war.” Dr. Mahmoud Cherif Bassiouni defines it as “a set of customs that provides protection for certain categories of persons and property, and prohibits any attacks to which they may be exposed during armed conflicts, whether international or non-international in nature. These customs are derived from treaty law and customary international law, commonly referred to respectively as the Law of Geneva (the treaty-based law of armed conflict) and the Law of The Hague (the customary law of armed conflict). The Law of The Hague is not wholly customary in its entirety; rather, it is customary in part. Consequently, the traditional distinction between treaty law and customary law tends to diminish.”²

Among the most prominent characteristics of this body of law are the following:

- It is a branch of public international law; accordingly, what applies to the latter applies to it.
- The scope of application of international humanitarian law in relation to armed disputes includes: a declaration of war, the severance

¹ Nasser (Mariam), *The Effectiveness of Punishment for Serious Violations of the Rules of International Humanitarian Law*, no edition number, Dar Al-Fikr Al-Jami'i, Alexandria, 2011, p. 22.

² Nasser (Mariam), *op. cit.*, p. 25.

The General Concept of International Criminal Protection of Human Rights

of diplomatic relations, and a state of heightened tension between the parties.

- The rules of international humanitarian law apply to peoples and to the parties affected by war, irrespective of whether a state is characterized as the aggressor or the victim of aggression.

International humanitarian law, although it forms part of international law like other international legal regimes, is distinguished by the particular principles on which it is built and by characteristics that set it apart from other branches of international law. Among the most important of these principles is the following:

First: The Principle of Humanity

Under the principle of humanity, the human person must remain a constant consideration in all circumstances. It entails that every human being is entitled to protection in his or her capacity as a human being, independently of any social, political, economic, religious, or military consideration. By its nature, this principle is impartial: it assigns no value to such considerations and rejects any differentiation based on race, sex, ethnicity, or creed. This principle is affirmed in the provisions common to the four Geneva Conventions, and it is also expressly reflected in the Statutes of the International Committee of the Red Cross, which indicate that the Committee's activities are founded upon the principle of humanity. The principle therefore operates as a legal and moral rule, and as an institutional foundation that links together all components of humanitarian action¹.

Second: The Principle of Military Necessity

The principle of military necessity obliges the parties to an armed conflict to abstain from conducting military operations that are not warranted by necessity, from resorting to such operations in an excessive or disproportionate manner without justification, and from breaching protected inviolabilities or directing attacks against civilian

¹ Taher (Fatima Zahra), op. cit., p. 61.

objects. In support of this approach, paragraph 2 of Article 54 of the Additional Protocol annexed to the Geneva Conventions concluded on 12 August 1949, concerning the protection of victims of international armed conflicts, stipulates that it is prohibited to attack, destroy, remove, or render useless objects and materials indispensable to the survival of the civilian population. Paragraph 5 then allows such action only within defined limits, where compelled by an urgent imperative of military necessity¹.

Third: The Principle of Distinction

Article 48 of Additional Protocol I of 1977 provides that the parties to a conflict must distinguish between civilians and combatants, and between civilian objects and military objectives, in order to ensure respect for and protection of the civilian population and civilian objects. Under Article 52 of Additional Protocol I of 1977, “military objectives” are those objects which, by their nature, location, purpose, or use, effectively contribute to military action and whose total or partial destruction, capture, or neutralization, in the circumstances prevailing at the time, yields a definite military advantage. The principle of distinction also entails a prohibition on the use of weapons of an indiscriminate effect, and on means or methods of warfare that inflict severe and long-lasting harm on the environment.

Section II :Principles of International Criminal Protection

International criminal justice rests upon a set of principles that both safeguard human rights and protect society from serious crimes. These principles have evolved in form and content and have been subject to differing interpretations over successive phases, from the Nuremberg trials through to the operationalization of the permanent International Criminal Court. Among the most notable are the principle of legality of crimes and punishments (Subsection One), the principles of international criminal responsibility (Subsection Two), and the principles governing the protection of the accused’s rights during the trial stage (Subsection Three).

¹ Rochou (Khaled), *Military Necessity within the Framework of International Humanitarian Law*, Doctoral Dissertation, University of Tlemcen, 2013, pp. 62, 66.

The General Concept of International Criminal Protection of Human Rights

Subsection One :The Principle of Legality of Crimes and Punishments

The principle of legality requires that no conduct be treated as criminal, and no penalty imposed, except pursuant to a legal text. An act may not be characterized as an offence unless a legal rule expressly criminalizes it and prescribes an appropriate sanction. For this reason, the principle of legality is a cornerstone of criminal justice: it secures legal protection for individual rights and freedoms by clearly identifying prohibited conduct, and, by implication, recognizing that all other conduct remains lawful and may be undertaken by all persons without fear of criminal liability¹.

The Rome Statute of the International Criminal Court expressly enshrines the principle of legality. Article 22(1) provides that no person shall incur criminal responsibility under the Statute unless, at the time it was committed, the conduct in question constituted a crime within the Court's jurisdiction. Article 23 further provides that a person convicted by the Court may be punished only in accordance with the Statute.

The adoption of the legality principle necessarily gives rise to two core principles in criminal law: the principle of non-retroactivity in matters of criminalization and punishment, and the retroactive application of the more favourable rule for the benefit of the accused.

Paragraph One: The Principle of Non-Retroactivity of International Criminal Law

This principle is among the most fundamental principles in domestic criminal legislation. It provides that a new law-together with the offences and penalties it establishes-may not be applied to conduct that occurred prior to its enactment or entry into force; its effects are confined to events taking place after it becomes operative²,

¹ Mohamed Abdel Moneim Abdel Khaleq, *The General Theory of International Crime*, PhD dissertation, Faculty of Law, Ain Shams University, 1988, pp. 121–122.

² Essam Abdel Fattah Matar, *International Criminal Justice: Its Principles and Substantive and Procedural Rules*, New University Press, Alexandria, 2008, p. 76.

Nesrine Safi

Nevertheless, this principle is not always easy to apply within international criminal law. For that reason, legal scholarship has split into two principal views regarding its applicability.

The first view argues that non-retroactivity has no meaningful scope in international criminal law. On this account, criminalizing provisions do not bring into existence a new legal reality; they merely disclose conduct that was already criminal. Such conduct had already been characterized as criminal under settled customary rules, and the written provision is viewed as no more than the codification of an established prior custom.

The second view contends that international criminal law necessarily adheres to non-retroactivity as a direct consequence of its commitment to the principle of legality: no crime and no punishment may be recognized without an international legal rule, irrespective of its source. Because this rule constitutes a fundamental guarantee for the administration of criminal justice and for the protection of human rights, international instruments have taken care to enshrine it¹.

Paragraph Two: The Principle of Retroactive Application of the More Favourable Law to the Accused

This principle means that where a new law is adopted after the offence has been committed and it prescribes a less severe penalty, the offender must benefit from that reduction. The International Covenant on Civil and Political Rights expressly alludes to this principle in Article 15, which provides that if, after the commission of a crime, a law is enacted imposing a lighter punishment, the perpetrator shall enjoy the benefit of such mitigation. The Statute of the permanent International Criminal Court also incorporates this principle in Article 24(2)².

¹ Essam Abdel Fattah Matar, *ibid.*, pp. 75–76.

² Jebari (Al-Taher), *op. cit.*, p. 391.

The General Concept of International Criminal Protection of Human Rights

Subsection Two: Principles of International Criminal Responsibility

International criminal responsibility is governed primarily by two core principles, which are addressed below.

Paragraph One: The Principle of Individual Criminal Responsibility at the International Level

During the proceedings before the Nuremberg Tribunal, certain defendants contended that international law regulates relations between states and that the individual does not constitute a subject of that relationship. They therefore argued that they could not be held criminally liable, on the basis that the criminal conduct attributed to them was, in reality, conduct of the state, and that the state to which they belonged afforded them protection from responsibility. The Tribunal dismissed this contention, relying on the provision in its Charter stating that: “The Tribunal shall have jurisdiction to try and punish all persons who, acting individually or as members of organizations, and in the service of the European Axis powers, committed the following crimes¹”; This indicates that any individual who commits conduct contrary to the rules of international law bears personal and direct criminal responsibility before international criminal justice, so long as that conduct amounts to an offence under international law. The Rome Statute of the International Criminal Court affirms this principle in Article 25.

Paragraph Two: The Responsibility of the Head of State and His Subordinates for International Crimes

For a considerable period, international legal doctrine denied that a head of state could incur responsibility for acts committed in office, on the basis that he represents his people externally and that the people alone are entitled to call him to account. Following the First World War, however, the notion of criminal responsibility for presidents and leaders in respect of international crimes began to gain traction. After the Second World War, with the establishment of the

¹ Ahmed Bashara Moussa, *International Criminal Responsibility of the Individual*, Dar Houma, Algeria, 2009, pp. 17–25.

Nesrine Safi

Nuremberg Tribunal, the responsibility of the head of state was expressly consolidated in its Charter. Article 7 of the Tribunal's Charter provided that the official capacity of the accused-whether as a head of state or as a high-ranking official-does not constitute a defence excluding responsibility, nor a ground for reducing punishment¹

It would be contrary to both justice and sound reason to hold subordinates accountable for carrying out unlawful orders issued by a head of state or his agents, while allowing the leader who orchestrated and commanded those crimes to escape liability².

Article 07 of the Nuremberg Charter also affirms that the head of state's criminal responsibility is not negated by the immunity recognized under customary international law. That responsibility continues to operate in peacetime, and, accordingly, the head of state may be subjected to criminal accountability for acts committed in the context of war³.

Paragraph Three: The Principle of Conscience Prevailing over the Duty to Obey Superior Orders

Most domestic criminal systems recognize that a subordinate may be exempt from responsibility for acts carried out in تنفيذ of orders issued by superiors whose commands are ordinarily binding. Many legal scholars, however, make such obedience contingent upon the legality of the order: there is no obligation to comply where the order is clearly and expressly unlawful⁴.

At the international level, the Nuremberg Tribunal regarded obedience to superior orders as a factor that may reduce punishment, but not as a defence that removes criminal responsibility. It held that the fact an accused acted under instructions from his government or

¹ Jebari (Al-Taher), op. cit., p. 392.

² Mohamed Mohy El-Din Awad, *Studies in International Criminal Law*, Dar Al-Fikr Al-Arabi, Cairo, 1972, p. 554.

³ Abbas Hisham Al-Saadi, *The Individual's Criminal Responsibility for International Crime*, University Publications Office, Alexandria, 2002, p. 287.

⁴ Jebari (Al-Taher), op. cit., p. 393.

The General Concept of International Criminal Protection of Human Rights

under the orders of a higher superior may be taken into account only by way of mitigation, where the Tribunal considers that justice so requires.

The Tribunal applied this approach when one of the accused, Keitel, argued in his defence that he was a soldier bound to obey his superior's orders and therefore bore no responsibility for the acts in question. The Tribunal responded that an order directing a serviceman to kill or to engage in terror in breach of the international law of war can never operate as a justification for violating the law; it may, however, be relied upon to obtain a reduced sentence in accordance with the Charter. The same principle was also adopted in the draft Code of Crimes against the Peace and Security of Mankind in Article 04, which provides: "The fact that the accused committed one of the crimes set out in the Code pursuant to an order of his government or his superior does not exempt him from international responsibility where, in the circumstances prevailing at the time of commission, it was possible for him not to comply with that order."

By contrast, the Statute of the International Criminal Court treats compliance with a superior's order as a ground excluding responsibility under Article 33, departing from the position reflected in international instruments, which considered such compliance a mitigating circumstance rather than a bar to responsibility, as affirmed by the Nuremberg Tribunal and the Tribunal for the former Yugoslavia¹.

Subsection Three: Principles Safeguarding the Accused's Rights During the Trial Stage

These are the principles established to protect the rights of the accused throughout the trial phase, and they may be set out as follows:

¹ Mariam Nasser, *op. cit.*, p. 133.

Paragraph One: The Principle of a Fair Trial

The fair trial principle denotes a body of legal rules that ensures the accused is afforded protection and humane treatment at every stage of the proceedings, so that justice is achieved in a manner removed from any spirit of vengeance or reprisal. This principle is grounded in a range of international instruments, foremost among them the Universal Declaration of Human Rights, which states in Article 10 that everyone is entitled, on a footing of complete equality with others, to a fair and public hearing by an independent and impartial tribunal in the determination of his rights and obligations and of any criminal charge brought against him. The same guarantee is reaffirmed in Article 14 of the International Covenant on Civil and Political Rights, and is further reflected in instruments adopted under the auspices of the United Nations, including the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Basic Principles on the Independence of the Judiciary, and related instruments¹.

The Rome Statute of the International Criminal Court affirms the fair trial principle. Article 55 provides for the legal safeguards guaranteed to persons during the investigative stage, foremost among them the prohibition on compelling a person to incriminate himself or to confess guilt, and the prohibition on subjecting him to any form of coercion, duress, or threat, or to torture, or to any form of cruel, inhuman, or degrading treatment or punishment.

Article 67 further sets out the guarantees that must be observed at trial, including the accused's right to a public and fair hearing conducted with full impartiality, and his entitlement to the minimum procedural guarantees.

Paragraph Two: The Principle of the Presumption of Innocence

The presumption of innocence is one of the most significant legal safeguards for the protection of human rights before criminal justice. It means that the accused is deemed innocent as a matter of principle

¹ Taher (Fatima Zahra), op. cit., p. 76.

The General Concept of International Criminal Protection of Human Rights

until guilt is established by a final judicial decision enjoying the authority of *res judicata*¹.

In view of its paramount importance, international instruments have consistently sought to entrench the presumption of innocence. Article 11(1) of the Universal Declaration of Human Rights provides that every person charged with a criminal offence shall be presumed innocent until proved guilty according to law in a public trial in which all guarantees necessary for the defence have been secured.

Article 14 of the International Covenant on Civil and Political Rights similarly affirms that anyone charged with a criminal offence has the right to be presumed innocent until guilt is established according to law, a safeguard also reflected in Article 11 of the Universal Declaration of Human Rights.

The Rome Statute of the permanent International Criminal Court incorporates this principle in Article 66, which provides that:

- 1- A person shall be presumed innocent until proved guilty before the Court in accordance with the applicable law.
- 2- The burden of proving the accused's guilt rests with the Prosecutor.
- 3- The Court must be satisfied of the accused's guilt beyond reasonable doubt before entering a conviction.

Paragraph Three: The Principle of Non Bis in Idem

It is a settled rule in domestic criminal law that a person may not be brought to trial or punished for an offence in respect of which he has already been finally convicted or acquitted in accordance with the law. International criminal justice has likewise adopted this principle and treats it as a principal safeguard underpinning the protection of human rights; accordingly, numerous international instruments have been

¹ Abdelmajid Zaâlani, The Presumption of Innocence in Law, Algerian Journal of Legal, Economic and Political Sciences, Faculty of Law and Administrative Sciences, Issue 3, 2001, pp. 9–30.

careful to provide for it¹, Article 14(7) of the International Covenant on Civil and Political Rights stipulates that no one may be subjected again to trial or punishment for an offence in respect of which he has already been finally convicted or acquitted by a judicial decision, in accordance with the law and criminal procedure of each country. The American Convention on Human Rights likewise addresses one dimension of this safeguard, providing that where an accused has been acquitted by a judgment that is not open to appeal, he may not be prosecuted anew for the same cause. The same principle is also incorporated in the draft Code of Crimes against the Peace and Security of Mankind prepared by the International Law Commission²; It is further enshrined in Article 16 of the Arab Charter on Human Rights of 1997, which provides that no person may be tried twice for the same offence, and that any individual against whom such proceedings are taken is entitled to challenge their legality and to seek release.

Article 20 of the Rome Statute of the International Criminal Court specifies the situations in which this principle operates as a fundamental safeguard for the protection of the individual and for ensuring a fair trial, through the following three paragraphs:

1- Except as otherwise provided in this Statute, no person shall be tried before the Court with respect to conduct that formed the basis of crimes for which the Court has already convicted or acquitted that person.

2- No person shall be tried before another court for a crime referred to in Article 5 if that person has already been convicted or acquitted by the Court.

3- A person who has been tried before another court for conduct also prohibited under Articles 6, 7, or 8 shall not be tried before the Court for the same conduct unless the proceedings before the other court:

¹ Jebari (Al-Taher), op. cit., p. 396.

² Essam Abdel Fattah Matar, op. cit., p. 95; Omar Fakhri Abdel Razzaq Al-Hadithi, op. cit., p. 11.

The General Concept of International Criminal Protection of Human Rights

a- Were undertaken for the purpose of shielding the person concerned from criminal responsibility for crimes within the jurisdiction of the Court

b- Were not conducted independently or impartially, in accordance with the norms of due process recognized under international law, or were conducted, in the circumstances, in a manner inconsistent with an intent to bring the person concerned to justice.

Conclusion

In closing this study, it can be stated that the imperative need to protect fundamental human rights, suppress the violations directed against them, preserve human dignity, and affirm the individual's security and safety-and, consequently, to maintain international peace and security-has led to the intensification of international efforts aimed at achieving international criminal justice. This has been pursued through the development of effective judicial mechanisms and safeguards capable of protecting human rights while, at the same time, enabling the punishment of those who commit the most serious crimes, by facilitating their pursuit wherever they may flee and bringing them to trial, so that peace and security may prevail within the international community. On the basis of this study, a number of principal findings may be drawn, most notably:

- International criminal protection of human rights has become one of the foremost matters the international community seeks to uphold, through the establishment of effective and genuine mechanisms that secure international peace and security.
- The legal framework of international criminal justice has instituted adequate guarantees to enhance the credibility and effectiveness of international criminal judicial bodies, by adhering to the fundamental principles affirmed in international human rights instruments and to the standards developed in international criminal jurisprudence, which protect all parties to proceedings brought before such bodies.
- The refusal of many states to accede to the Rome Statute of the International Criminal Court-an essential judicial mechanism

for operationalizing protection and curbing impunity-often reflects concerns about infringement of sovereignty or an attempt to avoid accountability of governing authorities where violations affecting the peace and security of humanity have been committed.

- The protection of fundamental human rights remains contingent upon the existence of sufficient guarantees and effective mechanisms to secure protection against the gravest crimes, including crimes against humanity, genocide, and war crimes.
- The ad hoc tribunals were able to give tangible effect to the principle of individual criminal responsibility of heads of state and leaders for crimes committed against humanity, and consequently to bring them before justice.

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