



International Criminal Accountability:

Balancing the Principle of Legality and the Pursuit of Global Justice

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Abstract

Each stage of international criminal jurisprudence has been shaped by specific circumstances that have influenced international criminal punishment. This jurisprudence was initially characterized by the political context that accompanied the establishment of temporary international criminal tribunals, which sparked extensive debates regarding the validity of their sentences. In the end, the international community established a permanent judicial mechanism that was tasked with dealing with the most serious crimes committed on a global scale, bringing those responsible to justice regardless of their status, and preventing impunity. This framework for international criminal penalties is based on a commitment to penal legitimacy and advancing an impartial and equitable international criminal justice system.

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1. Introduction

The power to define and enforce criminalization and punishment is a fundamental aspect of a state's legislative sovereignty, with domestic law serving as the primary basis for such actions. However, the adoption of an international convention that criminalizes specific acts often grants that convention a higher legal authority than national legislation. Since the principle of legality underpins criminal law, international conventions typically act as a supplementary source for defining crimes and penalties. A prime illustration of this is the Rome Statute, which delineates the legal structure for the International Criminal Court.

The principle of legality, enshrined in Article 22 of the Rome Statute, requires that actions are prosecutable only if they were defined as criminal at the time they occurred. This ensures that international legislators uphold legitimacy by not holding anyone accountable for acts not previously recognized as crimes.

This provision demonstrates the drafters' intent to ensure that the ICC operates within a framework of legitimacy and fairness, addressing concerns raised by earlier tribunals like the Nuremberg Trials, which faced criticism for applying retroactive justice.

The effectiveness of the Rome Statute's sanctions in deterring international crimes and achieving accountability has been mixed. While the International Criminal Court has been effective in setting legal precedents, holding accountable those responsible for severe international offenses, and advancing the tenets of

international criminal justice, it also faces significant challenges.

These include constrained enforcement powers, political meddling, and the hesitance of certain states to collaborate with the Court, all of which diminish its capacity to deter future crimes. Despite these obstacles, the ICC remains a cornerstone of the global effort to ensure justice for victims and reinforce the international community's commitment to combating impunity.

2. Legality of Sanctions in International Criminal Justice

The principle “*nullum crimen sine lege*” ensures accountability under the rule of law, prosecuting only actions explicitly illegal when committed.

2.1 The concept of global criminal penalties

global criminal penalties involves the imposition of sanctions by international courts on individuals who commit crimes deemed as threats to global peace, security, and human dignity. These sanctions, which differ from domestic criminal law penalties, respond to violations of norms set by the international community to maintain international justice principles (Nassri, 2011, p 222). Unlike domestic law, where legislators set legal boundaries and penalties, giving judges discretion in sentencing based on offense severity and offender culpability, international criminal law faces challenges due to the need for precise definitions and the specificity of crimes (Cataleta, 2015, p 2). This is because the laws governing international

criminal law are conventional in nature. (Matar, 2008, p 304).

2.1.1 Definition of global criminal penalties

global criminal penalties encounters numerous challenges, including defining its scope and determining the authority responsible for its enforcement. This complexity arises from the global community's unique characteristics and the difficulties in translating punishment concepts from domestic to international law. Additionally, the validity of international law's regulations is sometimes contested by legal scholars, questioning their mandatory nature and complicating the discourse on punishment (Harbe, 2013, p 57).

Consequently, no academic has provided a clear and accurate definition of global criminal penalties. Instead, it has been explained using the definition of punishment found in national laws, where punishment, according to Shibl (2011, p. 199), is frequently described as: "A Social action is intended to penalise those who violate laws in order to guarantee that they are applied effectively. "

Criminal punishment is also defined in the majority of national laws as: "The legal manifestation of society's response to offenders, which emerges either as a penalty imposed for the committed crime or as a precautionary measure aimed at individuals believed to have criminal potential, with the purpose of attaining the stated aims of both.

"(Abd El-Ghani, 2010, p 329).

It is characterized by some as: "The legal repercussions that an offender must endure after committing a crime, which

may take the form of a punishment or a preventative measure. Following a criminal trial, the public prosecution uses a court decision to impose this penalty, which is then enforced by the public authority through coercion". (Shibl, 2011, p.264).

The lack of a clear concept of global criminal penalties stems from an ongoing debate among legal scholars about whether such punishment exists under international law. Despite the continued discussion, it eventually culminated in the acknowledgment of international punishment, which has been grouped into numerous forms.

(Shibl, 2011, pp 226-263).

One of the most recent classifiers is international criminal punishment, which applies to individuals who commit acts that international legislators have designated as "international crimes" (International Criminal Court [ICC], 1998, Art. 5).

2.1.2 Forms of global criminal penalties

in international law, penalties is the conventional and dominant form of international criminal sanction, serving as the direct result of breaching its rules and regulations. Additionally, according to Shibl (2011, p 264), precautionary measures have developed as a newer form of this punishment.

a.global criminal penalties:

The discipline of criminal law jurisprudence has not reached a consensus on a singular definition of penalties, with various definitions emerging based on different perspectives and criteria (Al-Issa, 2015, pp 132-134).

Criminal law scholars describe punishment as: " A legal penalty that affects a person's liberty, property, or honour after they are found guilty of committing an act that is considered a crime."

Punishment in this context is viewed as a corrective action that intentionally causes suffering to the offender, supported by judicial decision and legal provisions (Ali mahmoud, 2021, p 545).

The essential elements of punishment obtained from this concept include:

- It is dominated by the notion of legality.
- It constitutes a rehabilitative punishment.
- It relies on the purposeful inflicted of suffering on the offender to maintain its effectiveness.
- It is specific to the offender and applies only to them.
- It is judicial, meaning that no punishment can be imposed without a court ruling rendered by an unbiased, independent, and specialized court.

Due to the customary nature of its regulations, punishment under international criminal law was obviously less precise and clear than under national criminal law until the Rome Statute came into effect.

b. Preventive Measures:

This refers to a series of steps taken to reduce the criminal danger provided by an offender, with the primary goal of protecting society by discouraging the perpetrator from committing future crimes. It is also defined as: "A criminal sentence consisting of legally prescribed measures imposed by a judge on an

individual whose criminal danger has been proven, with the goal of addressing and neutralizing such threat " (Shibl, 2011, p. 292).

The characteristics of preventative measures can be derived from the above definitions:

- 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 primary purpose is to mitigate criminal risks; it is not necessarily linked to criminal responsibility derived from free will. Consequently, it can be applied to individuals not deemed criminally responsible, such as minors or those deemed insane. The rationale for its application differs from that which underpins 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.

c. Challenges in Defining and Enforcing International Criminal Punishment

While the concept of international criminal punishment is well-established, several challenges persist:

- Jurisdictional Issues: Ensuring that international tribunals have clear authority to prosecute crimes and impose sanctions.
- Enforcement Mechanisms: The reliance on state cooperation for arrest,

detention, and imprisonment often hinders the effectiveness of international punishment.

- **Cultural and Legal Diversity:** Balancing universal principles of punishment with the diverse legal traditions and cultural norms of member states.
- **Proportionality:** This principle mandates that sanctions must be commensurate with the severity of the crimes.

2.2 Principle of Legality of Criminal Punishment before and after the Statute of ICC

According to Abdel Salam (2014, p. 216), the concept of legality in national criminal legislation limits the sources of criminalization and punishment to statute law, allowing the legislator the jurisdiction to define punishable conduct (crimes) and set the appropriate sanctions.

This idea meets further obstacles in international criminal law due to the absence of a worldwide legislative body and the static character of its legal structures. In international criminal law, the legality principle states that no activity may be considered illegal and no penalty can be imposed unless it complies with an established international legal norm. The phrase "legal norm" in this sense encompasses both written and customary regulations.

According to the second part of this concept, No one may be punished unless specifically permitted by law. The Universal Declaration of Human Rights (United Nations, 1948) codifies this idea, and several regional and international legal instruments further support it

(United Nations, 1953, Art.7; 1966, Art.15/1; 1978, Art.9; 1986, Art.7).

The principle of legality in international law establishes boundaries and safeguards to uphold criminal justice, with this study examining its historical application by international legislators, particularly before and after the Rome Statute.

2.2.1 The Adherence to the Principle of Legality in Criminal Sanctions

a. Before the Rome Statute

Early international efforts, such as the Treaty of Versailles (1919), laid the Ground work for prosecuting violations of international norms but lacked detailed legal frameworks that adhered strictly to the principle of legality.

The Nuremberg Trials (1945–1946) marked a pivotal moment in international criminal law. While groundbreaking, the trials were criticized for retroactively prosecuting crimes under newly formulated laws, such as “crimes against humanity.” This perceived breach of the principle of legality cast a shadow over the legitimacy of the proceedings.

Similarly, the Tokyo Trials (1946–1948) highlighted early challenges in international criminal justice, including the use of vague legal definitions and the retroactive application of norms, underscoring difficulties in adhering to the principle of legality.

The ICTY (1993) and ICTR (1994) advanced legal clarity by refining crime definitions through customary international law, reinforcing the principle of legality (Abdelsalam, 2014, p 226).

b. After the Rome Statute

The 1998 Rome Statute enhanced legality in international law by providing a comprehensive legal framework for ICC crimes (Shibl, 2011, p 269 ; Salem, 2010, pp 186-187).

- **Explicit Codification of the Principle:**

Article 22 clearly states:

1. No individual shall be deemed criminally responsible unless their behavior is recognized as criminal by the Court at the time it occurred.
2. Any ambiguities in the law should be interpreted in favor of the defendant.

This provision addresses criticisms of retroactivity by ensuring that criminal (Abdelsalam, 2014, p 228).

- **Codified Definitions of Crimes:**

- ✓ The Rome Statute defines key international crimes, reducing reliance on customary law and strengthening legal clarity.
- ✓ For example, Article 6 defines genocide with clear criteria, ensuring that the principle of legality is upheld in prosecutions under this category.

- **Non-Retroactivity and Fair Trial Standards:**

- ✓ Article 24 of the Rome Statute upholds the principle of non-retroactivity, confirming that individuals are only prosecuted for acts that were clearly illegal under the Statute at the time they were committed.

- ✓ The Statute also incorporates fair trial standards, further solidifying the legitimacy of its legal processes.

- **Enhanced Legitimacy of International Criminal Justice:**

Its integration of the legality principle enhances the legitimacy and credibility of international criminal justice.

- **Challenges and Limitations:**

1. Customary Law Ambiguities: While the Rome Statute codifies numerous crimes, international criminal law still partially relies on customary norms that may be imprecise.

2. State Cooperation: The ICC's dependence on member states for enforcement can result in inconsistent application of its rules, compromising the principle's universality.

3. Evolving Legal Norms: Adapting to new crimes like cyber warfare and environmental harm challenges strict adherence to legality (Abdelsalam, 2014, p 227).

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

Articles 22 and 23 emphasize legality in defining crimes and sanctions, though challenges persist in application. This represents a notable shift from the historical dependency on customary norms to define and sanction crimes in international law. The drafters' intentional incorporation of this principle underscores a committed effort to solidify the concept of punitive legality within the framework of international criminal justice.

This commitment is underscored by provisions such as Article (101/1), known as the "Rule of Specialty," which states: "No proceedings shall be instituted against a person brought before the Court under this Statute, nor shall any individual be penalized or detained for actions performed prior to their surrender, except for the specific conduct or series of acts that constitute the offenses for which they were surrendered."

This provision highlights that individuals brought before the Court are subject exclusively to the Statute's provisions, which clearly define the acts constituting international crimes and form the basis for prosecution.

Article (77) precisely delineates the types of penalties that may be imposed on individuals convicted of offenses specifically listed in Article (5), emphasizing the Statute's commitment to accuracy and legal protections.

a. Penalties involving deprivation of liberty: under the Rome Statute are categorized into two main types:

1. Fixed-Term Imprisonment: This is limited to a maximum of thirty (30) years.
2. Life Imprisonment: This penalty is reserved for extreme cases where both the gravity of the crime.

b. Financial penalties are divided into two categories:

1. **Fines:** Governed by Rule 146 of the Rules of Procedure and Evidence, fines are imposed based on established guidelines.
2. **Asset Seizure:** Involves the confiscation of assets derived from criminal activities, with precautions to protect the rights of legitimate owners.

Moreover, Article 79 of the Statute establishes a Trust Fund for victims and their families.

While the Rome Statute demonstrates significant advancement over its predecessors in upholding the principle of penal legality, certain observations highlight areas for improvement:

- **Lack of Specific Penalties for All Crimes:** The absence of clearly defined penalties corresponding to the severity of specific criminal acts undermines the

principle of legality. This gap may result in inconsistent evaluations of offenses and penalties (Al- Issa, 2015, p 137).

- **Exclusion of the Death Penalty:** Despite the severe nature of the offenses detailed in Article (5), such as genocide and crimes against humanity, the Statute explicitly excludes the death penalty. This exclusion is notable, especially in light of Article (80), which allows for the imposition of national penalties, including the death sentence, in jurisdictions where it is legally sanctioned. This creates a notable disparity and prompts a discussion on the Statute's adherence to the principle of punishment legitimacy.

- **Reparations vs Punishment:** Article (75) outlines reparations, such as restitution, compensation, and rehabilitation, for victims. These measures, executed through the Trust Fund under Article (79), are not explicitly classified as penalties in Article (77). The prevailing view is that reparations are remedial measures rather than punitive actions, as their inclusion in Article (77) would have required explicit mention (Al-Issa, 2015, p 138).

3. Efficacy of International Criminal Sanctions

International criminal justice aims to address severe violations through sanctions, but inconsistencies in proportionality remain. These sanctions are crucial for holding offenders accountable, delivering justice to victims, and deterring future offenses. However, the effectiveness of these sanctions in achieving these objectives is a subject of considerable debate.

3.1 Proportionality of Criminal Punishment to the gravity of International Crime

The principle of proportionality within international law connects the gravity of the crime to the appropriateness of the punishment. This principle is essential for ensuring that the punishment reflects the harm caused to victims and society (Harb, 2013, p 165).

Harb notes that proportionality in international criminal law is crucial for linking the crime's severity with appropriate sanctions. Overlooking this principle could undermine the foundational aims and effectiveness of international criminal penalties. This importance is underscored in various legal frameworks, including Article 46 of the Draft Code of Crimes Against the Peace and Security of Mankind, formulated by the International Law Commission in its 46th session in 1994. This Article mandates that sentencing must consider both the crime's severity and the offender's personal circumstances (Ababssa, 2015, pp.74 –75).

International criminal jurisprudence often struggles to ensure sanctions proportionally reflect the gravity of crimes. Sentencing practices vary widely across tribunals, from the Leipzig Court to the Nuremberg and Tokyo Tribunals, and more recent courts like the ICTY, ICTR, and ICC. While Nuremberg and Tokyo sanctions were deemed appropriate for the crimes' severity, the absence of the death penalty in ICTY and ICTR judgments has been criticized as disproportionate .

The Rome Statute provides flexibility in sentencing under Article 5, allowing judges to consider crime severity and

individual circumstances. However, the exclusion of the death penalty in Article 77 raises questions about the adequacy of sanctions for grave crimes.

This exclusion from the Rome Statute may not align with the broader goals of international criminal sanctions, which seek to prevent personal vengeance, restore legal order, achieve justice, and deter criminal actions (Belalem, 2018, p 126).

It is important to note that the creators of international criminal tribunal statutes, whether temporary or permanent, have generally followed the global trend of abolishing the death penalty in domestic legal systems, favoring imprisonment as the primary penalty (Belalem, 2018, pp 128-132).

Despite these efforts, the full realization of these principles within the international legal system is yet to be achieved (Harb, 2013, pp 166-167).

Judicial trials aim to uphold justice and fairness through the decisions they render. In criminal cases, the plaintiff represents society at large, while the defendant is the one who has committed the offense. As noted by Hamouda (2011, p 247), the criminal penalty imposed on the perpetrator is not directly tied to the victim, although it may serve as a form of moral compensation, helping to alleviate the victim's desire for vengeance or self-administered justice (Belalem, 2018, p 132).

In international criminal proceedings, the situation mirrors that of national criminal trials, albeit with some key distinctions. The international criminal justice system faces ongoing challenges in balancing fairness for victims and

perpetrators, ensuring equity throughout the process.

Victims of international crimes are entitled to two main categories of rights. The first includes procedural rights such as legal representation, protection, and participation in court proceedings (Gherssa and Brahmia, 2018, pp 678- 680). Second, reparative rights, as defined in Article 75/1, where the Court determines reparations post-conviction, considering the damages and reparative needs.

A pivotal right for victims is the right to redress, which includes restitution and compensation. Article 75/2 authorizes the Court to order reparations, including financial compensations, funded through the Trust Fund established by Article 79 of the Statute.

The Trust Fund may be accessed if the convicted individual is unable to meet the reparation requirement, with contributions from member governments and intergovernmental organizations committed to supporting victims of international crimes.

Another vital right granted to victims is the right to rehabilitation, which includes providing material, medical, psychological, and social support to address the harm caused by the international crimes committed against them. Thus, the Court and its member states bear a significant responsibility to protect victims' rights and work towards rectifying the damage they have suffered.

The protection of defendants' rights in international criminal cases is governed by several principles and legal safeguards, which span from the initial stage of suspicion through to the final judgment. Although, it is not possible to cover all

these protections here, key aspects related to international criminal punishment are essential to understanding the process. Given its punitive nature, international criminal punishment adheres to the principle of legality in both substantive and procedural aspects (Khouja, 2013, p 108).

The principle of legality, crucial to the International Criminal Court's structure, safeguards individuals from arbitrary prosecution, as epitomized by Article 22. This development arose from challenges during the post-World War II trials where defendants at Nuremberg and Tokyo contested the absence of legal norms for their actions at the time they were committed.

Moreover, the principle of proportionality emphasizes safeguarding the accused's rights, but judicial discretion in sentencing often leads to inconsistencies and potential discrimination. The lack of a standardized hierarchy of crime severity complicates consistency further, creating significant disparities even within the same tribunal.

This discretionary approach can lead to inconsistencies, as seen in national courts where some impose penalties not provided for by international criminal court statutes, such as the death penalty, while others apply life imprisonment or fixed-term sentences for similar offenses. This variability in sentencing creates significant discrepancies, even within the same court, when similar circumstances are involved (Belalem, 2018, p 135).

The judicial system prioritizes the rights of the accused, ensuring detention standards align with international norms. Articles 103/3/a and 106 of the Rome

Statute mandate humane treatment in detention, adhering to standards set by the United Nations' First Congress on the Prevention of Crime and the Treatment of Offenders, Geneva 1955 (Khouja, 2013, p 165).

3.2 Assessing the Efficacy of international Criminal Punishment through the Applications of international judicial practice

The effectiveness of international criminal punishments by the ICC and tribunals like ICTY and ICTR is debated, particularly regarding their deterrence of crimes, promotion of justice, and protection of human rights. The effectiveness of these sanctions involves multiple dimensions, including their deterrent effect and their broader influence on international law and human rights observance.

Below, we shall discuss how international criminal punishment has been administered through trials by both ad hoc international criminal courts and, subsequently, by particular practical steps taken by the permanent International Criminal Court.

3.2.1 Practical applications of criminal sanctions before international military and (ADHOC) tribunals.

a. Military Tribunal Judgments (Nuremberg and Tokyo) :

The horrible crimes perpetrated during the second World War sparked resentment among the winning nations, who vowed to avenge the victims by putting in place measures to prosecute senior political and military leaders of the Nazi regime accused of war crimes before a special international criminal tribunal. By late

1942(Bassiouni in Acsensio, 2000, p 640), the United Nations had compiled 8,178 files on suspected war criminals for the Nuremberg trials.

The court began on 21 November 1945 and ended on 31 August 1946. It held 403 meetings and tried 24 people (Al-shukri, 2005, p 30), including leaders of the Nazi Party in Germany . On 1 October 1946, it sentenced 12 people to death, three to life imprisonment, and seven to 10 to 20 years. Three people were acquitted (Al-Aanbaki, 2010, p 534).

As for The Tokyo Tribunal which was established by U.S.General "Mark Arthur", Supreme Commander of the Allied Forces, by a decision issued on 19 January 1946 to try Japanese war criminals, it was composed of 11 judges representing 11 countries. It began his first session on May 3, 1946, and ended on November 12, 1948. With the death penalty for seven defendants, including the Prime Minister. Furthermore, 16 defendants were sentenced to life imprisonment, 25 other were acquitted (Bassiouni in Acsensio, 2000, p 647), and one was sentenced to 20 years in prison, while another received a seven-year sentence.

The Nuremberg and Tokyo trials were crucial in establishing individual criminal responsibility under international law, but criticisms suggest they were primarily focused on political justice rather than genuine international justice. The new standard of accountability and punishment was based on the perpetrator's identity(Harb, 2013, p 386), and the absence of clearly defined legal standards and non-predetermined punishments further complicate matters.

Judges' authority to determine punishment, including the death penalty, leads to arbitrariness and disparities in severity. These deficiencies highlight the inadequacy of justice served in these proceedings (Al-Shukri, 2005, p 34).

b. Provisional Criminal Tribunal judgements for former Yugoslavia and Rwanda :

Ad hoc tribunals, such as the International Criminal Tribunal for the former Yugoslavia (ICTY), the International Criminal Tribunal for Rwanda (ICTR), and the Special Court for Sierra Leone (SCSL), have played a crucial role in prosecuting major international offenses like war crimes, genocide, and crimes against humanity. Established specifically for certain conflicts or regions, these tribunals have significantly influenced the practice and development of international criminal law.

Ad hoc tribunals are designed to hold individuals accountable for war crimes and other serious violations of international law. Their main focus is to prosecute those responsible for heinous acts such as genocide, ethnic cleansing and crimes against humanity, with an emphasis on individual rather than collective or state responsibility.

- ICTY: The tribunal, established to address crimes during the Yugoslav Wars (1991–2001), played a crucial role in bringing military and political leaders to trial for crimes like ethnic cleansing in Bosnia and Herzegovina and the Srebrenica massacre (Ascensio, 2000, p 715).

- ICTR: Formed to address the 1994 Rwandan Genocide, the ICTR prosecuted

key figures responsible for orchestrating or committing mass violence against the Tutsi population.

These tribunals resulted in the conviction of prominent figures such as Radovan Karadžić and Ratko Mladić for their roles in the Bosnian genocide, and Jean-Paul Akayesu for his role in the Rwandan genocide.

Ad hoc courts, such as the International Criminal Tribunal for the Former Yugoslavia (ICTY) and the Special Court for Sierra Leone, have been given discretionary power in determining sentences, allowing for a range of penalties based on the severity of the offence and the defendant's circumstances. However, this discretion has led to inconsistencies in sentencing, which can create a sense of unfairness. Ad hoc tribunals aim to strengthen domestic legal systems through complementarity, but their success in achieving this objective varies. While the ICTY and ICTR have encouraged national reforms and the establishment of war crimes courts, weak rule of law and political instability hinder the prosecution of war criminals in other post-conflict contexts. Ad hoc tribunals have faced criticism for selective prosecutions, inefficiencies in delivering justice, and challenges in securing the arrest of indicted individuals (Al-Aanbaki, 2010, p 549). Despite these challenges, ad hoc tribunals have made significant contributions to international justice.

3.2.2 Criminal sanctions and their implementation in the International Criminal Court's activities :

Following the entry into force of the Statute of the International Criminal Court

(ICC) on 1st July 2002, a significant number of cases have been referred to the Court. These referrals have varied between those made by the States Parties to the Statute of the Court, those made by the Security Council, and those made at the request of the Prosecutor of the Court. The latter category has included violations of the rules of international law that constitute international crimes within the Court's subject-matter jurisdiction. The present study will review the applications of international criminal sanctions through the Court's penal judgements on some of the cases before it, bearing in mind that many cases are still pending (International Criminal Court [ICC] website, 2024).

a. cases that have been heard in court and resulted in penal sanctions :

- The Democratic Republic of the Congo (DRC) referred two cases to the International Criminal Court (ICC): In the first case, T.Lubanga.D, a rebel militia leader, was found guilty of recruiting and enlisting children under the age of 15 and using them in combat. He was sentenced to 14 years imprisonment in 2012, marking the first criminal sentence handed down by the ICC. The second case involved B.Ntaganda, the Deputy Chief of General Staff of the National Forces for the Liberation of Congo (FNLC). Ntaganda was charged with multiple war crimes and crimes against humanity, and was sentenced to 30 years in prison. Both of these convictions have been confirmed by the ICC Appeals Chamber. Ntaganda has been transferred to a prison in Belgium to serve his sentence (International Criminal Court [ICC] website, 2024).

- As for the case referred by the State of Uganda in July 2004, the first criminal judgement was in opposition to D.Ongwn, commander of the Senya Brigade of the Lord's Resistance Army in Uganda, was convicted of 61 crimes, including war crimes and crimes against humanity, between 2002 and 2005. His trial began in December 2016, and he was sentenced to 25 years in prison. The Appeals Chamber confirmed the verdict and transferred him to Norway in December 2023.

- In 2012, the State of Mali raised a case against A. El Mahdi, a member of the Ansar Dine group linked to Al-Qaeda in the Islamic Maghreb. He was arrested in 2013 and found guilty of war crimes. His sentence was reduced by two years due to his cooperation in admitting all crimes (International Criminal Court [ICC] website, 2024).

b. Assessment of criminal penalties issued before the court

The practical applications of international criminal sanctions through the activity of the International Criminal Court (ICC) show that the ICC has adhered to the principle of legality of punishment stipulated in its Statute, as all the sanctions pronounced or implemented have been stipulated, and the judges have not exceeded their maximum limits, which has contributed to activating the role of criminal sanctions in achieving justice for victims, but what is taken against these sanctions is their disproportionality to the gravity of the crimes committed. Needless to say, the long-awaited sanctions have not lived up to the expectations of the victims, or even the organisations that work hard to defend human rights. The

Court is also criticised for the fact that all the sanctions it issued were against defendants from African countries, while turning a blind eye to serious violations of the rules of international law committed in other regions of the world, and what is happening today in the State of Palestine is a simple proof that international justice is still selective .

4. CONCLUSION:

This study analysed the enforcement of the principle of legality in criminal sanctions, with a specific focus on the International Criminal Court (ICC). The research yielded several conclusions and formulated recommendations with the aim of enhancing the Court's effectiveness in administering criminal justice on a global scale.

Key findings include the following:

- The principle of legality of punishment, a fundamental principle of international criminal law, reflects its crucial role in national legal systems, although its application varies.
- Challenges remain in aligning the gravity of offences with the corresponding penalties, even with the principle of legality clearly enshrined in the Rome Statute.
- Although the Rome Statute excludes the death penalty, despite the serious threats to international peace and security posed by the international crimes it addresses, a paradox arises between the accountability of individuals before national courts, which may impose the death penalty as provided for in domestic laws, and their accountability before the ICC. There is a significant contradiction between Article

23, which states that an individual convicted by the court may only be punished in accordance with the statute, and Article 80, which allows states to enforce the penalties provided for in their national laws.

Research suggestions :

- To maintain proportionality between the severity of a crime and its punishment and to ensure equity and justice for both victims and perpetrators, it is recommended to explore the possibility of including the death penalty as a sentencing option in Article 77 of the Rome Statute.
- Article 80 is proposed to be repealed on the grounds that it is inconsistent with the principle of legality in punishment.
- Penalties must be proportionate to crimes' severity. Mechanisms to implement these penalties must be created. This prevents excessive judicial discretion and inconsistencies in criminal rulings. It maintains the principle of legality in criminal sanctions, and ensures authentic international criminal justice.

5. Bibliography list :

1. Books :

• In Arabic :

1. Abdelghani, M. A. (2010). *International criminal law: A study in the general theory of international crime*. Dar Al-Jamiaa Al-Jadida for Publishing. Alexander-Egypt.
2. Abdelsalam, Z. M. (2014). *Arrest, investigation, and trial procedures before the International Criminal Court: A comparative analytical study*. National Center for Legal Publications. Cairo.
3. Al-Anbaki, N. J. (2010). *International humanitarian law*. Dar Wael for Publishing and Distribution. Jordan.
4. Al-Shukri, A. Y. (2005). *International criminal law in a changing world*. Etrak for Publishing and Distribution. Egypt.
5. Hamouda, M. S. (2011). *International crime: A comparative study with Islamic Sharia law*. Dar Al-Fikr Al-Jami'i. Alexander-Egypt.
6. Harb, A. J. (2013). *Contemporary theory of international punishment: The system of international sanctions against states and individuals*. Dar Al-Halabi for Legal Publications. Beirut-Lebanon.
7. Matar, E. A. F. (2008). *International criminal justice: Its principles and substantive and procedural rules*. Dar Al-Jami'a Al-Jadida. Alexander-Egypt.
8. Nasri, M. (2011). *Effectiveness of punishment for grave violations of international humanitarian law*. Dar Al-Fikr Al-Jami'i. Alexander-Egypt.
9. Shibl, B. M. (2011). *International criminal substantive law: A study on the structure of the international criminal norm, international crime, and international criminal punishment*. Dar Al-Thaqafa for Publishing. Amman-Jordan.

• In french:

Ascensio, H. (2000). *Droit international pénal*. A. Pedone. Cedin Paris X.

2. Theses:

1. Hawwa, S. *International criminal justice through judicial decisions of special international criminal tribunals*. Master's thesis. Faculty of Law and Political Sciences.

L'HadjLakhder University. Batna. (2009–2010).

2. Khodja, A. R. *Guarantees of fair trial before the International Criminal Court*. Master's thesis. Faculty of Law and Political Sciences. L'HadjLakhder University. Batna. (2012–2013).

3. Journal article :

• In Arabic :

1. Ababssa. M. (2015). *Proportionality of international criminal punishment: An approach for sound international criminal justice*. Journal of Law and Political Sciences. University of Ziane Achour. Djelfa. Volume 1. Number. 23.
2. Al-Issa. T. (2015), *The principle of legality in the Rome Statute of 1998*. Arab Universities Union Journal of Arts, Faculty of Law, Ajloun National University, Jordan, Volume 12, Number 1.
3. Belalem. A. (2018), *Issues of justice and fairness in international criminal punishment*, Academic Journal of Legal and Political Research, University of Amar Telidji, Laghouat, Volume 1, Number 3/2.

• In French:

Cataleta, M. S. (2015), *Profils juridiques de la peine dans la pratique pénale internationale, entre sanction sic et simpliciter et réinsertion sociale*, Revue électronique de l'AIDP, A-05.

4. International Documents :

1. United Nations. (1948). Universal Declaration of Human Rights.
2. Council of Europe. (1953). *European Convention on Human Rights*.
3. United Nations. (1966). *International Covenant on Civil and Political Rights*.
4. Organization of African Unity. (1986). *African Charter on Human and Peoples' Rights*.
5. Organization of American States. (1978). *American Convention on Human Rights*.
6. International Criminal Court. (2002). *Rome Statute of the International Criminal Court*.

5. Electronic Websites:

International Criminal Court, Cases, Retriever from: www.icc-cpi.int/fr/cases. Accessed: 18 Nov. 2024, at 8:15 AM.