

## THE OBJECTIVE EFFECTS OF THE ABSENCE OF INTERNATIONAL CRIMINAL RESPONSIBILITY IN PUBLIC INTERNATIONAL LAW

**DR.AMR EZZAT ELHOW**

Police Science Academy-Sharjah

United Arab Emirates

dr.amr.elhow.police@gmail.com

### **Absrtact**

*-when the act of denying international criminal responsibility for individuals engaged in prohibited behaviour is considered as indicative of the similarities between the factors contributing to permissiveness and the obstacles to international criminal responsibility, resulting in a lack of punishment, then it can be observed that there are several distinct differences between these contributing factors. These differences give rise to a range of effects, encompassing objective, personal, and procedural aspects. Considering the presence of impediments to accountability and rationales for permissibility as outlined above, it is not tenable to contend that specific causes and circumstances fail to constitute adequate grounds for an individual to be absolved from international criminal liability for their committed offences, without acknowledging the legal ramifications of such arguments. What will be the outcome for individuals whose cases were rejected by the International Criminal Court notwithstanding their engagement in activities falling within its jurisdiction?*

*-One might also inquire about the beneficiaries of the exemption from international criminal accountability and the measures used to acquit them of culpability for these offences before reaching the International Criminal Court.*

**KeyWords:** *International responsbilty- legality-offence-punishment contributor-absense-beneficiaries*

### **INTRODUCTION**

-The Rome Statute, a constitution with positive criminal law, emphasises the importance of law in defining and punishing crimes. It states that only law can define and penalise crimes, and international criminal law is not considered a crime due to its singularity. Domestic law limits criminal behaviour and punishment to writing, as words encourage crime. Articles 22 and 23 of the Rome Statute provide law-abiding offenders with legal footing, while Article 3 shows how offences performed abroad become legitimate and free of criminal culpability.

-Unlawful behaviour is both illegal and criminal, and criminalization explains crime. The crime cycle stops when a criminal claims innocence, and crime is futile. Some actions are illegal and may be prosecuted, such as when the submarine commander who sank an English ship on Fleet Command orders was acquitted by the German Supreme Court under international law.

-The Rome Statute does not distinguish subjective crime from offender circumstances, and it does not extend to preventative activities beyond civil compensation. Decriminalised charges allow misbehaviour to go unpunished, and international legal norms or state practices that do not violate the ICC Statute are absurd without understanding their impact.

-To address worldwide crime prevention, the Rome Statute defines guilt as "no crime" and offence in Article 39, which allows for reasonable defence depending on assault severity to protect people or property. Article 49 enables reprimands and other preventative measures only for teens above 13.

-The original culprit must be analysed using three criteria: original offenders are not liable to blame; forgive mentally ill offenders; and the first perpetrator is responsible for the crime. Criminal responsibility does not require civil liability or mental illness protection, and pornography protects abusers from punishment, security, and reward.



-Criminal contributory duty requires each original donor, moral actor shareholder, and subsidiary contributor to be legally accountable and punished. The International Criminal Court Statute applies to national laws that punish major criminal activity involving several stakeholders, so participation in this case does not need provocation, assent, or support.

-Despite this, international law punishes all criminals equally, making it crucial to address the unique challenges faced by countries and international criminal law systems. The Rome Statute does not restrict pornographic defences, but it added the terms "person" and "forces," which are ambiguous about whether a military person is a civilian or a military person who does not belong to such forces. Military commanders or troops should be held liable under international criminal law for defensive action, even if competent reasoning absolves them based on their goal rather than character.

-Confession has legal implications, as legal activity cannot be held accountable, and enabling any action that would be unlawful without pornography absolves the offender of any criminal responsibility and avoids punishment. Donors profit from the deed, not the guilty, as pornography is arbitrary and exploitable, but ignorance and inaccuracy are not.

#### **Study Problem**

-The input discusses the concept of legality in criminal law, particularly in international criminal law.

-It explains that an act can only be considered a crime if there is an existing legal standard that establishes its criminal nature and specifies the appropriate punishment. The input also mentions the Rome Statute, which introduces the concept of legality of the offense and punishment.

#### **Study objectives**

-The study aims to discuss the factors that can affect criminal responsibility, such as the absence of unlawful character, the presence of justifications for the offense, and the grounds for removing criminal liability.

-The input emphasizes that the presence of these factors can lead to the decriminalization of the act and the exemption from punishment. It also mentions the concept of the original offender, stating that the person who commits the crime is considered the primary perpetrator and their lack of criminal responsibility can affect the severity of liabilities.

#### **Search Plane**

**The first requirement:-the legal adaptability of the committed crime**

**The second requirement:- Inability of punishment**

**Third requirement:-The beneficiaries of the absence of international criminal responsibility**

**The first requirement:-the legal adaptability of the committed crime**

#### **The 1-1- legality principle**

-The legality principle states that only crimes and punishments that are permitted may exist. Due to the importance of this concept, it has been required to be registered in every constitution as a continual legal cornerstone of all positive criminal legislation<sup>(1)</sup>

-It follows that an act may only be declared a chargeable crime if it can be shown that there is an existing legal standard that establishes its criminal character and stipulates the appropriate penalty for it. Academics agree unanimously that, given this principle's special properties, the idea of legality in international criminal law does not imply the same thing as it does in domestic criminal law if no crime has been committed. The idea of legality within the scope of domestic law provides for the limitation of criminalization and punishment in written law, which suggests that the sources of criminalization are limited to punishment in texts alone.

-Articles 22 and 23 of the Rome Statute introduce this concept. Article 22 regulates the legality of the offence by stating that an act does not constitute a crime under Article 3 unless it is an offence

---

1) Stahn, Carsten. A Critical Introduction to International Criminal Law. Cambridge, UK: Cambridge University Press, 2019 p. 75

under the Statute of the Court. Article 23 confirms the legality of the punishment by stating that no one may be punished for an offence in accordance with the statute other than the penalties provided in the statute<sup>(1)</sup>

-The conduct is criminalised in line with the legality principle due to the presence of two elements: one positive, the criminalization rule that establishes wrongfulness and identifies the crime, and the other negative, the absence of any justification for the offence.

Acts that are considered international crimes under the Rome Statute and that are carried out for the justifications specified in the Statute itself as grounds for exclusion from the commission of crimes inevitably lead to the removal of such crimes from the category of wrongful acts to that of legitimate acts for which criminal liability is waived, to which we refer in more detail in the following section<sup>(2)</sup>

1-2-Absence of the illegal character of committed crimes

-Only the extraction of the act by the criminalization clause, which negates the conduct's wrongfulness and legalises it, is the criminalization clause's function. The components necessary for the conduct to be considered a crime, as mentioned in the criminalization clause, are assumed by the grounds for the infraction.

-Therefore, the absence of international criminal responsibility as a result of the existence of one of the reasons for the offence results in a change in the legal qualification of the wrongful act by breaking away from the cycle of offences punishable by the offence, i.e., the disappearance of his unlawful status and his legal status. Criminal responsibility is thus unnecessary. The community's interest in the crime, in the eyes of some, outweighs their own. As a consequence, the legislator permits the individual to engage in certain behaviours under defined conditions since to do otherwise would violate both the law and the intent behind the offence.

For example, if a legitimate defence is shown, the behaviour loses its criminal nature and is no longer penalised

-The cannon's violent act loses its criminal aspect, becomes lawful, and demonstrates the perpetrator's innocence when the requirements are met, leading to the production of a legal defence.

It is crucial to decide the basis for the criminality of such activities if they are performed in particular situations since the justification for certain behaviours is that they breach a legal right for which the legislator is entitled to criminal protection. The crime of murder protects the right to life; however, in some circumstances, it is believed that the homicidal act does not violate that right and is thus not unlawful<sup>(3)</sup>

-This is what the German Supreme Court did when it cleared the German submarine commander who had sunk an English ship on a Fleet Command order, reasoning that doing so represented reciprocity and, as a result, was acceptable behaviour under international law.

The same is true of British Captain McLeod and his crew, who were sent free despite sinking the American ship Carolina on the grounds that their actions were the result of their obeying a command from the government rather than the result of a single act.

---

1)Malcolm . N . Shaw : individual criminal responsibility in international law published onlind : 21 June 2018, p.90

2)Salim Mohamed Soliman Alogli : The criminal responsibility for the international crimes in national legislation , a comparative study , Dar Al Gamaheria for publishing , distributing and publicity , the Republic of Libya , First Edition ,2000.P.32

3)Nollkaemper, André, and Harmen van der Wilt. System Criminality in International Law. Cambridge, UK: Cambridge University Press, 2009,p. 88



-As stated above, if there is a legislative provision that enables or legalises such activity, even if someone has committed a crime, their international criminal culpability is precluded. Examples are when a person commits a crime out of self-defence or when troops obey their leaders' instructions when not doing so puts their lives in jeopardy<sup>(1)</sup>

### **The Sound Requirement:- Inability of punishment**

#### **2-1-Based on the reasons of absence of international responsibility**

-If there are reasons to dispute someone's criminal culpability, it is challenging to hold them accountable before the International Criminal Court for actions that fall within its scope or jurisdiction.

-It should be noted that the Rome Statute does not discriminate between the individual circumstances surrounding the criminals who committed the crime and the subjective conditions relevant to the crime itself. It is asserted that both outcomes in this case were simply "not to be asked" in that they denied the international criminal responsibility of the perpetrator of international crimes without explicitly stating whether the existence of one of the grounds for the denial of responsibility led to the imposition of punishment or the denial of compensation in addition.

-This is in contrast to national law, which distinguished between the consequences of causes for pornography and the influence of the availability of grounds for removing criminal liability. Contrary to what the Algerian Assembly believes, Article 47 of the Penal Code states that "no penalty shall be imposed on anyone who was in a state of insanity at the time of the commission of the crime."

-Additionally, Article 48 of the same Act states that punishment shall not be meted out to those who were compelled into committing the crime by circumstances beyond their control<sup>(2)</sup>

According to Article 49, only protective or educational measures may be imposed on a minor who has completed his or her 13th birthday, but in the case of offences, only reprimands are available. A minor who has reached the age of 13 to 18 years shall be subject to either protective or educational measures or reduced penalties.

-We may deduce from the three paragraphs that came before them that there are repercussions for having grounds to dispute criminal culpability, regardless of the ages specified in the preceding paragraph and how they relate to responsibility.

-In other words, regardless of how bad the crime was, it still went unpunished. However, the exemption from punishment based on the grounds for removing criminal culpability does not limit the adoption of preventive measures in addition to civil compensation<sup>(3)</sup>

#### **2-2-Based on the reasons of legalization**

-As previously stated, the existence of the grounds for accusatory action logically results in the decriminalisation of the wrongdoing, and the allowed outcome of this decriminalisation is the lack of punishment for the crime. The Algerian legislature drafted Article 39 of the Penal Code, which discusses instances of guilt

---

1) Sabra and Shatella, the Israeli Crime and the American responsibility , Dar Al Mostakbal Al Arabi, P1 ,1984 P.1-65:le pari perdu d'oslo le reglement du conflit israelo palestinien dans l'impasse, A.F.D.L,VOL , XLVI,2000,p CNRS edition ,Paris .P.131:135.

2)Sakl Saad Al Agami :The responsibility of the leaders and presidents of their crimes that their employees commit , Kuwaiti Rights Magazine , Second Edition, June ,2008 .P.105.

3)Robert Cryer , Darryl Robinson and Sergey Vasiliev : An introduction to international criminal law and procedure Published online: 23 August 2019, p.99

through wrongful conduct and how they relate to the concepts of "no crime" and "no crime," respectively

-The article states there is no offence:

A. Whether the conduct was required by law or enacted

B. As long as the defence is appropriate given the gravity of the attack, the behaviour is only necessary if it is necessary to protect the person, another person, or the person's or another's property.

-It is plainly clear from this section that the presence of the grounds for the violation disqualifies the illegal behaviour from being considered criminal behaviour and renders the punishment inapplicable. Although there could be an excuse for the sentence to be commuted rather than terminated, according to Article 74 of the Yugoslav legal system, the subordinate who has used up the president's order is still responsible for crimes.

-As long as the International Criminal Court's Statute does not clearly address such implications, there is no rationale to apply international legal standards or national laws that do not conflict with the Statute.

the subsequent.

### **Third requirement: -The beneficiaries of the absence of international criminal responsibility**

#### **3-1-original offender**

- The person who participates in criminal conduct or action is still deemed to be the only offender of the offence. or the person who really commits the crime—the original perpetrator—is the one who does the operational labour. The primary component of criminal<sup>(1)</sup>The travaux préparatoires are not included in the conduct, the criminal outcome, or the relationship between them.

-So, it might be argued that under both national and international criminal law, the concept of the only principal offender is similar. In accordance with Article 25, paragraph 3.1 of the Rome Statute, "A person shall be criminally accountable and punishable for any offence within the jurisdiction of the Court if the person: <sup>(2)</sup>

-Whether acting alone or in tandem with another, the perpetrator of this crime... No matter the kind of grounds, the original offender's lack of criminal responsibility has an impact on the severity of criminal and other civil liabilities; therefore, we are compelled to look into them in line with the following criteria:

#### **3- I- Criminal Responsibility**

-There is no criminal liability if the original perpetrators committed their crime under certain circumstances, whether they were subjective or objective.

-The availability of such a ground during the commission of the crime only benefits the original perpetrator and does not extend beyond it to other shareholders or accomplices. For example, if it is proved that the accused was insane at the time of the commission of the crime, he must be acquitted in order to escape liability<sup>(3)</sup>

-According to the individual for whom the omission's conditions are met, only those who actively took part in the crime are immune from criminal accountability.

---

1)Werle, Gerhard, and Florian Jessberger. "Foundations." In *Principles of International Criminal Law*. 3d ed. By Gerhard Werle and Florian Jessberger, 1–163. Oxford: Oxford University Press, 2014, p. 66

2)van Sliedregt, Elies. *Individual Criminal Responsibility in International Law*. 2d ed. Oxford: Oxford University Press, 2012, p.69

3)Meloni, Chantal. "The Principle of Individual Responsibility and the Macro-dimension of International Crimes." In *Command Responsibility in International Criminal Law*. By Chantal Meloni, 7–31. The Hague: T. M. C. Asser, 2010, p.150

-The fact that one of the accomplices or other stockholders employed the personal reasons for excluding criminal responsibility does not, in the circumstances of the crime, result in the original offender being immune from criminal accountability since such grounds are tied to the perpetrator's person.

Even when their consequences also have an impact on other partners,

-The original offender benefits from the presence of the grounds for excluding criminal responsibility in the same manner that he benefits from the circumstances that permit wrongdoing to result in criminal liability.

-Whether this is due to pornographic motives or other restrictions on criminal responsibility, the inability to prosecute the first perpetrator is due to the original offender's absence of criminal responsibility <sup>(1)</sup>

### **3-2-: civil Responsibility**

-As long as the fulfilment of original offender's responsibility is based on obstacles to responsibility, the original perpetrator is still liable in civil cases even if he was not criminally accountable for the original crime. This is the case if the original perpetrator was emotionless or without choice at the time of committing the crime, or if certain circumstances forced him to do so.

-This suggests that laws that, , protect people with mental illnesses from criminal responsibility and hence from punishment do not also contain provisions for civil duty since criminal responsibility is not necessarily a need for civil obligation<sup>(2)</sup>

- Unlike the causes of pornography, their availability releases the original perpetrator from punishment, safety measures, or an obligation of reparation.

The absence of civil responsibility in the case of pornography is due to the fact that a person cannot undo an act that is permitted by law and may sometimes command or allow it.

It also helps everyone who takes part since the intentions for the act are the same and the perpetrators are neither objective nor subjective.

### **3-3-Contributer to the crime**

#### **3-3-A- Type of Liability for the Contributor**

-To determine the kind of contributor's responsibility, we make a distinction between the liability of each original contributor who conducts their crime with the other, the liability of the original stockholders who do their crime via a third party (moral actor), and the liability of the subsidiary contributor (partner).

#### **I.The original Contributor who committed the crime with another**

-Article 25, paragraph 1.3 of the Rome Statute states that "a person shall be criminally liable and subject to punishment if he or she has committed an offence within the jurisdiction of the Court, whether acting alone or in concert with another."

-The original perpetrator is expected to be an original contributor to aid in the completion of criminal activity in the crime when the material portion of the offence consists of numerous actions and each shareholder has carried out these actions<sup>(3)</sup>

-The International Criminal Court Statute refers to the doctrine of national criminal laws, which provides for the plurality of the original shareholders when each one arrives as a punishment for

---

1)Lyal . S .Sunga : Individual Responsibility in International Law for Serious Human Rights Violations .(Boston 1992)P.94-142

2)Katja Creutz: state responsibility in the international legal order A Critical Appraisal  
Published online : 8 October 2020 , p. 44

3)Khalid Mohamed Khalid : The Responsibility of the Presidents and the Leaders Before the International Criminal Court , Master Degree in International Criminal Law, the Opened Arab Academy in Denmark . 2008, P24.



criminal behaviour that falls within the parameters of the crime's material element, so participation in this case does not imply incitement, agreement, or assistance.

-The fact that they were both original actors served as the foundation for each perpetrator's accountability for an original contribution since international criminal law does not see the perpetrator as an accomplice to the crime but rather views them as equals in the eyes of the law.

This is the subject of the request for an indictment against Ali Kushayb, which the Pre-Trial Chamber of the International Criminal Court determined had merit. Article 13 25 of the Court's Statute outlines the punishments for committing war crimes and crimes against humanity, among others<sup>(1)</sup>

-The ethnic cleansing of the hamlet of Akhmetsi served as the basis for the charge against Kupreki and others accused of crimes against humanity for political, ethnic, and religious motives, and the trial of the six defendants in the trial court of first instance started on August 17, 1998.

-On November 16, 1998, the same court also handed down a ruling involving a number of defendants, including Zdrato Music, Hagin Dellic, Esad Landzo, and Zejnil Delalic. These individuals were found guilty of a variety of crimes, including murder, torture, sexual assault, and the unlawful detention of civilians in the Celebic camp<sup>(2)</sup>

-The ICTR is also putting Theoneste Bagosra Gratien, Kabiligi, Uwe Ntabakuze, and Anatoli Nismgiyumva on trial collectively for their alleged involvement in the planning of the Rwandan genocide.

For accuracy, it is important to refer to the following three images of the offender and other people:

-**The first example** demonstrates how each participant satisfies all the conditions for the physical element of the crime, making each person's involvement sufficient on its own for the crime to happen.

As opposed to the first picture, where each contributor is the outcome of a single act, the material element of the crime

-**In the second type** is made up of many actions, not all of which are performed by each contributor.

-**The third example:** the contributor participates in activity that is beyond the scope of this pillar, which is so essential that it would not have occurred in the first place, rather than doing an act that results in the development of the physical component of the crime.

Regardless of how diverse the types of donations may be, the Rome Statute holds the first contributor legally accountable and punishable.

## II. The original perpetrator who comettes the crime through another one (moral actor)

-The moral perpetrator of the criminal offence is an original contributor to it because of his control over the crime and the emergence of his sovereignty over the crime process, which constitutes total control over the conduct of the criminal act. As a result, the criminal outcome is a direct result of the medium he used and his intention to do so<sup>(3)</sup>

-According to comparative jurisprudence, the act that helped to create the ingredients of the crime is referred to as (moral, intermediate, or indirect) jurisprudence, taking into account the idea of the typical offender. The term "criminal" refers to someone who commits a crime, and it does not

---

1)Ilias Bantetas and Lutz Oette : international human rights law and practice Published online : 30 November 2020 ,p.50

2)Hussein Nasmaa : The international criminal responsibility , Master Degree , Faculty of Law and political science , Montori University, Algeria , 2007. P.6,7.

3)Gldeon Boas , James L , Bischoff and Natalie L Reid : international criminal law practitioner library published online : 10 December 2009 , p. 74



only refer to someone who physically commits the act that makes up the material element of the crime; it also refers to someone who uses the help of others to carry out the act.

-The concept is that the moral actor is the one who, rather than committing the crime themselves, commands others to do so and is hence referred to as the "indirect actor" or the perpetrator.

-The expression "committed by another person" alludes to the principal's crime being perpetrated by a kid, a lunatic, or a person who had good intentions but used them as a tool to accomplish the crime, enabling the original offender to make fun of others for it<sup>(1)</sup>

-The moral actor hypothesis, which assumed that the original contributor may co-commit the crime with another person, regardless of that other person's criminal responsibility, was recognised by the Rome Statute.

-If the original perpetrator is not found guilty owing to a lack of criminal intent or incapacity, criminal liability is established not as an accomplice to a crime committed by an act of good faith but as the original perpetrator of the crime done by others.

-It should be noted that Article 25 of the Rome Statute introduced criminal accountability for the perpetrator via another person instead of limiting criminal liability to the person who committed it alone or in collaboration with others. Whether or not the perpetrator used it as an official for the commission of the crime, either due to a lack of capacity or malicious purpose, this clause is designed to demonstrate the perpetrator's criminal accountability.

One of the cases before the International Criminal Court in this regard is that of (Thomas Lubanga), the leader of a militia in the Democratic Republic of the Congo who was accused of war crimes for allegedly abusing children during the Congo hostilities<sup>(2)</sup>

III: partner in crime

-Who directly contributes to the execution of the offence refers to the offender's contribution to the act that forms the basis for the material element of the offence; it also broadens the scenario in which the perpetrator has committed an act that is not a component of the material element of the offence.

-His only responsibility is to provide assistance, and by doing so, he may open the door for the latter. Does the original offender ask the partner apart from himself, or does he ask who is connected to him? When the reasons for the crime are known, the conduct of an accomplice in a crime is consequently recognised as dependent on the commission of the offence because participation is deemed a sort of criminal contribution, provided that this contribution is not direct but incidental or secondary<sup>(3)</sup> Ordering, inducing, or inducing the commission of an act that has already been committed or attempted constitutes a crime, as stated in Article 25, Paragraph 2(b), of the Statute of the International Criminal Court. A person shall be held responsible for helping, abetting, or otherwise assisting in the commission of an offence for the purpose of enabling.

-According to the aforementioned, the three categories of engagement in international crime are incitement, agreement, and aid. participating in the commission of an infringement is an offence in and of itself, according to Principle 7 of the Regulations on the Drafting of the Nuremberg Principles, which reiterates the concept of participation in international crime. Activities that constitute a secondary criminal contribution to the applicable crimes are also covered in Article 20, paragraph 13, subparagraphs (a), (b), and (c) of the 1954 Draught Code of

---

1) Erin Louise Palmer : prosecutor V. Charles Ghankay Taylor (SCSL) international legal materials published online : 20 January 2017 , p. 90

2) Darryl Robinson : justice in extreme cases : criminal law theory meets international criminal law published online : 17 December 2020 , p. 144

3) Damgaard, Ciara. Individual Responsibility for Core International Crimes. Berlin: Springer, 2008 , p. 76



Crimes against the Peace and Security of Mankind. These actions include actively encouraging or participating in the commission of any article II offence, as well as conspiring to commit any of the crimes listed in the preceding paragraphs.

-According to Article 70 of the Statute of the International Criminal Court, the subordinate criminal contribution is held to the same standards of responsibility and punishment as the original criminal contribution<sup>(1)</sup>

-It should be noted that because international criminal law recognises all parties who contribute to responsibility and punishment, the legal implications of distinguishing between the principal, the moral, and the partner do not differ in terms of the punishment for crimes committed on a global scale.

In the case that the person commits, orders, induces, incites, or attempts to commit any crime subject to the jurisdiction of the International Criminal Court, as well as for the purpose of aiding, abetting, or otherwise assisting in the commission of the crime, he or she has clearly established the person's guilt under the Rome Statute and is included among everyone who contributes to the crime, regardless of the type of behaviour that was engaged in. This circumstance is addressed under Article 25 of the Statute of the International Criminal Court: "In accordance with this Statute, a person shall be criminally accountable and punishable for any crime within the jurisdiction of the Court if the person:

the order, provocation, or encouragement to engage in conduct that has previously been attempted or done. providing encouragement or other help, including the means to carry out the crime, to facilitate or attempt to carry it out<sup>(2)</sup>

It is understood from article 25 of the Statute of the International Criminal Court that criminal responsibility for the crimes over which the Court has jurisdiction lies solely with the offender, as stated in the article outlining the requirements for establishing such responsibility, which states that it is an individual responsibility to which a person, regardless of the degree of his or her contribution to the crime, whether an offender, accomplice, or accomplice in crime, is subject.

-It should be noted that the Nuremberg Tribunal has taken a proactive approach in this area by holding organised leaders, instigators, and participants in the creation and execution of a joint plan or conspiracy to commit any international crime accountable for all acts committed by any person during the course of the implementation of this plan<sup>(3)</sup>

-The criminal liability of Ma La De R-Maladie and Karzi R-Kabaridze, the military commander in that territory and the head of the Bosnian administration in the province of Pal, respectively, has also been established by the International Criminal Tribunal for the Former Yugoslavia's case law.

-These people had the authority and the right under the law to organise, provoke, assist, and facilitate suspected crimes. (Riggiu Georges), a journalist and broadcaster, is one of the cases now being heard by the International Criminal Tribunal for Rwanda. Through his work in 1997, he advocated murder, caused serious bodily and mental injury to, and persecuted Tutsis. He was sentenced to 12 years in prison in 2000 after being found guilty of public and direct incitement to commit genocide.

---

1) Cristian Correa, Shuichi Furuya and Clara Sandoval Reparation for victims of Armed Conflict Published online : 3 December 2020, p. 142

2) Cheryl S. White : Bridging Divides in transitional justice published online : 27 September 2018, p. 78

3) Bassiouni, M. Cherif. "The Subjects of International Criminal Law: Ratione Personae." In International Criminal Law. Edited by M. Cherif Bassiouni, 41–70. 3d ed. Leiden, The Netherlands: Martinus Nijhoff, 2008, p. 40

### 3-4-The extend of the contributor's impact with the absense of criminal inrtnational responsibility

-Due to the personal nature of the grounds for the absence of international criminal responsibility, the contributor's impact on those grounds differs depending on those same grounds. Because of this, only those who actively took part in the crime, such as the perpetrators or their allies, can determine the causes of an omission and the severity of the lack of responsibility. For example, even though the person who was unable to feel or make a decision at the time of the act was insane or mentally ill and is not questioned about the crime committed, questioning the perpetrator with whom he or she is cooperating or the accomplice who suggested, agreed to, or helped in the commission of the act is not prohibited.

-As a consequence, the original perpetrator's constraints on criminal culpability or personal circumstances have no bearing on the first partner or contributor. Therefore, the offender's usage of these limits does not relieve him of responsibility to the other shareholders. They ask about the international offences they have committed instead. This is due to the fact that the limitations on responsibility are of a personal nature. Only those who have addressed him personally will benefit from them. This was shown in international procedures when Shacht's criminal responsibility for helping to prepare for the war of aggression was postponed in order to determine if Shacht had actual knowledge of the hostile plans. Because this scientific truth did not provide them with sufficient evidence, he was really cleared."

-Accordingly, the accomplice in a permissible act benefits from the fact that the perpetrator of the offence has been found guilty of the offence. Contrary to the foregoing, the reasons for the offence go beyond their impact on both the original and subsequent shareholders. Anyone who assists a person in the legal defence by giving him a weapon to ward off the attack would have participated in a permissible act and would have benefited from the availability of the legal defence<sup>(1)</sup>

-The question is whether using the perpetrator's reasons for creating pornography by the partner constitutes a crime under both domestic and international law. It is against the Rome Statute for the partner to benefit from excluding the offender's criminal liability under domestic law in the manner described above because article 31, paragraph 1/c, states: "The participation of a person in a defensive operation by forces which do not as such constitute a ground for excluding criminal responsibility under this subparagraph."

-We may infer the following things from this passage:

1. The Rome Statute differs from domestic law because, according to this paragraph, the partner cannot benefit from the legitimate defence of forces but still bears responsibility despite the denial of responsibility for the forces involved in defence operations<sup>(2)</sup>
2. The Rome Statute lists legal defence as one of the grounds for excluding criminal culpability, in contrast to the justifications for pornography mentioned above.
3. The Rome Statute added the terms "person" and "forces," which are ambiguous regarding whether a military person through this formulation means a civilian person or a military person who does not belong to such forces, making the same paragraph C, which denies criminal liability to a person defending property necessary to the accomplishment of a military mission, even more ambiguous and imposing criminal liability on a person as part of a military mission, even more unclear.

---

1) Ahlam Ali Mohamed Al Akraa : International Criminal responsibility , Practical study , Israel international responsibility for committing war crimes in Gaza District between 27/12/2008 and 18/1/2009 a research for Thesis in General International Law Faculty of Law , Tanta University.P.70

2) Amgad Hekal: The international criminal individual responsibility before the International Criminal Court , Dar Al nahda Al arabiya . 2009. Second Edition .P.537, 538



-Therefore, it could be necessary to add the word "civilian" to the end of the statement so that it reads as follows: "Participation of a civilian in a defensive operation by forces does not in and of itself constitute a ground for excluding criminal responsibility."

-If a valid defence absolves the perpetrators of guilt, which is related to their objective rather than personal character, it is unreasonable to exclude a military member or soldier from international criminal culpability for their engagement in a defensive operation<sup>(1)</sup>

Taking into account the

-The following considerations may be extracted from the aforementioned conclusion that, if the behaviour is justified in being approved, it has many legal repercussions:  
I. Since a person cannot be held responsible for an act that is permitted by law, the lack of criminal culpability in the case and the existence of a ground for pornography make it an offence in ordinary cases to permit any act that, by its nature, constitutes an offence if committed in ordinary circumstances if the act is accompanied by an act of pornography, which disavows all responsibility for it and prevents any grounds for punishment to be imposed on the perpetrator.  
I. Any person who contributes to the act in issue should benefit from the reasons for the act since the reasons for the act are based on the act itself and not on the perpetrators, whether the reasons are self-inflicted or not

III-While ignorance and mistake may not be committed in the context of the materialities of the crime, the grounds for pornography are subjective conditions, so these types of offences may not be committed in that context. However, this does not prevent someone from taking advantage of them<sup>(2)</sup>

### CONCLUSION

-Despite the criticism directed at them, the Second World War criminal trials represent the first instance of the concept of an individual's international criminal responsibility before the judicial system.

-Every state must exercise its criminal authority over imposing responsibility for international crimes, according to the Rome Statute, which established that this system is not a replacement for the principle of responsibility in the international community. It is noted that this court is a fundamental and auxiliary factor to reduce impunity due to its effectiveness in addressing the perpetrators of international crimes through Acknowledgment of responsibility. The national courts of countries that have the capacity to do so, and the court does not interfere to exercise its jurisdiction except when the failure of The State Party does not have the ability to bring the perpetrators of these crimes to justice.

-Individual international criminal responsibility has developed into a fundamental standard of international law.

It is acknowledged by convention and agreement, and as it is a peremptory regulation, it is not allowed to be denied or violated.

### RECOMANDATION

1-The study recommended that Article 35 of the Statute of the Court specifically state that offences that may be admissible by error in the law or by mistake in the law are to be brought before the International Criminal Court. Legalisation as a barrier to international criminal responsibility: facts and mistakes.

2-States that have ratified the International Criminal Court's Statute are required By improving its national judicial system and modifying its legal, legislative, and administrative

---

1) Ahmed Abal wafa: The international responsibility of the states that put mines in the Egyptian land , Dar Al nahda Al arabiya, 2001.P.264

2)Ahlam Ali Mohamed Al Akraa : International Criminal responsibility , op.cit p 120

framework to comply with the guiding principles of the system, the International Criminal Court's foundation,

Taking into account that the International Criminal Court has additional authority.  
3- Due to the significance of these rules in determining the application of individual international criminal responsibility, it is necessary to codify the customary rules of individual criminal responsibility that have been applied and followed by Special International Criminal Courts and the Working Manual of the International Criminal Court.

#### REFERENCE:

- [1] Ahmed Abal wafa: *The international responsibility of the states that put mines in the Egyptian land* , Dar Al nahda Al Arabiya .
- [2] Amgad Hekal: *The international criminal individual responsibility before the International Criminal Court* , Dar Al nahda Al arabiya . 2009. Second Edition
- [3] Ahlam Ali Mohamed Al Akraa : *International Criminal responsibility* , Practical study , Israel international responsibility for committing war crimes in Gaza District between 27/12/2008 and 18/1/2009 a research for Thesis in General International Law .Our professor Dr. Mustafa Ahmed Fouad , Faculty of Law , Tanta University
- [4] Ambos, Kai. *Der Allgemeine Teil des Völkerstrafrechts: Ansätze einer Dogmatisierung*. Berlin: Dunkler & Humblot, 2002.
- [5] Bassiouni, M. Cherif. "The Subjects of International Criminal Law: Ratione Personae." In *International Criminal Law*. Edited by M. Cherif Bassiouni, 41-70. 3d ed. Leiden, The Netherlands: Martinus Nijhoff, 2008.
- [6] Cheryl S. White : *Bridging Divides in transitional justice* published online : 27 september 2018
- [7] Cristian Correa , Shuichi Furuya and Clara Sandoval *Reparation for victims of Armed Conflict* Published online : 3 December 2020
- [8] Damgaard, Ciara. *Individual Responsibility for Core International Crimes*. Berlin: Springer, 2008.
- [9] Darryl Robinson : *justice in extreme cases : criminal law theory meets international criminal law* published online : 17 December 2020
- [10] Erin Louise Palmer : *prosecutor V. Charles Ghankay Taylor (SCSL) international legal materials* published online : 20 January 2017
- [11] Gldeon Boas , James L , Bischoff and Natalie L Reid : *international criminal law practitioner library* published online : 10 December 2009
- [12] Hussein Nasmaa : *The international criminal responsibility* , Master Degree , Faculty of Law and political science , Montori University, Algeria , 2007.
- [13] Ilias Banteadas and Lutz Oette : *international human rights law and practice* Published online : 30 November 2020
- [14] Khalid Mohamed Khalid : *The Responsibility of the Presidents and the Leaders Before the International Criminal Court* , Master Degree in International Criminal Law, the Opened Arab Academy in Denmark . 2008.
- [15] Katja Creutz: *state responsibility in the international legal order A Critical Appraisal* Published online : 8 October 2020
- [16] Lyal . S .Sunga : *Individual Responsibility in International Law for Serious Human Rights Violations* .(Boston 1992)
- [17] Meloni, Chantal. "The Principle of Individual Responsibility and the Macro-dimension of International Crimes." In *Command Responsibility in International Criminal Law*. By Chantal Meloni, 7-31. The Hague: T. M. C. Asser, 2010.
- [18] Malcolm . N . Shaw : *individual criminal responsibility in international law* published onlind : 21 June 2018
- [19] Nollkaemper, André, and Harmen van der Wilt. *System Criminality in International Law*. Cambridge, UK: Cambridge University Press, 2009.
- [20] Robert Cryer , Darryl Robinson and Sergey Vasiliev : *An introduction to international criminal law and procedure* Published online: 23 August 2019
- [21] Sakl Saad Al Agami :*The responsibility of the leaders and presidents of their crimes that their employees commit* , Kuwaiti Rights Magazine , Second Edition, June ,2008
- [22] Salim Mohamed Soliman Alogli : *The criminal responsibility for the international crimes in national legislation , a comparative study* , Dar Al Gamaheria for publishing , distributing and publicity , the Republic of Libya , First Edition ,2000.



- [23] Stahn, Carsten. *A Critical Introduction to International Criminal Law*. Cambridge, UK: Cambridge University Press, 2019.
- [24] Sabra and Shatella, *the Israeli Crime and the American responsibility* , *Dar Al Mostakbal Al Arabi*, P1 ,1984 *le pari perdu d'oslo le reglement du conflit israelo palestinien dans l'impasse*, A.F.D.L,VOL , XLVI,2000,p CNRS edition ,Paris .P
- [25] van Sliedregt, Elies. *Individual Criminal Responsibility in International Law*. 2d ed. Oxford: Oxford University Press, 2012.
- [26] Werle, Gerhard, and Florian Jessberger. "Foundations." In *Principles of International Criminal Law*. 3d ed. By Gerhard Werle and Florian Jessberger, 1-163. Oxford: Oxford University Press, 2014.