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Aspects of International Criminal Responsibility

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Abstract:

International criminal law protects interests related to the sovereignty, entity and independence of states and therefore does not Although states are usually the target and victim of such crimes committed against them, violating their sovereignty, entity, or independence, this does not preclude the possibility of international crimes targeting non-state actors, as these actors have interests protected by international criminal law that relate to the fundamental interests of humanity. The commission of international crimes entails two types of liability. The first is the international criminal liability of the individual who committed the international crime, based on the principle of personal jurisdiction and punishment, as he is considered to have full volition to commit these criminal and prohibited acts. The second form of liability for the commission of these serious crimes is the international liability of the state whose employees and agents commit these crimes in its name and on its behalf. In many cases, this is in implementation of a policy pursued by the state under certain circumstances, crises it is experiencing, or armed conflicts it is waging for one reason or another.

Keywords: Direct contribution, Subsidiary contribution, Individual responsibility, State responsibility.

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Introduction:

International criminal law is a branch of international law. It is distinguished by its customary origin, as all attempts to codify it have failed. Therefore, international crimes are not acts stipulated in written law, as is the case with domestic crimes. Rather, they are criminal behaviors established by international custom. The latter (international custom) remains a source of criminalization for international crimes, even if international treaties criminalize certain acts. This is because these treaties do not create crimes, but rather reveal the custom that criminalizes them. Thus, the rule of written legality does not find its place in international criminal law, as it does in domestic law.

International crimes differ from domestic crimes due to their international element. This means that an international crime is committed based on a deliberate plan orchestrated by a state or a group of states. It is executed by relying on the state's power, capabilities, and resources—factors that are not available to ordinary individuals. Moreover, international crimes may be committed by natural persons,(1) yet they still retain their international character if these individuals act on behalf of a state or as its agents, utilizing its means and resources.

It is worth noting that international crimes, in all their forms—genocide, crimes of aggression, crimes against humanity, and war crimes—pose a serious threat to global peace and security on the one hand and to the lives of peoples and the continuity of states on the other.

The primary challenge in punishing international crimes lies in the fact that they are often committed by high-ranking state officials acting under the direct orders of their governments. Therefore, the international community must take all necessary measures to address these grave crimes, which extend beyond a state's territorial jurisdiction. (2) To prevent perpetrators from evading justice under the guise of

(1)Dr. Abdullah Suleiman Suleiman, *Fundamental Introductions to International Criminal Law*, Diwan of University Publications, Ben Aknoun, Algeria, 1992, p. 142.

(2)Dr. Hassanein Ibrahim Saleh Obeid, International Crime, Dar Al Nahda Al Arabiya, Cairo, 1989, pp. 90 and

presidential immunity or shifting responsibility to the state, it is essential to uphold the principle of individual accountability, ensuring that those in power cannot escape prosecution by attributing their actions to the state or their subordinates.

Section One: International Criminal Responsibility of the Individual.

The principle of individual criminal responsibility has become one of the most important principles recognized in the field of international law since the Versailles Conference in 1919. However, the first practice of this principle was achieved twenty-five years later through international courts for the first time, and we mean the Nuremberg and Tokyo courts of 1945 and 1946 as a special judicial mechanism.(1)...moving on to the trials of the former Yugoslavia and Rwanda in 1993 and 1999, as a temporary judicial mechanism, and ending with the enshrinement of this type of international responsibility, i.e. the responsibility of individuals, in the statute of the International Criminal Court.

For international criminal law scholars, the concept of responsibility has become one of the most important tools or weapons of international criminal justice for suppressing international crimes, which have been steadily increasing, particularly in the last decade of the twentieth century. This responsibility is rooted in national criminal law, from which international criminal responsibility derives some of its concepts(2).

Sub-Section One: Direct Individual Responsibility.

The first application of the provisions of individual international criminal responsibility was the trials of the Provisional International Criminal Tribunal at Nuremberg in 1945, where one of its rulings stated: "Persons other than those who committed the crime may be held personally criminally responsible, especially those who ordered its commission."(3)"

The international criminal responsibility of a natural person is defined and its elements are determined by the provisions of the Statutes of the International Criminal Tribunal for the Former Yugoslavia and Rwanda of 1993 and 1994 as follows: "Anyone who plans, instigates, orders, or in any manner aids or encourages the planning, preparation or execution of the crimes set forth in Articles 2 to 5 of this Statute shall be personally responsible for that crime."(4)"

Article 25 of the Statute of the International Criminal Court addresses the system of individual international criminal responsibility, which applies to anyone who personally commits a crime within the jurisdiction of the Court, and anyone who commits a crime by ordering, soliciting, inciting, aiding, abetting, or otherwise assisting in the commission of such a crime or attempting to commit it, or otherwise contributing. Accordingly, the forms of criminal participation in the commission of an international crime are mentioned, by way of example, but not limited to, as the aforementioned article summarizes them as planning, incitement, solicitation, ordering, consenting to, or acquiescing to, and providing assistance in any form.(1).

The system of individual international criminal responsibility applies to all state officials, whether from civil or military authorities. Both civilian leaders and military commanders bear full responsibility for the actions of their subordinates—a principle upheld by the Nuremberg and Tokyo Tribunals of 1945 and 1946. This responsibility is also enshrined in several key legal instruments, including Article 7/3 of the

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following.

Dr. Mona Mahmoud Mustafa, International Crime between International Criminal Law and International Criminal Law, Dar Al Nahda Al Arabiya, Cairo, 1989, p. 42, p. 40 and following.

(1)Dr. Najat Ahmed Ahmed Ibrahim, International Responsibility for Violations of International Humanitarian Law, Maaref Establishment, Alexandria, 2009, p. 324.

(2)Dr. Mohamed Sharif Basyouni, Dr. Khaled Siri Siam, Introduction to the Study of International Criminal Law, Dar Al-Shorouk, Cairo, 2007, pp. 91-92.

(4)Article 7/1 of the Statute of the International Criminal Tribunal for the Former Yugoslavia of 1993, and Article 6/1 of the Statute of the International Criminal Tribunal for Rwanda of 1994.

(1)Michael Koebele, Corporate Responsibility under the Alien Tort Statute, Martinus NIJHOFF Publishers, Leiden, Boston, 2009, page262

1993 Statute of the International Criminal Tribunal for the Former Yugoslavia[2], Article 6/1 of the 1994 Statute of the International Criminal Tribunal for Rwanda, Article 6 of the 1996 final draft on crimes against the peace and security of mankind, Article 86 of the 1977 First Additional Protocol to the 1949 Geneva Conventions, and Article 28 of the Rome Statute of the International Criminal Court.[3] Accordingly, the principle of command and superior responsibility has become firmly established in both customary and treaty-based international law.

The perpetrator of an international crime may not claim that he is not personally responsible for international criminal responsibility because he carried out an order issued to him by a higher authority, whether the source of this order was a civil authority, a military authority, or any other public authority in the state. This is a rejected argument, because obedience to superiors cannot, under any circumstances, extend to the commission of crimes.

Part One: Its Adoption in International Criminal Justice.

The direct international criminal responsibility of an individual for committing an international crime means two issues. The first is the possibility of international criminal law applying criminalization standards directly to individuals without going through the criminal justice procedures of states.[4]The second entails that the perpetrator of such crimes, as well as anyone who committed the material acts or directly contributed to the material element, bear personal international criminal responsibility. International criminal law has enshrined this meaning and applied this idea in the field, and it is also the body that established and developed the theory of international criminal responsibility for natural persons.

The concept of this responsibility in light of international criminal law was crystallized by the direct application of the Nuremberg and Tokyo trials of 1945 and 1946, and its principles were also established by Article Six (06) of the Nuremberg Charter, which states that: "Crimes against international law are committed by persons and not by abstract entities, and that the provisions of international law can only be applied by punishing individuals who have committed such crimes."[1]". The judicial case law represented by the Nuremberg Tribunal ruling formulated a confirmed rule establishing personal international criminal responsibility, which was unanimously ratified by the United Nations General Assembly on December 11, 1946.[2]These principles and concepts were also established in the Statute of the International Criminal Tribunal for the former Yugoslavia and the Statute of the International Criminal Tribunal for Rwanda, which applied the international criminal responsibility of the individual in many of the issues and cases that they decided.[3].

Finally, we note that the system of international criminal responsibility for individuals has received great attention and a place in the Statute of the Permanent International Criminal Court.[4]Article 25 of the latter referred to the possibility of international criminal responsibility being established in accordance with the rules recognized in international criminal law. Therefore, this system did not take into account what is known as the criminal responsibility of the state for its actions.[4]That is, the person who bears

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[2]Article 7/3 of the 1993 Statute of the International Criminal Tribunal for the Former Yugoslavia states that: "Any act of the acts provided for in Articles 2 to 5 of this Statute, committed by a subordinate, shall notrelieve his superior from criminal responsibility if he knew or had reason to know that one of his subordinates was preparing to commit such act or had committed it, and that his superior did not take the necessary and reasonable measures to prevent the commission of that act or to punish the perpetrator."

[3]See:Gideon Boas And James L Bischoff And Natalie L Reid, Forms Of Responsibility In International Criminal Law, Cambridge University Press, New York, 2007, page252.

[4]Dr. Mohamed Sharif Basyouni, Dr. Khaled Siri Siam, Introduction to the Study of International Criminal Law, Dar Al-Shorouk, Cairo, 2007, p. 101.

[1]See: Article 6 of the Charter of the Nuremberg Tribunal of 1945 and Article 5 of the Tokyo Tribunal Statute of 1946.

[2]Dr. Abdul Qader Al-Baqirat, International Criminal Justice, Punishing Perpetrators of Crimes Against Humanity, University Publications Office, 2005, p. 159.

[3]See: Articles 7/1 and 23/1 of the Statute of the International Criminal Tribunal for the Former Yugoslavia, and Articles 6/1 and 22/1 of the Statute of the International Criminal Tribunal for Rwanda.

[4]Dr. Najat Ahmed Ahmed Ibrahim, previous reference, p. 329.

[4]Alaa El-Din Ghawar, The Crime of Aggression under the Statute of the International Criminal Court, Master's

criminal responsibility for committing international crimes according to this statute is the natural person of age and of sound mind who is accused of that.[5]According to this text, the person who will be held criminally responsible is the one who physically commits an international crime, such as a private person, a subordinate, or a person who contributes to the crime, whether he joins with another person or through the mediation of another person who is not punished, or even through issuing an order, solicitation, or encouragement to commit the crime.

In conclusion, we say that international criminal jurisdiction has established the principle of international criminal responsibility for natural persons. We have clarified this based on what is stipulated in the statutes of special and temporary criminal tribunals and even the permanent International Criminal Court, and also through the judicial practices of these courts, whose application of the provisions of individual responsibility has become stable and consistent, with the total and final exclusion of state criminal responsibility due to many factors such as its influence on national criminal law in such matters and other material and legal difficulties. This is the project that the International Law Commission has been studying since 2001 regarding the possibility of holding the state criminally accountable.

Part Two: Its Adoption in International Criminal Law.

In fact, international custom has not addressed the issue of individual criminal responsibility, as it is concerned only with the ties and relationships between states. However, this principle (individual criminal responsibility) has a distinct presence in the heart of many relevant legal documents. International conventions, particularly international agreements in the field of international humanitarian law and international criminal law, have unequivocally and explicitly adopted this principle, although it is shrouded in some ambiguity regarding the details of immunity enjoyed by public officials, the case of indirect commission of a material act, and other cases that raise problems at the practical or applied level.

The Treaty of Versailles of 1919, in its seventh part, concerning penalties and sanctions, and through the Responsibility Commission, whose primary task was to determine the responsibilities of the perpetrators of serious violations among Turkish and German officials.[1]Wilhelm II, Emperor of Germany, was held individually responsible for international criminal responsibility.[2]However, this responsibility was not implemented because the Dutch government considered that this extradition was in conflict with Dutch penal law, as well as with the Dutch Asylum Act of 1875, which prohibit the Dutch national authorities from extraditing political refugees for any reason.

The London Treaty of 1945, which established the Nuremberg Tribunal and its Statute, is the first international agreement to establish this principle and apply it in the field and in practice through what is stated in Article 6 thereof.[3]Resolution No. 195, adopted unanimously by the United Nations General Assembly on December 11, 1946, affirmed this principle, as it constituted a position of acceptance by states and the work to respect and implement it.

The conclusion of many international treaties adopts this principle as a general and absolute rule, similar to what was stated in the Convention on the Suppression and Punishment of the Crime of Genocide of 1984.[1]and the 1973 Convention on the Suppression and Punishment of the Crime of Apartheid[2]...as addressed in the final draft prepared by the International Law Commission on crimes against the peace

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Thesis, Department of Law, Souk Ahras University Center, 2010, p. 92.

[5]William Bourdon, *The International Criminal Court: The Rome Statute*, Paris, Le Seuil, 2000, p. 113.

[1]See: Article 227 of the Treaty of Versailles.

[2]Ahmed Bishara Musa, International Criminal Responsibility of the Individual, PhD Thesis, Faculty of Law, University of Algiers, 2008, p. 17. See also: Dr. SafwanMaqsoud Khalil, Criminal Responsibility of the Individual, Journal of Sharia and Law, Mosul, Issue 43, 2010, p. 113.

[3] Article 6 of the Charter of the International Military Tribunal at Nuremberg stipulated the principle of individual international criminal responsibility and divided international crimes into three types: crimes against peace, crimes against humanity, and war crimes.

[1]Article III of the Convention on the Suppression and Punishment of the Crime of Genocide of 1948.

[2]Article 4/1 of the Convention on the Suppression and Punishment of the Crime of Apartheid of 1973.

and security of humanity for the year 1996 in Article 2, paragraph 1, as follows: "A crime against the peace and security of humanity entails individual responsibility".[3]

The 1998 Statute of the International Criminal Court, which entered into force in 2001 and primarily incorporates international criminal law, stipulates the principle of individual criminal responsibility in Article 25. Thus, it is clearly evident that the nature of individual criminal responsibility is of an international criminal nature, as it is linked to the commission of international crimes.

It is worth noting that the provisions of international humanitarian law adopted the principle of international criminal responsibility of the natural person, which was included in the four Geneva Conventions of 1949 in the following articles: Article 50 of the First Convention, Article 51 of the Second Convention, Article 131 of the Third Convention, Article 147 of the Fourth Convention, and Article 85 of the First Additional Protocol of 1977, which stipulated various forms of serious violations of international humanitarian law.[4]Which are considered war crimes. In fact, what leads to criminal liability for these grave breaches is not their prohibition under international humanitarian law, nor their commission by members of military forces, but rather their being considered intentionally committed by natural persons, the significant damage they cause to facilities and structures, the serious bodily or health damage they cause, and the deaths of many people.[5].

In conclusion, the principle of international criminal responsibility of natural persons has been adopted in both international criminal law and international humanitarian law, as we find it exclusively enshrined in their rules. Natural persons are held responsible for the consequences of committing international crimes in general, and torture in particular, committed in the name of and on behalf of the state, as crimes against humanity or war crimes, or as a tool for committing genocide. To date, there is no international legal basis for state criminal responsibility, a project that the International Law Commission has been studying since 2001.

Part Three: The Position of International Jurisprudence on the International Criminal Responsibility of the Individual.

There is a jurisprudential divergence regarding the international criminal responsibility of the individual. One jurisprudential trend holds that the international criminal responsibility of the natural person is applicable, while another trend categorically rejects this idea. A third, dual, trend combines the responsibility of the state and the individual together.

First - The Rejecting Trend.

This jurisprudential trend considers that the state alone bears international criminal responsibility.[1]On the commission of international crimes that threaten the peace and security of the international community, and this traditional position based on the state being the sole legal subject of international law[2]Therefore, it is not possible, on the one hand, to exclude the international personality of an individual and, on the other hand, to hold him accountable for international criminal responsibility. This is a contradiction and the two cannot be combined. Al-Faqih considers Weder as one of the most prominent supporters of this view is that it rejects the international criminal responsibility of natural persons, because the subjection of an individual to two different legal systems (national law and international law) at the same time is a strange paradox and cannot be accepted in the absence of a global state. Therefore, the state alone is criminally responsible for international crimes committed in its name.[3].

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[3]Dr. Muhammad Sharif Basyouni, Dr. Khaled Siri Siam, previous reference, p. 102.
[4]Dr. Omar Saad Allah, The Development of the Codification of International Humanitarian Law, Dar Al-Gharb Al-Islami, Beirut, 1997, p. 220.
[5]Dr. Omar Saad Allah, Introduction to International Human Rights Law, University Publications Office, Algeria, First Edition 1991, p. 235.
[1]Dr. Mohamed Abdel Moneim Abdel Ghani, International Criminal Law, New University House, Azarita, 2008, p. 321.
[2]Dr. Abdel Aziz Al-Ashawi, Lectures on International Responsibility, Dar Houma, Algeria, 2007, p. 17.
[3]Dr. AmjadHeikal, Individual International Criminal Responsibility before the International Criminal Court,

The proponents of this trend start from the doctrine of dualism of laws, which is defended by both Professors "Triepel" and "Anzilotti", and it results in international law imposing burdens on states only, and by the concept of violation, natural individuals cannot be burdened with international criminal responsibility. In the same negative direction, Professor Amador adds that contemporary international law imposes new obligations, including breaches of obligations that result in compensation from the state and other violations that result in international criminal responsibility for the state alone. These are new obligations on states that were not previously present in traditional international law.(4).

This trend is based on the evolution of the state's international responsibility from civil to criminal. However, the nature of each type of responsibility is different from the other. Obligating the state to pay the necessary compensation to redress the damage does not pose any practical problems, while imposing criminal penalties in international criminal responsibility raises more than one problem at the practical or applied level. This is because, on the one hand, the state will be punished, including persons who have no connection to the international crime committed, and on the other hand, the real perpetrators will be able to escape criminal accountability. This is the established doctrine of international criminal justice.

Second - The Supportive Trend.

Proponents of this approach believe that the perpetrator of an act that warrants international criminal responsibility can only be a natural person, whether he committed this act on his own behalf or on behalf of his state, in whose name he acts, since the state is nothing more than a legal assumption that does not exist in reality, justified by certain social, economic and political necessities.(1).

This opinion was adopted by jurist Glasser; the reason for his refusal to say that international criminal responsibility is imposed on states is that while it is possible to hold a state civilly accountable for committing a violation of international law, criminal prosecutions for behaviors that are considered international crimes are only against natural persons. (2).

This jurisprudential trend is considered the most realistic at the international level because international crimes are usually committed by natural persons in the name of their state and on its own behalf, and therefore the consequences of these crimes fall on their shoulders. An individual is the one who commits the material element of an international crime, orders its commission, or establishes a specific aggressive policy towards others. This statement is consistent with the concepts of criminal liability in national laws, such as the personality of crime and punishment. The moral element of the crime is based on criminal intent, consisting of knowledge and will, which is absent in states but is realized in natural persons. This similarity is also true for civil liability at the domestic or international level. This jurisprudential trend holds the natural individual alone liable for international criminal responsibility and rejects holding the state accountable for its legal personality. This contradicts the principle of individual personality or the personality of crime and punishment, which are the two core principles upon which the contemporary concept of criminal punishment is based.

Finally, we note that this view is the predominant one in jurisprudence, law, and the judiciary, as it is consistent with the philosophy of responsibility, trial, and punishment at the national and international levels, as applied by the international criminal judiciary in the Nuremberg and Tokyo trials, as well as by the International Criminal Tribunal for the former Yugoslavia and Rwanda, and adopted by the permanent International Criminal Court under Article 25 of its Statute.

Third: The Dual Approach to International Criminal Responsibility for Both the Individual and the State.(1)

A respected legal opinion considers the dual responsibility of the individual and the state together for committing an international crime.(2). One of the pioneers of this trend is the jurist Bella, who believes that

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Dar Al Nahda Al Arabiya, Cairo, 2008, p. 115.

(4)Ahmed Bishara Musa, the previous reference, p. 22.

(1)Dr. Abdelkader Al-Baqirat, The Concept of Crimes Against Humanity in Light of International Criminal Law and National Laws, National Office of Educational Works, Algeria, 2004, p. 157.

(1) Dr. Abdul Aziz Al-Ashawi, Lectures on International Responsibility, Dar Houma, Algeria, 2007, p. 74.

(2)Alaa El-Din Ghowar, the previous reference, p. 83.

if there is an objection to the idea of the criminal responsibility of the state on the grounds that it does not have a distinct, special will, and therefore its personality is based on deception and assumption, while criminal responsibility can only fall on real individuals because they alone can be subjected to criminal punishment, then it is necessary to take into consideration that international law is meant to protect states against the attacks they are exposed to, and it is therefore unacceptable for the same states to bear the criminal consequences in cases in which they are the perpetrators. This is because recognition of the international legal personality of the state also includes recognition of the possibility of bearing international criminal responsibility, because one of the consequences of this recognition is attributing the capacity to commit international crimes.

Jurist Bella also acknowledges that international criminal law cannot ignore the responsibility of natural persons for international crimes they commit in execution of orders issued to them by, in the name of, and on behalf of their state. He argues that while international criminal sanctions must be applied to states, international punishment must also extend to the individuals representing them who committed those acts. Jurist Bella concludes that acts giving rise to international criminal responsibility give rise to two types of responsibility: collective responsibility of the state accused of committing the international crime, and individual responsibility of natural persons who committed the acts constituting those prohibited conducts.[3].

Sub-Section Two: The Individual's Subsidiary Responsibility

There are many forms of international crimes, similar to the four types that the International Criminal Court has jurisdiction over, such as crimes against humanity, war crimes, genocide, and aggression. These are criminal behaviors that are usually committed within a policy and methodology previously prepared by the authorities of a state. This means that such serious crimes are usually committed by a group of official and unofficial individuals, each of whom carries out his or her assigned task according to a well-thought-out criminal plan.

The person who carries out the material element of the international crime is called the principal perpetrator, as he bears direct international criminal responsibility personally. In addition, there are those who contribute to its commission - the international crime - in any way, whether through planning, incitement, order, enticement, or any form of criminal participation, such that they extend a helping hand to the principal perpetrator, and as a result they bear indirect personal international criminal responsibility.[1].

Whoever commits an international crime through another person is referred to as a co-perpetrator or co-author. Whoever commits it alongside another person is considered an accomplice. In both cases, the individual bears international criminal responsibility by extension, as derived from Article 25(3)(a) of the Rome Statute.

Part One: Narrowing the Concept of Partnership in International Crime.

The Rome Statute of the International Criminal Court does not address the concept of accomplice, which prompts the researcher of this important legal point to refer to the rules of customary international law and international criminal jurisprudence. For complicity in a crime in general, and an international crime in particular, to be established, and for the complicit person to bear individual international criminal responsibility by extension, the material and moral elements of complicity must be present, as follows:

A- The Material Element of Subscription:

This element includes the obligation to provide material or even moral assistance, such as providing information to the principal perpetrator about the victim or monitoring and facilitating the commission of the crime by any means. This is consistent with Article 25/3/c of the Statute of the International Criminal Court, which does not specify the means used to commit the crimes within the jurisdiction of the Court. Anyone guarding the premises to facilitate the commission of a crime is considered a participant, and the presence of a person of authority at the crime scene is considered moral assistance to the principal

[3]Dr. Muhammad Abd al-Mun'imAbd al-Ghani, the previous reference, pp. 222-223.
[1]See: Article 25/3 of the Statute of the Permanent International Criminal Court.

perpetrator. These cases were applied by the internal criminal courts of the Allied Powers following the end of World War II.[2], which is the same position confirmed by the former International Criminal Court for Rwanda in the case of Akayessu who was holding the position of mayor, where the court decided that his holding that position was a decisive factor in his responsibility as an accomplice, as he helped the accused to commit acts of sexual violence by encouraging him, and he was convicted as an accomplice to the crime.[1].

The International Criminal Tribunal for former Yugoslavia ruled in a case that no rule in customary international law establishes criminal responsibility for an individual based solely on the various forms of secondary participation outlined in Article 7 of the Statute. Rather, the accused's conduct must contribute to the commission of the criminal act, and their participation must have a direct impact on the perpetration of the crime.[2].

The International Law Commission's 1996 draft code of crimes against the peace and security of mankind examined the issue of complicity, meaning the extent to which individual international criminal responsibility can be established for any person who freely and knowingly assists in the commission of the crime or facilitates its commission by any means and in a direct manner.[3]This is what was established by previous legal precedents codified in Article 25/3/a and 25/3/c of the Statute of the International Criminal Court.

B- The moral aspect of participation.

The moral element of participation is based on the necessity of having knowledge of the acts of participation and the intention to participate in committing the crime. The jurisprudence of the International Criminal Tribunal for the former Yugoslavia concluded that the element of the moral element deduced from the trials conducted after World War II is based on the necessity of having awareness of the acts of participation in addition to its connection to a deliberate decision, i.e. the intention to participate.[4].

This vision was confirmed by Article 2/3/d of the International Law Commission's draft code of crimes against the peace and security of mankind for the year 1996, which stipulated the availability of assistance with knowledge for the establishment of the moral element of participation, which was also decided by Article 30 of the Statute of the Permanent International Criminal Court, by stipulating the availability of knowledge and intent for the establishment of the moral element.[5].

Part Two: The Perpetrator with Others in the International Crime.

The development in the commission of international crimes has led to the emergence of new forms of participation, including the division of tasks among those involved. One person may order the commission of the crime, another may help plan it, another may gather information to facilitate its commission, and yet another may carry it out.

A perpetrator is anyone who directly or primarily contributes to the commission and execution of an international crime, including planning, ordering, or inciting it. An accomplice is anyone who knowingly provides material or moral assistance to the perpetrator. A co-perpetrator is someone who intentionally contributes to the commission of an international crime, or who commits it through another person, and thus bears personal international criminal responsibility like the principal perpetrator. This development

[2]Abdul RazzaqGharbi, the previous reference, p. 117.
[1]See:Judgment:Akayessu)JP(،Affiliate no° ICTR-96-4-T, on September 2, 1998.
(2) Read: Arrêt sur la compétence Duco Tadic, affié n° IT-94-TA, du 15 juillet 1999.
[3]See: Article 2/6/d of the International Law Commission's 1996 Draft Code of Crimes against the Peace and Security of Mankind.
[4]The court declared that:"The moral penalty for complicity consists of the failure to participate in the crime preparation".
[5]See: Article 30 of the Statute of the Permanent International Criminal Court.

in international criminal law aims to prevent all forms of participation in the crime of torture, and thus evade criminal responsibility.[1].

Article 77 of the Rome Statute of the International Criminal Court stipulates the penalties applicable to a person convicted of a crime under Article 5 of this Statute, whereby that person shall be subject to one of the following penalties:

A- Imprisonment for a specified number of years, up to a maximum of 30 years.

b- Life imprisonment where such penalty is justified by the extreme seriousness of the crime and the special circumstances of the convicted person.

In addition to imprisonment, the court may order the following:

A- Imposing a fine in accordance with the criteria set forth in the procedural rules and rules of evidence.

b- Confiscation of proceeds, property and assets derived directly or indirectly

from that crime, without prejudice to the rights of bona fide third parties.

The international crime of torture does not expire by statute of limitations, in accordance with international norms, agreements and conventions that stipulate that international crimes do not expire by statute of limitations. Among these agreements are:

1- The Convention on the Non-Applicability of Limitations to War Crimes and Crimes against Humanity, adopted by the United Nations General Assembly on November 26, 1968, stipulates in its first article:

The following crimes are not subject to the statute of limitations, regardless of the date on which they were committed:

A. War crimes, as defined in the Statute of the International Military Tribunal of Nuremberg of 8 August 1945, and in particular the "serious crimes" provided for in the Geneva Conventions of 12 August 1949 for the protection of victims of war.

b- Crimes against humanity, whether committed during peace or war, as defined in the Nuremberg system, expulsion of individuals or occupation by armed attack or inhumane acts resulting from a policy of racial discrimination or the crime of genocide, or if these acts do not constitute crimes under the domestic law of the state in which they were committed.

2- The Rome Statute of the International Criminal Court, which stipulated in its Article 29 that international crimes are not subject to statute of limitations, as this Article stipulates the following: (Crimes within the jurisdiction of the Court shall not be subject to statute of limitations, regardless of its provisions).

Section Two: International Criminal Responsibility of the State.

While there is stability at the level of international criminal law and international criminal jurisprudence regarding the international criminal responsibility of a natural person, the problem arises with regard to crimes committed by the state and the extent of its responsibility for them.

Sub-Section One: The Legal Nature of State Responsibility.

International criminal jurisprudence regarding the criminal responsibility of the state is divided into those who recognize it and those who deny it (i.e. Responsibility).

Part One: Recognition of the International Criminal Responsibility of the State.

Proponents of this view believe that the state, like a natural person, bears international criminal responsibility for international crimes committed in its name. Their argument is:

[1]For further clarification of the concept of co-actor, see: Article 25/3/a of the Rome Statute.

The expansion of the concept of state responsibility for its crimes throughout the history of trials for international crimes led to the birth of international criminal responsibility.[1].

- The international criminal responsibility of the State already exists in contemporary international criminal law, and its full recognition will have a significant impact on improving the effectiveness of the provisions of this law.

The criminal liability of the state as a legal entity must be recognized, since liability arising from the commission of crimes stipulated in penal laws can only be such (i.e., criminal liability).

The indictment of Germany as a state in the Nuremberg trials was supported by the British Public Prosecutor, who considered the state to be solely responsible, both civilly and criminally, for the crimes of World War II.[1].

-If there are criminal penalties that can be applied to natural persons, there are also criminal penalties that are consistent with the nature of the state as a legal entity, namely:

- Publish the conviction that proves the state's involvement in committing an international crime.
- The award of punitive compensation against the State may be placed in the United Nations Voluntary Fund for Victims of Torture.
- The convicted state is sentenced to rehabilitate victims of international crime.[2].
- Exclusion from international organizations, deprivation of their aid, and the application of economic and military sanctions.

Part Two: denying the state's criminal responsibility.

Proponents of this approach believe that the state, as a legal entity, cannot in any way bear international criminal responsibility. Their argument is:

The existence of criminal liability entails punitive sanctions that contain elements of deterrence and punishment, which cannot be envisaged or applied to countries.

The criminal penalty applicable at the national level cannot be extended to states in any way, as no other civil penalty may be imposed on the latter than compensation to redress the damage caused by their unlawful act.

Imposing criminal penalties on states, rather than on natural persons who have committed international crimes, including torture, leads to the actual perpetrators escaping international criminal responsibility. This is what happened during the Allied trials following World War II. The system of individual criminal responsibility was adopted, excluding state criminal responsibility.

The rights and obligations imposed on the state are, in reality, nothing more than what its representatives, whether official, civilian or military, bear, since the latter (the state) is a moral entity with no real existence.

The embodiment of the principles and provisions of domestic criminal law at the international level faces significant obstacles. The state, as a legal entity, acts only through its representatives, and therefore, double attribution of responsibility may be considered. If a civilian or military official commits an international crime while performing their official duties or in connection with them, they bear personal

[1]Dr. Mahmoud Sharif Bassiouni, Introduction to the Study of International Criminal Law, previous reference, p. 24.
[1]Dr. Ben AmerTounsi, The Basis of State Responsibility During Peace in Light of Contemporary International Law, Dahleb Publications, Algeria, 1995, p. 284.
[2]Dr. Tariq EzzatRakha, Prohibition of Torture and Related Practices, Dar Al Nahda Al Arabiya, Cairo, 1992, p. 723.

international criminal responsibility for these prohibitions. Their state also bears the consequences by providing compensation to the victim, whether a natural person or a state.

The Statute of the International Criminal Court establishes international criminal responsibility for natural persons, not states.[1]It also referred to the civil responsibility of states under international law in an implicit manner, as Article 25, paragraph 4, states: "No provision in this Statute relating to individual criminal responsibility shall affect the responsibility of states under international law."

From the above, it is clear that international criminal law and jurisprudence unanimously adopt the criminal responsibility of natural persons and exclude it for states, while recognizing the responsibility of civil states. The arguments of those who deny international criminal responsibility for states appear more realistic, particularly with regard to the moral element of an international crime, which requires the presence of the elements of will and knowledge, both of which are fulfilled for natural persons but not legal entities.

Sub-Section Two: The Basis of State Responsibility.

Article 86 of the Rome Statute of the International Criminal Court obliges states, particularly member states, to fully cooperate with the Court in its investigations and prosecutions of crimes. However, if a state fails to cooperate, there is no provision that imposes a penalty for non-compliance.

Furthermore, paragraphs 5 and 7 of Article 87 of the Statute outline the only course of action available to the Court, which is the possibility of notifying the Assembly of States Parties (which has no authority to sanction a state). Alternatively, if the case was referred to the ICC by the United Nations Security Council, the Court may notify the Security Council of a state's refusal to cooperate.

The principle of mandatory cooperation applies to all requests made by the Court in the context of its investigations and prosecutions. These requests may involve arresting and surrendering individuals, providing documents or evidence, identifying and locating persons, conducting searches and arrests, and other forms of assistance, [1] as stipulated in Article 89 of the Rome Statute.

The judiciary is considered the competent authority to implement the principles and provisions of the Rome Statute containing the Statute of the Permanent International Criminal Court of 1998 after its incorporation into the national laws of the States Parties. Any negligence, omission, or inability to prosecute those accused of these serious international crimes committed within the territory subject to its jurisdiction is considered an internationally wrongful act in violation of the provisions of the Convention, resulting in the international responsibility of the State vis-à-vis the other States Parties. The State is responsible for the actions of the judiciary, like all other authorities, and there is no room for claiming that it is an independent authority to evade responsibility for its actions. This responsibility arises in practice in cases of denial of justice, poor administration of justice, or the issuance of a judgment that is clearly unfair. The State also bears responsibility if it is proven that it did not punish the person who committed the wrongful act, or that it neglected to investigate or bring him to trial.[2].

The responsibility of the state for the international crimes committed by its official employees who work in its name and on its behalf, which fall under the jurisdiction of the International Criminal Court, if their involvement is proven by virtue of personal international criminal responsibility, not to mention that it bears international responsibility for these violations.[3]

The absolute prohibition of international crimes in all their forms negates any justification for committing this crime. Under no circumstances may the principle of immunity, the official status of the perpetrator, or the obligation to obey an administrative superior be invoked to prevent liability or mitigate punishment. This failure opens the door wide for international criminal justice to exercise its

[1]See Article 25(4) of the Statute of the International Criminal Court.
[1]Article 89 of the Statute of the International Criminal Court
[2]Dr. Tariq EzzatRakha, previous reference, p. 727.
[3]See: Article 25/4 of the Statute of the Permanent International Criminal Court.

jurisdiction when it fails to prosecute those for the commission of international crimes within the jurisdiction of the International Criminal Court, pursuant to the Court's complementary jurisdiction.[4].

Conclusion:

International crimes committed by state agents in their official capacity give rise to two types of international responsibility. The first is the international criminal responsibility of the individual who committed the international crime, based on the principle of personal jurisdiction, since the individual is considered to have full volition to commit these criminal and prohibited acts. The second form of responsibility for committing these serious crimes is the international responsibility of the state whose employees and agents commit these crimes in its name and on its behalf. In many cases, this is in implementation of the policies pursued by its representatives under certain circumstances, crises it is experiencing, or armed conflicts it is waging for one reason or another.

At the end of our study, we reached the following results:

The commission of an international crime entails two types of responsibility: the responsibility of the individual who committed the international crime and the responsibility of the state to which the latter belongs.

The international criminal responsibility of a natural person is divided into direct responsibility when the perpetrator is the principal perpetrator and subsidiary responsibility when the person contributes to it as an accomplice.

The international criminal responsibility of the state has sparked widespread jurisprudential controversy between supporters and opponents.

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