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The regularity of the relationship between "domestic" criminal law and "international" criminal law / an analytical study

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Summary

This study aims to examine the relationship between "domestic" criminal law and "international" criminal law - which is one of the most important branches of public international law -. One of the researcher's concerns was also presenting and discussing the relationship between the two laws, and discussing the intersection and complementarity between them, and are they affected by local laws or not? . The researcher also discussed the authority of international law - with regard to crime - and the researcher concluded: the independence of international criminal law, and also concluded that local laws are affected by the rules of international law, with mutual effects between them at times.

Keywords : Transnational organized crimes; International crimes; International Criminal Court; International Criminal Law.

Introduction

There is no doubt that there is a difference between transnational organized crime and international crimes, as the international component in each is completely different. The international element latent in transnational organized crimes is based on the fact that its crimes exceed the borders of a single state, while the excessive and widespread use of force against one of the basic values that concern the entire international community represents the international element that characterizes international crimes. and then; This element should not serve as a basis for, or a justification for, the consideration of transnational organized crimes within the scope of international criminal law. Transnational criminal law is the most appropriate legal framework to accommodate transnational organized crime; As there is a difference between cross-border criminal law and international criminal law.

This article will, on the one hand, clarify the difference between cross-border criminal law and international criminal law, by addressing some elements of distinction between the two legal systems. On the other hand; It will examine the extent to which some crimes of transnational criminal law (transnational organized crime) can be transferred into international criminal law. The purpose of this last issue is to show that the possibility of internationalization of some cross-border organized crime is possible. This does not mean that crimes of transnational criminal law may be at times within transnational criminal law and at other times within international criminal law, but rather that a specific transnational organized crime may move from a particular legal system to a different one. As a result of some developments.

Importance of the topic:

Clarifying the difference between international criminal law and cross-border criminal law is an important justification in the context of eliminating ambiguity and confusion between the two legal systems, especially since revealing this relationship will produce legal results worthy of attention. and for example; Considering transnational criminal law as a branch of international criminal law means that transnational organized crimes will be subject to the legal regime that characterizes international crimes, such as the principle of universal jurisdiction. But in the event that cross-border criminal law is separate from international criminal law; In this case, states will have to establish a criterion of criminal jurisdiction to consider transnational organized crimes that are the subject of transnational criminal law.

The importance of this topic is also highlighted by the fact that the emergence of cross-border criminal law as an independent branch of public international law may prompt some to shed more light on this branch. In terms of its arrangement from the inside, such as (its concept, sources, and development), as well as its relationship to the branches of public international law and other topics related to it. Such as international human rights law and international responsibility law.

Last, but not least, the issue of considering cross-border criminal law as an independent branch of public international law may cast a shadow over the academic programs within the Arab law faculties, for the latter to establish specialized courses or independent programs, whether at the level of undergraduate studies or postgraduate studies to study this. The new branch in depth. Especially since transnational organized crime - which is the subject of transnational criminal law - is growing and developing rapidly [1].

Research problem:

The concept of transnational organized crimes and their ignorance put them in a different position from international crimes, especially after the provision of the latter exclusively in the Statute of the International Criminal Court. This research deals with an important problem, which is whether the international criminal law is really able to absorb these transnational organized crimes, or should the last type of crimes have an independent legal container that accommodates these crimes, which is the cross-border criminal law. This main problem prompts us to ask about the standards or legal features that could constitute this container. Or the legal framework (cross-border criminal law) that you can distinguish from international criminal law.

Research Methodology:

This research will address the problem referred to above through research and analysis in the original sources, which are international conventions in the field of international criminal law, as well as conventions dealing with transnational organized crimes.

as well; This research will adopt the methodology of examining secondary sources such as (case law, writings of jurists, international law), and analyzing them, and this would support and confirm the legal arguments presented by the researcher.

[1] Fijnaut, *Transnational Crime and the role of the United Nations,* 8 European Journal of Criminal Law and Criminal Justice 119, at 122 (2000).

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Search Plan:

The research topic will be addressed and the problem raised will be addressed through the following division:

The first topic: the elements of discrimination.

The first requirement: the legal concept.

The second requirement: the subject matter of the law.

The third requirement: the sources of law.

The fourth requirement: criminal liability.

Fifth requirement: competence.

The second topic: the internationalization of transnational organized crime.

The first topic: the elements of discrimination

In the context of distinguishing between transnational criminal law and international criminal law, we will review some elements that will contribute to clarifying the difference between the two legal systems, provided that this is done through the legal concept (the first requirement), the subject of the law (the second requirement), and the sources (the third requirement). , and criminal responsibility (the fourth requirement), and finally the jurisdiction (the fifth requirement)

The first requirement: the legal concept

The concept of transnational criminal law has appeared in the writings of Western jurisprudence in the field of international law not recently, as they have become accustomed to using it through research, study and writing: in contrast to Arab jurisprudence, which still finds it difficult to deal with the concept of law. transnational criminal.

There are also those in Arab jurisprudence who confuse this concept with other concepts in the field of public international law, such as international criminal law and international criminal law.

Boister sees transnational criminal law as nothing but the indirect suppression under international law of transnational criminal activities by employing the national criminal laws of states for this purpose .[2] In other words, cross-border criminal law is a set of international law rules that contain obligations under which states undertake to take the necessary measures to combat a specific cross-border criminal activity. On the basis of this definition. It can be said that the rules of transnational criminal law are not self-enforcing [3] As it relies on national laws to empty its content, which Boister considered to be a weakness in this law, as he believes that national laws often do not tend to include unified rules to combat transnational organized crime .[4]

Indeed; The author of this article disagrees with Boister on this point. Since such differences between national laws may be expected due to the different principles of national criminal laws from one country to another, and this was alluded to by the United Nations Convention against Transnational Organized Crime of 2000. Article 34 (1) of the Convention

[2] Neil Boister, *Transnational Criminal Law,* 14 European Journal of International Law. *953*, at 953 (2003).

[3] Neil Boister, *An Introduction to Transnational Criminal Law* 91 (2012).

[4] Boister, *Transnational Criminal Law supra* note 2, at 958.

indicates that each State party The Convention may take the necessary legislative and administrative measures in accordance with the basic principles of its internal law, to ensure the implementation of its obligations specified in the Convention. Also, cross-border criminal law through international conventions often requires party states to apply or include in their laws the minimum or reasonable rules of these conventions [5] This may sometimes allow States to adopt different rules that are more stringent and severe than the rules of the Convention to which they are a party and regulate transnational organized crime. For example, Article 34 (3) of the United Nations Convention against Transnational Organized Crime for the year 2000 states that states parties may adopt stricter or more severe measures than those stipulated in this Convention in order to prevent and combat transnational organized crime.

On the other side; International criminal law is a set of rules of international law responsible for characterizing international crimes as well as defining principles and procedures related to the investigation, prosecution and punishment of those crimes [6] This branch of international law imposes direct personal international criminal responsibility on individuals who commit international crimes even in the absence of criminalization in the national laws of states [7].If international criminal law considers an act to constitute an international crime, while the internal criminal law of a country does not consider it as such; Individuals must not commit this behavior, otherwise they will be held accountable and punished [8] Before the International Criminal Court, or before the courts of any other country that criminalizes this behavior, as these crimes - as we will see later - are characterized by universal jurisdiction.

It is worth noting that there is another legal system that may overlap with cross-border criminal law and international criminal law between them. International criminal law, by presenting the status of the "criminal" domestic legal branch to the international adjective, "international" means that branch of the internal criminal law that is concerned with defining the legal system for crimes stipulated in national criminal laws that contain an international or foreign element, especially since such Crimes raise the issue of conflicting criminal laws of two or more countries, and this conflict is resolved by agreement between the concerned countries .[9] And more clearly. This system refers to a set of national rules that show the relationship of the internal criminal law of the state with the outside when committing a crime of an international nature[10]

[5] See Legislative Guides for The Implementation of the United Nations Convention Against Transnational Organized Crimes and the Protocols Thereto (United Nations, New York, 2004) 11.

[6] Miša Zgonec-Rožej, *International Criminal Law – Manual* (1st edition, the International Bar Association, 2010) 24.

[7] Gerhard Werle, *Principles of International Criminal Law* (2nd ed, Oxford University Press, 2009) 27.

[8] Abdel Wahed Al-Far, International Crimes and the Authority to Punish Them, Dar Al-Nahda Al-Arabiya, Cairo, 1996, p. 42.

[9] Abdullah Ali Abbou Sultan, The Role of International Criminal Law in the Protection of Human Rights, Dar Degla. 2010. p. 38.

[10] See: Ibid.

The fundamental differences between international criminal law and cross-border criminal law on the one hand, and international criminal law on the other hand; It lies in the fact that the first two systems are branches of public international law that include a set of international rules that relate to crimes of concern to the international community, according to their seriousness. While the last legal system (international criminal law) is the internal law that determines how the state organizes these crimes as well as how to deal with them if one of these crimes is committed on the territory of the state, or if the perpetrator of the crime, or the victim has the nationality of the state, or that crime has negative impact on the interests of the state.[11]

For example, if a person commits the crime of smuggling migrants (which is a crime within the scope of transnational criminal law) on the territory of State A and flees to State of nationality B; The international criminal law in this example is the one that organizes this crime at the national level and shows its elements, in addition to that it defines the law or the competent judiciary to punish that person, or in other words it settles the conflict of jurisdiction between the two countries. It is worth noting that the international criminal law that deals with such problems may be the result of unilateral acts issued by the legislative authority in the country, and may also be the product of an international treaty that has been applied under the internal criminal law of the state, which later became described as international criminal law[12] .

Another example that illustrates the relationship of international criminal law to international criminal law is: that international criminal law is determined at the international level through international conventions and norms (for example: the definition of the crime of genocide and its elements). While international criminal law determines how it is regulated by the state; Which may be by emptying the international rules related to genocide within the internal criminal law (international criminal law), which will determine at the national level its definition, its elements, and the competent judiciary to consider such crimes. It is assumed - as a general rule - that national courts have jurisdiction over international crimes, since the jurisdiction of the International Criminal Court in this regard is complementary to the jurisdiction of the national judiciary[13]

The second requirement: the subject matter of the law

There are those who adopt a broad trend in defining the subject of international criminal law by including transnational organized crimes within the subjects of international criminal law in addition to international crimes [14] .Supporters of this trend, such as Kreb Claus, seem to see

[11] Abdul Rahim Sidqi, International Criminal Law - International Criminal Law - Criminal Jurisdiction. Dar Al-Nahda Al-Arabiya, Cairo, 1986, p. 8.

[12] Ibid.

[13] See: Article I of the Statute of the International Criminal Court (adopted on July 17, 1998, entered into force on July 1, 2002.(

[14] Cherif Bassiouni (ed.) *International Criminal Law: Crimes* (2nd ed, Martinus Nijhoff Publishers, 1999); Claus Kreβ,
International Criminal Law (1st edition, Max Planck Encyclopedias of International Law, 2009) 2.

transnational organized crime as "crimes of international concern" and thus deserve to be within the scope of international criminal law.[15]

In fact. The writer in this article does not agree with this broad accusation; Because the international component of transnational organized crime, as mentioned earlier, is completely different from the international component of international crimes .[16] In addition, adopting this broad approach may lead to the recognition of a broad legal framework of international criminal law, the rules of which are not applied in practice. The International Criminal Court and the interim international criminal courts concerned with the application of international criminal law did not deal with a single transnational organized crime within their jurisdiction. Transnational organized crimes such as drug trafficking and terrorism have been excluded from the outset from the Statute of the International Criminal Court, as they are not as serious as genocide, crimes against humanity and war crimes .[17] Therefore, it is possible to say that one of the important differences between international criminal law and transnational criminal law is that the subject of the first is international crimes, while the subject of the second is transnational organized crimes.

Although there is no agreed definition of international crimes, they can be defined as crimes that result from a violation of a fundamental rule: or an imperative that shocks the conscience of humanity and threatens the entire international community .[18] .This definition applies to the crimes stipulated in Article 5 of the Statute of the International Criminal Court (the crime of genocide, crimes against humanity, war crimes, and the crime of aggression). International crimes are violations that affect the values and interests that fall within the interest of the international community as a whole, and therefore it was decided to protect them through the rules of international law .[19] For example, "respecting human rights and not violating them" is one of the interests that all countries seek to defend, as it represents a legal and moral duty [20] .Hence, the rules of international criminal law have been employed to protect this interest. For example, against serious violations resulting from abuse of power and reprisals that the State may take against its own citizens, or aliens residing in its territory .[21]As the crimes against humanity stipulated in Article (7) of the Statute of the International Criminal Court may contain such violations.

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[15] Kreβ, *supra* note 14, at 2-3.

[16] See: The first requirement of the research.

[17] Daniel D. Ntanda Nsereko, The International Criminal Court: Jurisdictional and Related Issues, 10 Criminal Law Forum 91
(1999).

[18] Cherif Bassiouni, *The Sources and Content of International Criminal Law: ATheoretical Framework* (2nd ed, NJ: Transaction Press, 1999); Antonio Cassese, *International Criminal law* (2nd ed, Oxford University Press, 2008) 11.

[19] See: Hosnien Obeid, International Crime, Dar Al-Nahda, Cairo, 2004, p. 80, as well as Fotouh Abdullah Al-Shazly, International Criminal Law, New University House. 2001 p. 11.

[20] Muhammad Al-Saeed Al-Dakkak, The Condition of Interest in the Claim of Responsibility for Violating International Legitimacy, University House for Printing and Publishing, Cairo, 1983, p. 77.

[21] Mohamed Hassan Mohamed Ali International Terrorism Crimes and the Jurisdiction of the International Henna Court, Knowledge Foundation, Alexandria. 2013 p. 143.

On the other hand, transnational organized crimes do not fall within the global concern of the international community as a whole, as they often affect the interests of one or more countries, not all countries, as is the case in international crimes .[22] .There are many examples of such crimes, such as the crime of human trafficking, the crime of drug trafficking, the crime of human smuggling, the crime of money laundering, and other examples that do not meet the standards of the United Nations Convention against Transnational Organized Crime for the year 2000 AD. Transnational offenses are defined in Article 3(2) that "the offense is of a transnational nature if:

١ .Committed in more than one country.

٢ .It was committed in one state, but much preparation took place. planning or directing it. or supervising it in another country.

٣ .Committed in one country, but involving an organized criminal group that engages in criminal activities in more than one country.

٤ .It was committed in one country, but has severe repercussions in another country".

Given the above cases; We may find that the Convention considered that if the place of committing a certain crime, or planning and preparation for it, or if its results exceeded the borders of more than one country; We are dealing with a transnational crime.

On the other hand; The crime is also considered transnational if the perpetrators of the criminal activity practice such activity, or others, in more than one country, and therefore the criterion in this case is not related to the criminal activity, in and of itself, which must be transnational borders of countries as in the previous hypotheses, and I The criterion was that people who had committed criminal activity had to move across borders of more than one country [23] .On this basis, it is necessary to say that the crimes of smuggling migrants are transnational crimes, while theft crimes do not fall within that category unless such crimes cross the borders of more than one country, or if those responsible for these crimes are involved in theft crimes, or other crimes. others in more than one country.

On the other hand; The United Nations Convention against Transnational Organized Crime has decided that the scope of application of the Convention will be limited to organized crimes, or in other words - as stated in the Convention - crimes in which an organized criminal group is involved. Article 2 of the Convention defines an organized criminal group as "a group with an organizational structure, consisting of three or more persons, existing for a period of time, acting in concert with the aim of committing one or more serious crimes or offenses established in accordance with this Convention, from In order to obtain, directly or indirectly, a financial or other material benefit. According to this definition. In the sense of violation; Transnational criminal activities carried out by less than three persons as well as activities whose perpetrators do not seek to obtain financial or material benefit such as terrorist groups, insurgents, or criminal activities that are not serious and are punishable by

[22] Tom Obokata, *Transnational Organised Crime in International Law* (1st edition, Hart Publishing Ltd, 2010) 31.

[23] Id at 29.

deprivation of liberty for a period of less than 4 years [24]Not all of them fall under the framework of organized crime, which is the subject of the United Nations Convention against Transnational Organized Crime.

The third requirement: the sources of law

The search in the sources of both transnational criminal law and international criminal law; It reveals the existence of differences, especially in the conventional and customary sources, as well as the resolutions of the UN Security Council, which we will clarify in the following points: First:

International conventions whose subject matter is combating drug trafficking, human trafficking, smuggling of migrants, money laundering, and other conventions of a similar nature are all within the sources of cross-border criminal law. These international conventions all have in common that they include obligations on state parties to criminalize, prosecute, provide legal aid, extradite transnational offenders, establish national jurisdiction, and other legal and illegal measures.[25] Each of these agreements is a legal response to a specific threat ،[26]It is noticeable when examining these agreements that they almost all share a definition of illegal activity or threat. As well as for some obligations such as criminalization, prevention and cooperation. Boister criticized these agreements for not paying any attention to the issue of human rights .[27] However, this criticism may be misplaced. Conventions that include organized transnational crimes, on the one hand, must take into account the rules and standards stipulated in human rights conventions and their customs when prosecuting and prosecuting the perpetrators of those crimes. For example, the procedures and standards stipulated in Article 9 of the International Covenant on Civil and Political Rights and Article 5 of the European Convention on Human Rights are among the foundations for achieving criminal justice applicable in all trials [28] .Including those related to transnational organized crime. On the other hand, there are a number of cross-border criminal law agreements that have dealt with some human rights, whether in detail ،[29] or by reference to international human rights law .[30]

On the other hand, international conventions are an important source of international criminal law. For example, the London Agreement of August 8, 1945, which included the

[24] See ibid., article 2(b).
[25] Boister, *supra* note 2 at 958.
[26] Id.
[27] Id ،at 959.
[28] Nowak M, *U.N. Covenant on Civil and Political Rights: CCPR* Commentary (Kehl am Rhein, 1993) 1162; Robin white & Clare Ovey, *The European Convention on Human Rights* (1st edition, Oxford University Press, 2010) 209.
[29] See: Article 6 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, 2000.
[30] See: article 16 (1) of the Protocol against the Smuggling of Migrants by Land, Sea and Air, 2000, supplementing the United Nations Convention against Transnational Organized Crime, supplementing the United Nations Convention against Transnational Organized Crime, as well as article 14 of the International Convention for the Suppression of Terrorist Bombings of 1997.

substantive and procedural legal framework of the Nuremberg wisdom،[31] As well as the Rome Convention of 1998, which includes the four international crimes and some general principles of international criminal law and procedural rules related to how the International Criminal Court exercises its jurisdiction .[32] What distinguishes these and other conventions of international criminal law is that they contain the substantive framework. Or international crimes, as well as the procedural framework that includes starting from the structure of the court and how it exercises its jurisdiction to the type of penalties and how to appeal them.

These agreements, in contrast to transnational criminal law agreements, contain an integrated framework, the purpose of which is to put international criminal law into practice, and most importantly, to define the role of national courts with regard to jurisdiction. In other words; The extent of states' freedom in implementing conventions of international criminal law is almost limited compared to their role in transnational criminal law conventions.

What also distinguishes international conventions as a basic source of international criminal law is that many of their texts are the result of a process of codification of customary international law .[33] .For example, international custom has played a fundamental role in shaping some of the texts of the basic statute of the International Criminal Court, and this was evident through the preliminary works that dealt with the customary basis for many of the issues that were up for discussion [34].For example (too); The international crimes that are the subject of international criminal law stipulated in Article 5 of the Statute of the International Criminal Court are the result of customary practices against which the elements of customary international law are available, and are not the product of an international agreement that was adopted at a known time to limit illegal activity, just as It is the case in transnational criminal law conventions.

Second: The foregoing prompts us to say that customary international law, as a source of cross-border criminal law, is still in the process of growth and formation compared to international criminal law. While the obligation to prevent and punish the commission of international crimes is well established in customary international criminal law, cross-border criminal law does not include such an obligation in its customary basis [35] .As long as there is not a practice agreed upon by the majority of countries with a legal obligation to consider a certain behavior such as arms trafficking as a transnational organized crime. It is difficult to say that there is an international customary rule that calls for punishing the perpetrators of such behavior. In any case, the large number of states parties to the United Nations Convention against Organized Crime, amounting to (190) states parties up to the date of

[31] See "London Agreement of August 8th 1945." http://www.icls.de/dokumente/imt_london_agreement.pdf (last visited 14 December 2018).
[32] The Rome Statute of the International Criminal Court, adopted in Rome on 17 July 1998, entered into force on July 17, 2002.
[33] Obokata, *Transnational Organised Crime in International Law supra note* 22, at 30.
[34] Gideon Boas James et al., International Criminal Law (Practitioner Library, 2011) 1-3.
[35] Obokata, *Transnational Organised Crime in International Law supra* note 22, at 46.

writing this research [36] It may have a fundamental role in forming a customary international rule in the future related to the imposition of an obligation on states to combat transnational organized crime in general and to punish it[37] .

Third: The decisions of the United Nations International Security Council, in accordance with Chapter VII, played a prominent role in the development of international criminal law. For example, Security Council Resolutions No. 827/1993 adopted in accordance with Chapter VII establishing the International Criminal Tribunal for the former Yugoslavia and Resolution No. 955/1994 establishing the International Criminal Tribunal for Rwanda included the stipulated texts for the establishment of these courts, in addition to their statutes that were mentioned in separate annexes. These decisions and what they contain are considered by Cassese Antonio to be international agreements, given that the UN Security Council and its competences are stipulated in an international agreement, which is the Charter of the United Nations [38] .However, the writer in this article does not agree with this view, because these decisions were adopted according to a legal system in which the Charter of the United Nations and the temporary internal legal system of the Security Council participated in its formation, in addition to customary international law, and therefore the reference of these decisions is not of a nature Pure agreement represented in the Charter of the United Nations. Not to mention that many of the provisions of the FIBNA Convention on the Law of Treaties of 1969 are not applicable to the decisions of the UN Security Council regarding the establishment of courts, and therefore it is possible to say that those decisions represent an independent source of international criminal law.[39]

This issue of the decisions of the International Security Council as a direct source for creating the rules of international criminal law does not exist within the framework of transnational criminal law. The role of the UN Security Council in combating transnational organized crimes, or transnational criminal law in general, has centered in the form of directive or indicative statements issued by its presidency; Which calls on states to adopt policies of criminalization, prevention, and cooperation. investigation and prosecution for the purpose of curbing the expansion of transnational organized crime .[40]For example: Statement of the President of the UN Security Council No. 4 of 2010 calling on countries to cooperate and take strict measures to curb the spread of illegal drug trafficking activities[41] .

[36] See United Nations Treaty Collections <https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII 12&chapter=18&clang=_en>

[37] Obokata, *Transnational Organised Crime in International Law supra* note 22, at 46.

[38] Cassese, *supra* note 18 at 15-16.

[39] Sean D. Murphy, *Principles of International Law* (2nd ed, West Academic Publishing, 2006) 105.

[40] James Cockayne, the UN Security Council and Organized Criminal Activity: Experiments in International Law Enforcement (Working Paper Series, United Nations University, 2014) 1-14.

[41] UN SC, S/PRST/2010/4 (24 February 2010).

Even at the level of resolutions that the Security Council rarely resorts to in the framework of cross-border criminal law, they also carry directive discourse that is devoid of a binding nature due to their issuance outside the framework of Chapter VII, such as Resolution No. 2388 (2017), in which he calls on Member States to commend efforts to combat Human trafficking, especially in the context of armed conflicts[42].

It is possible to say. The resolutions of the United Nations Security Council issued in accordance with Chapter VII can constitute a source of international criminal law, while at the present time they do not serve as a source for the rules of cross-border criminal law.

The fourth requirement: criminal liability

On the grounds that states are moral entities, physical criminal sanctions cannot be imposed on them ،[43]It was necessary, within the framework of international criminal law, to search for persons who committed international crimes and punish them for those crimes, which is one of the most important principles enshrined by the Nuremberg Tribunal after World War II [44] .Hence, it is possible to say that international criminal law imposes direct personal criminal responsibility on the perpetrators of international crimes without regard to the employment status in the state .[45] In other words, the consecration of the principle of direct personal criminal responsibility is only to eliminate the theory of immunity of state employees .[46] The determination and implementation of this personal criminal responsibility was entrusted first to the provisional international criminal tribunals and then to the International Criminal Court ،[47] This was explicitly stated in Article 25 of the Court's statute.

On the other hand, transnational criminal law does not create direct criminal liability for persons under international law and does not establish the possibility of punishing

[42] See: Security Council resolution 2388 (2017), paragraphs 2 and 3.

[43] States may sometimes be subject to measures, or material sanctions commensurate with their nature as abstract moral entities, such as those imposed by the UN Security Council under Article 41 of Chapter VII of the Charter of the United Nations. Such sanctions, which may vary between economic, diplomatic and political sanctions, may be imposed on a country in conjunction with the imposition of material criminal penalties on persons related to that country. have committed an international crime. However, the basis of responsibility in the two cases is different. International responsibility for violating international law may be the legal basis for imposing material penalties on the state, including punishing persons who have committed an international crime with criminal material penalties, such as imprisonment, that are based on the principle of personal criminal responsibility. Bearing in mind that determining the state's responsibility for violating international law may lead to non-material penalties. Or rather, legal results such as paying compensation, or returning the assignee to what it was before the violation occurred. However, the failure of the state to comply with any of these measures may prompt the victim state to impose sanctions on that violating state, either individually, or collectively through a council international security.
See Werle, *Principles of International Criminal Law supra note* 7 at 40-41.

[44] Elies van Sliedregt, *Criminal Responsibility in International Law*, European Journal of Crime, Criminal Law and Criminal Justice, vol. 14/1, 81-114 (2006)

[45] Sometimes, personal criminal responsibility may coincide with international responsibility, in the sense that the commission of some international crimes may trigger, on the one hand, the responsibility of the person who committed the international crime, and international responsibility may be triggered on the other hand, if it is proven that there is a relationship between the state and the international crime, such as Support and encourage the state to commit genocide.
Werle, *supra* note 7, at 40; James & others, *supra* note 35, at 4.

[46] Sliedregt, *supra* note 45.

[47] Boister, *supra* note 2, at 958.

transnational organization's crimes regardless of whether or not they are criminalized in domestic law or punishing their perpetrators before international courts such as the International Criminal Court[48] Transnational criminal law imposes an obligation only on states to establish organized crimes of a transnational nature in their domestic laws .[49] And also committed to prosecuting these persons for these crimes. The stipulation of such obligations is nothing more than a determination of indirect personal criminal responsibility under international law. However, this indirect criminal responsibility, unlike international criminal law, may be suspended by the political immunity established in accordance with public international law. Or international diplomatic law that takes into account the functional and personal status of state diplomats [50]Or the immunity established through the international law of transnational crimes itself, as stipulated in Article 26 of the United Nations Convention against Transnational Organized Crime. On the other hand, this indirect criminal responsibility necessitates a degree of cooperation between States in order to put it into practice in the context of transnational crimes .[51] It is worth noting that the non-compliance of the States parties to an international convention against transnational organized crime, to establish such indirect personal criminal responsibility, by not putting the obligations of criminalization and punishment into practice; It may raise the international responsibility of that State on the basis of the law of treaties, or the law of international responsibility.

Fifth requirement: competence

International criminal law recognizes the principle of universal jurisdiction, which means that any country can initiate procedures to prosecute persons responsible for the commission of international crimes, regardless of the place where the international crime was committed, the nationality of the offender, or the nationality of the victim .[52] This universal jurisdiction is based on the fact that international crimes constitute a violation of fundamental values and rights of concern to the entire international community. Hence, every country within this international community has the right to hold those responsible for these violations accountable .[53] However, this universal jurisdiction may be relatively derogated from. This is through the statutes of the temporary international criminal courts, or the statutes of the International Criminal Court. The statutes of each of the International Criminal Tribunal for the former Yugoslavia, as well as the International Criminal Tribunal for Rwanda, have granted these courts priority in jurisdiction to punish the perpetrators of international crimes in the territories of those countries .[54] however; It is possible for national courts to exercise

[48] Obokata, *supra* note 22, at 95-96..

[49] Id.

[50] Boister, *An Introduction to Transnational Criminal Law supra* note 3, at 220-222; Obokata, *supra* note 22, at 98.

[51] W Schabas, *International Crime*, (D Armstrong ed, 2008) 269.

[52] Cedric Ryngaert, *the International Criminal Court and Universal Jurisdiction:A Fraught Relationship*? 12 New Crim. L. Rev 498 (2009).

[53] Máximo Langer, *Universal Jurisdiction as Janus-Faced*, Journal of International Criminal Justice 11 (4), 737, (2013).

[54] Robert Cryer et al., *An Introduction to International Criminal Law and Procedure* (2nd ed, Cambridge University Press, 2010) 125.

the same jurisdiction in the case of international crimes committed by non-prominent leaders, or referral to national courts by the temporary international criminal courts themselves. In both cases, the existence of security stability in those countries must be verified, as well as an effective judicial system .[55] As for the statute of the International Criminal Court, it adopted the principle of complementary jurisdiction to exercise jurisdiction to prosecute and punish the perpetrators of international crimes, and that priority is given to national courts, provided that the intervention of the International Criminal Court may be possible in the event that the first is unable or unwilling to exercise Jurisdiction .[56]It is important to point out that the perpetrators of international crimes will not always be able to escape punishment.

As for cross-border criminal law through agreements to combat transnational organized crime, it stipulates the need for state parties to establish jurisdiction to look into transnational organized crimes, as this jurisdiction must be based on the existence of a relationship or link between the state party and organized criminal activity. and for example; Article 15 of the United Nations Convention against Transnational Organized Crime has expressed that relationship by stipulating that the State Party to that Convention must adopt legal measures in its national laws confirming its jurisdiction over transnational organized crimes stipulated in the Convention, among which is that if those crimes were committed in the territory of the state; or on board one of its ships or aircraft, or the transnational organized crime is committed by a national of that State Party, or if it is committed by a person who has no nationality but his habitual residence is in the territory of the State Party, or if the victim is a national of the State Party. In the existence of that association, or relationship, the competent state is required, according to provisions in the agreements to combat transnational organized crime, to prosecute the perpetrators of transnational organized crimes, or to extradite them to another country that has jurisdiction due to the existence of one of the aforementioned links.

It is necessary to point out that the possibility of impunity for perpetrators of transnational organized crimes exists, unlike the perpetrators of international crimes as we mentioned above. The reason is that the implementation of the obligations contained in the conventions against transnational organized crime, including the obligation to prosecute and punish; Their implementation has been left to the will of states, which some consider to be an aspect of weakness in these agreements .[57] The state with jurisdiction may not wish to exercise jurisdiction. At the same time, there is a legal basis that gives that country the power to refuse extradition.and for example; International law allows a state to announce its refusal to extradite because there is no extradition agreement between it and the other state wishing to exercise jurisdiction .[58]Also, one of the reasons for refusing extradition is the absence of double criminality [59] Or not to extradite the citizens of the country .[60] Or there are doubts on

[55] Rožej, *supra* note 6, at 383-86.

[56] Cryer et al., *supra* note 55, at 153-54.

[57] Andreas Schloenhardt, *Transnational Organised Crime and the International Criminal Court Developments and Debates*, 24 University Queensland Law Journal 94 (2005).

[58] See Article 16 (4) of the Convention against Transnational Organised Crime.

[59] *Id*, Article 16 (1).

the part of the requesting State that the accusation leveled by the requesting State is based on considerations related to gender, race, religion, or political opinion.[61]

The second topic: the internationalization of transnational organized crime

In the early stages of preparing a proposal for a "law of crimes against the peace and security of humanity" from 1991 to 1995, the International Law Commission in charge of preparing the proposal included treaty crimes, or transnational organized crimes, and in particular, drug smuggling and terrorism crimes; Within that law, which expresses international crimes.[62]

However, the 1996 proposal excluded drug trafficking crimes, and limited it to including "essential crimes". or international crimes .[63] This trend was adopted when drafting the statute of the International Criminal Court. In 1989, Trinidad and Tobago submitted a request to the United Nations General Assembly for the purpose of establishing an international criminal court to prosecute those responsible for drug trafficking crimes [64].As the countries of the Caribbean region in general, and Trinidad and Tobago in particular, were of the opinion that there was difficulty in tracking the perpetrators of drug smuggling crimes because of their weak economic and human capabilities compared to the organizational capabilities enjoyed by drug smuggling organizations. In any case, and after numerous deliberations and discussions during the preparation of the Statute of the International Criminal Court; Drug trafficking crimes, and other proposed crimes such as terrorism crimes, were excluded.

The trend opposing the inclusion of such crimes was based on several arguments [65] ،First: There is no international customary rule indicating that drug trafficking and other transnational organized crimes enjoy the international element, as is the case in international crimes. Second: Organized transnational crimes, including drug trafficking, are less serious crimes compared to genocide and war crimes. Third: The investigation of organized crimes may burden the International Criminal Court from the perspective of the funding sources from which the court suffers in the first place. Fourth: The principle of sovereignty may constitute an obstacle to an international institution such as the International Criminal Court prosecuting those responsible for such crimes. Because of these above arguments, as well as the desire of major countries such as the United States of America to exclude organized crime from the

60 *Id*, Article 16 (7)

61 *Id*, Article 16 (4).

62 Regina Menachery Paulose, *Beyond the Core: Incorporating Transnational Crimes into the Rom Statute*, 21 Cardozo J. Int'l & Comp. L. 8,1 (2013).

63 See Report of the ILC, 47th Session, UNGAOR 50th Sess, Supp. No. 10 (A/50/10), paras. 112-118.

64 UN General Assembly, Letter dated 21 Aug 1989 from the Permanent Representative of Trinidad and Tobago to the UN Secretary-General, UN Doc A/44/195 (1989) and UN General Assembly, UN Doc A/44/49 (1989).

65 Andreas Schloenhardt, Conference Paper: Transnational Organised Crime and the International Criminal Court towards Global Criminal Justice, Australian Institute of Criminology International Conference, (2004) 8.

Rome system; It was agreed that this issue would be discussed in one of the subsequent conferences of the International Criminal Court.[66]

Despite the aforementioned obstacles that prevented some transnational organized crimes from being one of the subjects of international criminal law, especially the extension of the jurisdiction of the International Criminal Court to these crimes; There is still a trend calling for the internationalization of some transnational organized crimes and the extension of the jurisdiction of the International Criminal Court to these crimes .[67] The reason for this is due to the inability of the executive agencies within the states to curb these transnational organized crimes .[68] Although more than 16 years have passed since the United Nations Convention against Transnational Organized Crime of 2000 entered into force on September 29, 2003, it may seem unable to put an end to the continuous increase in these crimes. This was attributed by some to the agreement's lack of effective measures .[69] Others refer to reluctance by states to implement the provisions of the Convention .[70] anyway; The hypothesis of the evolution of a transnational organized crime into an international crime subject to international criminal law and the jurisdiction of the International Criminal Court is based in two cases:

The first case: amending Article 5 of the Statute of the International Criminal Court by adding a specific transnational organized crime and then extending the jurisdiction of the International Criminal Court to this crime. This hypothesis necessitates the existence of an independent, objective legal framework that clarifies the concept of transnational organized crime and its proposed elements to be added under Article 5 of the Statute of the International Criminal Court. Relying on the international conventions whose subject matter is transnational organized crime, which is proposed to be added within the Statute of the International Criminal Court, will raise the issue of the need for the States parties to the Statute of the International Criminal Court to also be parties to those conventions relating to transnational organized crime ،[71]and for example; The agreement to include the crime of human trafficking within the jurisdiction of the International Criminal Court requires that the States parties to the latter also be parties to the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children of 2000. In any case; The expansion of the scope of international criminal law by adding transnational organized crimes within the statute of the International Criminal Court depends on the existence of a real desire on the part of the party states, especially the influential ones, which must decide that in a conference to review the statute of the International Criminal Court, similar to the one that was held in

[66] *Id*; Paulose, *supra* note 63, at 83.

[67] Paulose, *supra* note 63; Neil Boister, *Treaty Crimes, International Criminal Court*? 12 New Crim. L. Rev. 341, 2009; Schloenhardt, *supra* note 58.

[68] Jennifer M. Smith, *An International Hit Job: Prosecuting Organized Crime Acts as Crimes against Humanity*, 97 The Georgetown Law Journal 1151 (2010).

[69] Ibid.

[70] Kevin Tessier, *The New Slave Trade: The International Crisis of Immigrant Smuggling*, 3 Indiana JGLS 261& 264 (1996).

[71] Cherif Bassiouni, *Universal Jurisdiction for International Crimes: Historical Perspectives and Contemporary Practice*, 42 Firginia Journal of International Law 81, (2001).

Kampala Uganda from May 31 to June 11, 2010, in which a definition of the crime of aggression was reached[72].

The second case: interpretation of the texts contained in the Statute of the International Criminal Court related to crimes against humanity, war crimes, and genocide [73] An expanded interpretation that would accommodate transnational organized crime. This hypothesis has been the subject of study and research by a number of jurists of international law .[74] and for example; The work to consider human trafficking activities, or in drugs, as crimes against humanity, stipulated in Article 7 of the Rome Statute; It requires proving that these transnational organized crimes were committed as part of a large-scale organized attack against a civilian population, and that the perpetrator had knowledge of the attack that was pursuant to, or in furtherance of, a state or organization's policy to commit the attack .[75]In addition to these basic elements of crimes against humanity, it is necessary for the crime of human trafficking, or other transnational organized crime, to include one of the acts referred to in paragraphs (a to k) of Article 7 of the Rome Statute of the International Criminal Court. It is worth noting that Paragraph (k) of Article 7 of the Rome Statute may accommodate a number of transnational organized crimes as they are also considered crimes against humanity, other than the acts expressly provided for in Paragraphs (a) to (j): "Other inhumane acts of a nature which willfully cause great suffering, or serious injury to body, mental or physical health.[76]"

The presence of elements related to crimes against humanity, mentioned above, in organized transnational crimes may lead to saying: that these crimes have become international crimes, and then also to say the possibility of extending the jurisdiction of the International Criminal Court to consider such crimes.

Conclusion

This research concludes that cross-border criminal law is a new branch of public international law, and therefore it is completely different and independent from international criminal law. And sources of law, and the issue of jurisdiction, and criminal responsibility. However, this complete separation between transnational criminal law and international criminal law does not prevent the internationalization of some transnational organized crimes, which are essentially within the subject matter of transnational criminal law, by becoming one of the subjects of international criminal law.

This study may pave the way for other studies aimed at consolidating cross-border criminal law, as a new branch of public international law independent of international criminal law, and working to clarify its problems and develop it, so that it becomes more effective in confronting crimes. It may be more perpetrators of international crimes, not to

[72] "Crime of Aggression" http://iccnow.org/?mod=independentcourt (last visited 30 December 2018).

[73] See: Articles 6, 7 and 8 of the Statute of the International Criminal Court.

[74] Schloenhardt, *supra* note 58; Tom Obokata, *Trafficking of Human Beings as a crime against Humanity: some implications for the International Legal System*, 54 ICLO 445-458, (2005); Smith, *supra* note 69.

[75] Schloenhardt, *supra* note 58; Smith, *supra* note 69.

[76] See: Article 7 (k) of the Statute of the International Criminal Court.

mention the degree of gravity that is equivalent to the latter. Many transnational organized crimes have become a gross violation of the human rights and interests of many countries.

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