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The principle of joint jurisdiction in the international criminal judiciary

Dr. Ali Kh. Kh. Alshara'h

Professor of Public Law, Faculty of Law, Al -Bayt University
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Abstract

The principle of joint jurisdiction is one of the principles that have been found for the international judiciary to be directly able to compete with the national judiciary to consider cases of concern to the international group, by requesting the dependence of the state with the authentic judicial state. The principle of joint jurisdiction was able to define a common relationship between the international and national judiciary, by focusing on taking advantage of the effectiveness of the two judiciary in order to reach the rules of justice, so His Highness is to eliminate the other, and at the same time it is not objectionable to resort to aspects The actors of each judiciary separately in order to reach justice in the shortest and most effective way, according to the principlend pre -trial procedures such as investigation and gathering evidence, as it is the most capable of the ground. It is also possible, on the other hand, to rely on domestic law with regard to criminalization and punishment, while the authority to decide is given to the international judiciary, being the closest to neutrality and farthest from being affected by the dimensions of the internal affairs of the state, because most of these cases are in contact with the internal affairs of states.

Introduction

The need to resort to the international criminal judiciary has become unavoidable, and it has become imperative to accept it at the internal level of states, and accordingly the rules of individual criminal responsibility were developed in international law, and due to the existence of this need, the possibility was found that the conflict of jurisdiction arises between the international judiciary and the national judiciary, Here it was necessary to find a way to resolve this conflict, and the existence of determinants that govern this relationship - which is inevitable - between two different judicial systems, namely the international and

national judiciary.

Hence the importance of finding principles that define the form and type of relationship between the international judiciary and the national judiciary, such as the principle of common jurisdiction and the principle of complementarity.

The principle of common jurisdiction emerges as the link between the international judiciary and the national judiciary, to draw the features of the relationship between them, without one of them overpowering the other in order to activate the practicality required by the judicial work in such crimes, which constitute a threat to the international community, and gives a kind of reassurance that the perpetrators will not escape. From punishment, and achieving the best deterrence with regard to those who think of committing such crimes, that they have no refuge, whether in their own countries or anywhere else in this world.

On this basis, it was important to research the nature of this principle, to identify it, and to know the implications of its implementation in particular when there is a relationship between the international and national judiciary.

Research problem:

The conflict of jurisdiction between the international judiciary and the national judiciary raises many problems the most important of which is the violation of the principle of state sovereignty, but the problem that seems clear is that it exercises judicial power. the state's judicial authority changed its jurisdiction over issues related to national affairs, without giving consideration the jurisdiction of the national authorities, taking into account that the results of exercising this jurisdiction have realistic repercussions on the state, accompanied at the same time by concerns about the politicization of rulings, the right of the state to waive its natural jurisdiction or even share it with other parties, and the extent of the authority to place the state's trust in the judiciary. International, which may not have a role in its formation.

Research importance

The importance of this research is evident in that it tries to find that fine line between the state's preservation of its sovereignty and its rightful confidence in its self-produced powers, and its duty to seek justice, even if it is by resorting to powers outside the scope of its natural authority, whenever access to That justice requires the use of these external authorities, or when the capacity of the state is not sufficient to reach justice accepted by the measure of human conscience, or even just because that justice will be tainted with bias and lack of integrity.

Research Methodology

In this research, the descriptive analytical approach was followed, where the texts and provisions related to the subject of the research are analyzed, and then the applicability of those texts to practical cases is determined, and the

practical practices of the international judiciary and the national judiciary are tracked, and the cases on which jurisdiction has been exercised are described, with an attempt to verify the validity of These practices, and verifying their feasibility to establish their repetition on similar cases that may occur in the future, which may establish a fundamental approach that is based on determining the form of the correct relationship between the international criminal judiciary and the national judiciary in future cases.

The first topic is what is the principle of common jurisdiction

The state of conflict between laws in general, and between external law and internal law in particular, still raises many problems that jurisprudence must solve, especially with the development of international law, and the withdrawal of its impact increasingly on the internal level of states, and with the continuous diminishing of the aura that surrounded the principle of state sovereignty. States have become more accepting of relinquishing part of their sovereignty in order not to impede the application of international law, and the traditional view of the principle of state sovereignty, which includes the absolute authority of the state in its internal and external relations, has shifted to the consideration that accepting the rules of international law does not conflict at all with this idea - namely, the sovereignty of the state. The state - and does not violate it in any way, because these rules are in their essence nothing but restrictions that states imposed on themselves and they agreed to follow them for the sake of a higher goal, which is to consolidate the pillars of global peace and security, and to develop friendly international relations among them to achieve stability and well-being for their people. With the essence of its sovereignty, it is linked to the uniqueness of the constituent characteristics of each state, socially and politically religiously and economically. (1)

Hence, it was imperative for the law not to disturb this endeavor in order to create cooperation among states, even at the legal level. Therefore, it was necessary to find solutions to the problems that raise the conflict between external and internal law, especially if its provisions relate to the application of persons who must be in It is customary for the nationals of a country, and when they commit acts that are classified as international crimes that raise the concern of the international community, then the issue of contention here becomes which laws apply to them and which court is the competent judiciary to try them.

Hence, it becomes clear to us the importance of establishing legal principles that define the limits of the applicability of each law and the jurisdiction of each judiciary, and the statement of the relationship between them. Among these principles, the importance of the principle of joint jurisdiction between the international criminal judiciary and the national criminal judiciary emerges.

Which we will address in two matters:

The first deals with defining the principle of common jurisdiction.

The second deals with the principle of joint jurisdiction in international

criminal courts.

The first requirement

Introducing the principle of joint jurisdiction

The principle of common jurisdiction is one of the principles established by international law to implement the effectiveness of the international criminal judiciary in the face of the traditional monopoly of the national judiciary in prosecuting national individuals for the criminal acts they commit under the rules of international criminal law in an original manner simultaneously and associated with the exercise of the national judiciary's jurisdiction.

There are a number of features with regard to the principle of joint jurisdiction, which we list as follows: First: The principle of joint jurisdiction does not prevent or impede any of the international or international courts.

the national authority to exercise its competence in hearing the case.

The international judiciary considers the case jointly with the national judiciary, rather it relies on the national judiciary with regard to the collection of evidence, evidence and litigation procedures, (1) and in the national one, and here one should not confuse the partnership permitted by the principle of joint jurisdiction, and the independence of both judiciary in the matter. Adjudication of the case, since it is not conceivable that the case would be considered by two separate judges at the same time that would have the authority to issue a judgment in it, this is in contrast to what is well-established in the judiciary's principles, and it is a clear violation of the rights of the accused that the judiciary itself protects, and a defect in the litigation procedures, so it is It is inconceivable that it is one of the purposes of the principle of common jurisdiction. The judiciary itself, and a defect in litigation procedures, so it is not conceivable that it is one of the purposes of the principle of common jurisdiction.

Second - The principle of joint jurisdiction is one of the principles of general international law

Although the principle of joint jurisdiction establishes a joint relationship between the international judiciary and the national judiciary, it is one of the principles of public international law and therefore cannot be implemented by national laws, meaning that national laws cannot establish this joint relationship with the international judiciary even if they wanted to. , and even if the crime is defined as an international crime, its jurisdiction remains unique and independent of the international judiciary, while the opposite is true as international law can implement this principle to establish the relationship joint with the national judiciary, provided that the crime is international.

Here, too, confusion must be removed between the principle of common jurisdiction and another principle in national laws, which is the principle of universal jurisdiction, which allows the national judiciary to consider cases of international crimes that did not fall within the scope of its regional or temporal jurisdiction. It

is independent and isolated from the international judiciary, and the national judiciary, relying on this principle, cannot establish a participatory relationship with the international judiciary. The principle of universal jurisdiction is determined by the type of crime, so that it gives the national judiciary jurisdiction over international crime, given that all members of the international community have a duty to fight this type of crime. crimes and the prevention of impunity for the perpetrators. (1)

Third - The principle of joint jurisdiction is closely linked to criminal responsibility. The principle of joint jurisdiction can only be applied in the case of individual international criminal responsibility, and we do not exaggerate if we say that it revolves whether or not with it, and therefore the implementation of this principle cannot be achieved in the case of international responsibility in the face of persons of public international law. (1)

Although these main features that we notice on the principle of common jurisdiction,

However, it is not limited to it only, as it is common to other principles of international law.

Based on the foregoing, it can be said that the principle of joint jurisdiction is the principle that allows the international judiciary to exercise its substantive jurisdiction over an international case subject to individual international criminal responsibility jointly with the national judiciary in terms of the power to judge and jointly in terms of trial procedures.

And the follower of this principle will find that it has been resorted to in most cases when the national judiciary was able to exercise its jurisdiction over these cases, but it may not be willing to exercise its jurisdiction or that it does not enjoy the impartiality and integrity required to exercise its rightful jurisdiction in these cases either from the side of the victim on him or on the part of the offender.

It should also be noted that in all cases the stipulation of the principle of joint jurisdiction, this was done at the request of the governments of the countries or in agreement with them or with their acceptance to implement the principle of joint jurisdiction, which indicates that the countries wanted to relinquish part of their sovereignty with regard to the exercise of their national judiciary to its direct jurisdiction. And the principal independently of those lawsuits that took place on its territory and within the jurisdiction of its national law, and that, as we will see later in the folds of this research, on practical cases in which the principle of joint jurisdiction was stipulated in international courts that were established temporarily to consider certain lawsuits, and the judiciary had International and national judiciary have joint jurisdiction over them.

The second requirement

The principle of joint jurisdiction in international criminal courts

First: the former Yugoslavia Tribunal

With regard to the International Criminal Tribunal for the Former Yugoslavia,

Articles (6) and (8) of the Statute of the Court, related to the jurisdiction of the Court, stipulated the common jurisdiction of the Court with the national courts, and that the jurisdiction of the Court does not prevent national courts from exercising their jurisdiction, however, according to the Statute, The international court has priority over national courts in exercising jurisdiction, as under this authority the court may request the national judiciary to postpone the exercise of its jurisdiction over any case under consideration by the court.

On the other hand, Article (29) of the Basic Law stipulates the obligation of states to cooperate with the Court in the exercise of its work, (1) which necessarily requires cooperation with it in arrest and evidence procedures based on national laws.

Second: The International Criminal Tribunal for Rwanda

The International Tribunal shares jurisdiction with national courts with regard to the trial of persons accused of committing crimes against international humanitarian law (2), which are, of course, crimes under Rwandan national law on which the Rwandan national courts rely in exercising their jurisdiction and extending their jurisdiction over them, as Article (1) stipulates /9) of the Statute of the Criminal Court.

Rwanda's International Tribunal has common jurisdiction with national courts over stipulated crimes it in its articles of association.

It should be noted here that the victims in cases before the International Tribunal are not entitled to claim compensation for the damages incurred by them as a result of these crimes, but this does not prevent them from resorting to national courts to claim such compensation, which illustrates the common role played by the national judiciary is in addition to the international judiciary in this aspect.

Also, although the International Court is bound by the principle of not prosecuting a person for the same act twice, yet at the same time its statute mentioned an exception to this principle, as it remains for it to the jurisdiction to try the person who has been tried before the national judiciary if he was tried for the act as a crime of common law, and not as an international crime, then it remains the court has jurisdiction to try him a second time for the act as an international crime. (1)

Third: The International Tribunal for Lebanon

The Special Tribunal for Lebanon was established according to an agreement between the Lebanese Republic and the United Nations, and its statute was issued under Security Council Resolution No. (1664), and the purpose of its establishment was to try those responsible for the assassination of the former Lebanese Prime Minister (Rafik Hariri) and to establish a statute for this court to operate according to it. (2)

The statute of the court specified the applicable law with regard to prosecution and sentencing the Lebanese Penal Code, as well as Articles (6) and

(7) of the Lebanese Penal Code of 1958 with regard to toughening penalties for civil war, disobedience, and sectarian strife. (3)

It should be noted that the court, according to the principle of legality and individual international criminal responsibility for crimes within its jurisdiction, has determined the acts that constitute crimes according to its statute, as well as the responsibility of the superior and subordinate for these acts.

As for the common jurisdiction, the text came in Article (4) of the Statute of the Court, where it ruled in Paragraph (1) that "the Special Court and the national courts in Lebanon have common jurisdiction."

Within its jurisdiction, the court shall have precedence over the national courts in Lebanon."

It goes without saying that, on a clear basis, the common relationship between the international judiciary represented by the court on the one hand, and the national judiciary represented by the Lebanese judiciary on the other hand, was defined, and the features of this relationship were drawn at the request of the Lebanese government. The judiciary declares its competence in the cases brought before it and refers to the court what it has reached in the investigations related to these cases and transmits any records related to the trial procedures by the Lebanese judiciary if they were conducted by it, in addition to transferring any persons detained pending investigation to the custody of the court.

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It is also possible, at the request of the court, for the Lebanese judicial authority to refer the results of the investigation and a copy of the trial records in any of the crimes brought before it to the prosecutor general of the court for review, which is within the same temporal scope of the jurisdiction of the court, which was determined by the Statute for the period between 1 October 2004 to 12 December, 2005 or at a later date to be determined pursuant to Article (1). Also, the Lebanese judicial authorities inform the court on a regular basis of any progress made in the investigation of cases with jurisdiction, and the court may, at any stage, ask those authorities to waive their jurisdiction in favor of court.

The second topic

The principles governing the relationship between the international judiciary and the national judiciary and their effects.

The legal principles that govern the relationship between the two jurisdictions aim to form a link between these two different judicial systems in terms of applicable laws and jurisdiction, although the rules of individual international criminal responsibility have been established for the international judiciary to have jurisdiction over individuals who - as we noted earlier - are Mostly nationals of one of the countries, and therefore their national judiciary has jurisdiction over their trial, or the national judiciary of the territory of the state in whose territory the act was committed, but there are many issues that still need to be resolved regarding this relationship that overlaps with many other issues of concern to states , such as sovereignty and immunity, in addition to the position of the state itself regarding those acts on the basis of which charges are attributed to its citizens and considering them criminal acts that require trial.

Based on this, the legal principles on which the relationship between the international judiciary and the national judiciary is based are of special importance in building a correct relationship between them in order to reach the essential goal, which is to prevent the perpetrators from impunity and to develop this relationship to reach a stage in which each of the two judiciaries can effectively implement their jurisdiction over crimes. to achieve the ultimate goal of establishing the foundations of justice everywhere.

In our attempt to understand the nature of this relationship and the role of the principle of common jurisdiction in defining this relationship, we will address this research in two demands, where we will single out the first to distinguish between the principle of common jurisdiction and the principle of complementarity, and single out the second to know the rank of each of the international and national judiciary in relation to the other in implementation of the common jurisdiction.

The first requirement

Distinguish between the principle of joint jurisdiction and the principle of complementarity

The principle of complementarity in the manner of the principle of common jurisdiction is one of the principles in international law established by the international judiciary in order to serve as a link between the international judiciary and the national judiciary. It was stipulated in the Statute of the International Criminal Court in the preamble and the first article thereof, to the effect that The jurisdiction of the International Criminal Court is complementary to the jurisdiction of the national judiciary, when it is unable or unwilling to exercise its jurisdiction over a case involving one of the most serious crimes for the international community, defined by the Rome Statute as four crimes: genocide, crimes against humanity, and war crimes. And the crime of aggression that is suspended until a specific and agreed-upon definition of aggression is developed. (1)

The principle of complementarity was the cornerstone of states accepting the jurisdiction of the court, and then necessarily accepting the establishment of such a judiciary, which might imagine that it would later become a higher authority than the state's authorities and a higher judiciary than its judiciary. The national is the one who has the original jurisdiction, and the international judiciary does not dispute this competence, but rather came to complete the deficiency that may be experienced in some cases in the event of inability or unwillingness as a result of the conditions that states may go through that do not allow them to exercise their powers properly, or when the internal conditions may conflict For the state with the rules for establishing justice in the best way, such as conditions of immunity or private and general amnesty that may be subject to the status of certain persons to help them escape punishment.

And in confirmation of the foregoing, the text came on the principle of complementarity to confirm that the international judiciary has no supremacy over the national judiciary and that states will not be subject to the decisions of this judiciary with regard to their sovereign actions and national security. The international conviction that it is inevitable to establish it because of the urgent need for it to be an impenetrable bulwark against the gross violations of the rules of international law and the rules of domestic laws, especially with regard to crimes that have the most severe impact on the human conscience of all the international community. (1)

And based on what we have presented above, we find that the principle of complementarity takes a precautionary nature when it is applied with regard to the international judiciary exercising its jurisdiction, as it comes in second place after the national judiciary, and its jurisdiction may not be exercised except after the national judiciary has exhausted all the mechanisms available to it to exercise its jurisdiction. The international judiciary as a reserve judiciary, and then it can exercise its jurisdiction over the case that falls within the scope of its substantive jurisdiction, and that in other than this situation, the international judiciary cannot implement its jurisdiction over the cases over which the national judiciary has exercised its jurisdiction.

Hence, we can say that according to the principle of complementarity, the international and national judiciary are not at the same level nor the same rank in matters of concern. It appears here that the international judiciary is in the second level and rank with respect to the national judiciary in cases that fall within its substantive jurisdiction, (2) and this is in contrast to what is in the principle of joint jurisdiction in terms of level and rank, as we find that the international judiciary and the national judiciary are on the same level and rank in all cases And if the international judiciary has precedence, this does not affect its level and rank in the face of the national judiciary, but this precedence has reasons and justifications that necessitate it, such as the judicial effectiveness enjoyed by the international judiciary in applying the best standards and optimal procedures with regard to the conduct of the trial.

It should be noted, based on what has been presented, that there are similarities and differences between
The principle of common jurisdiction and the principle of complementarity:

First - the similarities:

- A. Both principles are among the principles of international law. However, their source is not the same. The principle of complementarity has its source in an international agreement, while the principle of common jurisdiction is its source in decisions.
 - B. organizations.
 - C. B- Both principles find scope for their implementation in international crimes only.
 - D. Second - the differences:
 - E. The subject, so the principle of complementarity has its place in the permanent international judiciary, while the principle of jurisdiction
 - F. The contributor has his place in the temporary international judiciary.
 - G. B- The rank of the international judiciary, as the principle of complementarity puts the international judiciary in the second place, while the
 - H. The principle of joint jurisdiction places the international judiciary in the same rank with the national judiciary.
 - I. C- The national judiciary's exercise of its jurisdiction prevents the international judiciary from exercising its jurisdiction in the principle of complementarity, but in the principle of joint jurisdiction, both judiciaries have direct jurisdiction.
- Jurisdiction, even if the international judiciary takes precedence.

The second requirement

The primacy of the international judiciary over the national judiciary, in accordance with the principle of joint jurisdiction

The implementation of the principle of joint jurisdiction, although it is equal in rank between the international and national judicial systems, one of them must take precedence over the other, because the legal logic does not agree with the exercise of two judicial systems having jurisdiction over the same case, so it was necessary for one limit to take precedence over the other. Here, the international judiciary took precedence, and this did not come randomly. Rather, it had its justifications and reasons that necessitated that, among which it is mentioned:

1- The importance of the issue, as most of the cases in which the need for an international judiciary is resorted to are of great danger to the international community, or they affect the conscience of all humanity, as was the case in the crimes of genocide in Rwanda, or war crimes and crimes against humanity in the former Yugoslavia, Or it is so dangerous that it severely affects the entity of an individual

The international community, which calls for the group's intervention through the international judiciary, as in the case of

Lebanon. 2- There is reasonable doubt among the international community that the national judiciary will not be sufficient for implementation. The best standards accepted by the international community in the trial.

3- The state's request, in cases where the principle of joint jurisdiction was implemented, it was either from

At the request of the state, or it was basically with the consent of the state for the intervention of the international judiciary, and therefore it is obvious that if there is the consent of the state with the jurisdiction of the international judiciary over the case, it will take precedence in that, because if its exercise of its jurisdiction was not considered by the state, it would not be satisfied with that. or when you asked him to intervene in the case.

In view of the foregoing and with the recognition of the primacy of the international judiciary over the national judiciary in implementation of the principle of joint jurisdiction, however, this does not in any way consider the supremacy of the international judiciary over the national judiciary, as we find that there is a partnership between the two judiciaries with regard to applicable laws and investigation and evidence procedures, as well as in In most cases, jurisdiction is left to the national judiciary

completely and renouncing the jurisdiction of the international judiciary in the interest of the national judiciary, and this was confirmed by Security Council Resolution No. (1966) where it emphasized the international mechanisms for the conduct of the work of the former tribunals of Rwanda and Yugoslavia to make efforts to refer cases that are not related to the leaders of Here, we emphasize that the primacy was related to the best practices that the international judiciary is more capable of doing because of its liberation from the restrictions imposed by the national laws of the state, as it is able to choose the best standards and practices from the different legal systems.

Conclusion

We have tried in this research to touch the importance of the principle of common jurisdiction in defining the relationship between the international and national judiciary, when there is a need for their presence together, and we have seen that this principle plays a prominent role in this relationship, as the international judiciary in all cases carries the burdens of the most important issues that concern the international community, While there are cases closely related to it that the international judiciary cannot or does not have the ability to advance, it needs a common relationship with the national judiciary, and on the other hand, there is no ability or sometimes the desire for the national judiciary to advance cases for one reason or another, and these issues are of interest to the international community, so it was here Needing the help of the international judiciary, and in the midst of these mutual needs and reasons, the principle of common jurisdiction

emerged, which does not exclude any of the two judiciaries and at the same time gives the authority to each judiciary according to the effectiveness it provides in deciding these issues.

And we saw that the principle of joint jurisdiction does not decide the supremacy of either of the two judiciary over the other, but rather it may give

The precedence of the international judiciary as the judiciary intervened out of necessity.

As we have seen, the principle of joint jurisdiction establishes a somewhat reciprocal relationship between the two judiciary

By resorting to international laws and sometimes to national laws with regard to evidence, criminalization and punishment.

And we found that the principle of joint jurisdiction has a significant contribution to the acceptance of states to exercise international jurisdiction over some cases that were considered, until recently, at the heart of the internal affairs of states, because the boundaries of the relationship drawn by this principle establish the reassurance of those states on the one hand that their national judiciary is joint alongside the international judiciary. Considering these issues in terms of formation and procedures and the applicability of national laws as well as international laws.

The reviewer

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