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CRIMINAL POLICY FOR JUVENILE CRIMES FOR THE PERSPECTIVE
OF INTERNATIONAL CRIMINAL LAW

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ABSTRACT

This study deals with restorative justice as a modern approach to dealing with juvenile issues, as the correctional justice theory is the umbrella that provides all aspects of justice for children with the aim of achieving their interests in all situations that they may encounter. This study also seeks, through the descriptive, analytical and comparative approach, to study the concept of restorative justice for juveniles through the juvenile justice system in accordance with international and local laws, in addition to the practical framework for the application of restorative justice represented in the three levels represented by the "preventive" level, the remedial level, restorative justice. " And the level of aftercare and the importance of this study appears in that it helps to analyze the reality of the situation of juveniles in international and local legislation on the one hand, and practical practices towards juveniles through justice systems on the other hand, in order to reach that restorative justice is a complement to the juvenile justice system and not a substitute for it Where this study aimed to shed light on the concepts of restorative justice and their importance, and to indicate their levels by showing the ways of their work in the field of juvenile justice.

1. Introduction:

Countries have a set of international obligations regarding grave violations of the provisions of international law, which are represented in the obligation to take all necessary measures to limit these violations, and to pursue the prosecution and fair trial of the perpetrators (Zaidan, 2007). In recent times, the use of minors in armed conflicts and terrorist operations

has spread significantly, because it is easy to control them through training and directing them towards committing serious crimes without fear or hesitation, as they obey orders without thinking or estimating the consequences, which raised many questions, including about the possibility of the juvenile delinquent's benefit from a fair trial based on reducing the penalty prescribed for the crime on the basis of incomplete mental perception, as is the case with ordinary crimes; the criminal philosophy within the internal regulations is based on not considering the juvenile an adult deserving of punishment, but rather a delinquent who deserves rehabilitation, since the commission of the crime depends on the extent of mental perception of what the person's actions are and the consequences thereof, as the juvenile accused of violating laws and subject to internal criminal jurisdiction is entitled, Benefiting from all rights and guarantees related to a fair trial that adults benefit from, in addition to what international instruments and conventions provide in terms of protection for juvenile delinquents (Abdel Sattar, 1998). However, the matter is different with regard to international crimes since the jurisdiction of most international criminal courts does not meet mainly for accused persons under the age of eighteen, although the provisions of international crimes are regulated.

2. Study Design and Procedures.

In this research we will adopt the qualitative approach and the analytical approach, as we will describe and analyze the procedures for imposing criminal responsibility on juveniles, and perhaps the use of this approach contributes to identifying and identifying strengths, deficiencies and contradictions in the legal and international criminal provisions related to imposing criminal accountability on juvenile crimes in Iraq in light of protection This enables them to propose the most appropriate solutions to address deficiencies and eliminate contradictions, while maximizing the benefits of strengths.

3. International Juvenile Criminal Responsibility.

Juvenile within the framework of the penal laws can be defined as a person who has not completed the age of majority required to bear full criminal responsibility for committing any act or abstention that is punishable by law, while the term delinquency is applied to the person who commits an act or abstention that is punishable by law before reaching the legally required age of majority (Swaikat, 2010).

In defining the frameworks of international criminal responsibility for juveniles, we must precede them with the legal definition of the child or what is termed juvenile delinquent in this field, as the concept of the child can be defined through the text of Article 1 of the Child Convention of 19 The age of eighteen, unless the age of majority is reached earlier according

to the law applied to it. As the United Nations rules for the administration of juvenile justice, in what is known as the Beijing Rules, have adopted a definition that can be used as a guide when determining what is meant by the age of the child in the meaning stipulated in the Convention on the Rights of the Child, I knew him that “a child is a young person who may, under the relevant legal systems, be held accountable for committing the crime in a manner different from the accountability of an adult” (Hegazy, 2003).

3.1. The legal age of criminal responsibility.

Geneva Protocol, the text of the year 1977, the minimum age of children participating in the hostilities, in fifteen years, and this is a step in itself in addition the quality of international humanitarian law at the time, and the strengthening of a clear international efforts that have been made in this regard. This continued to be the case under the 1989 Convention on the Rights of the Child, which set in its article the age of conscription for children to fifteen years, and the obligation of states to take all possible measures to ensure that those under this age do not participate in the fighting directly (Abdel Qader, 2014).

It is noted that the contradiction is clear and explicit in this Convention, so that the first article of the child known as "that every human being has not attained eighteen years unless an earlier age of majority under the law applicable, then asked states not to recruit children under fifteen into their armed forces so meaning A child between the ages of fifteen and eighteen is permitted to be recruited into the armed forces of states parties, while he is still a child, according to the definition of Article 1 of the age of childhood, and here it can be said that Article 2 did not bring anything new, rather that its content would divert attention from the stronger rule contained in the Second Additional Protocol to the Geneva Conventions, which provides a comprehensive and strict prohibition regarding the involvement of children in non-international armed conflicts (Rabie, 2013). Perhaps the framers of the convention realized this contradiction, and international efforts culminated in the signing of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict of 2000, which stated in the first article that "States Parties shall take all possible measures process to ensure that members of their armed forces who have not attained eighteen years of age a direct part in hostilities (Musleh, 1992).

Thus, the recruitment of children and compelling them to participate in armed conflicts is one of the most serious violations against the rights of the child, in addition to the prohibition of child recruitment in many international instruments. In implementation of this, the Rome Statute established international criminal responsibility for the recruitment of children, but the Court of Sierra Leone went further, when it indicated that

the recruitment of juveniles under the age of fifteen is an established international crime under international custom. A juvenile is considered a victim because his recruitment was not legal in the first place, and hence, they incur limited liability, if at all, when they committed those serious crimes (Sidqi, 2007).

3.2. Elements of criminal responsibility for juvenile crimes.

According to the provisions established in the Penal Code, it is not sufficient to punish the perpetrator for his material behavior punishable by law, but rather that must be accompanied by the availability of a sinful will that he has, expressed in what is known as the moral element of the crime. Accordingly, it can be said that the crime is based on two elements, the first is a material behavior prohibited by the penal law and the second is a sinful will that directs this behavior, as well as a causal link between the two elements (Shams El Din, 2009). Material element does not raise problematic and determine what it is, and proven achieved, because in its entirety are material facts can be substantiated by means of proof known legally, when has proof the process is the material element of a crime has been proven, but it is proven not enough alone to impose punishment on those who came to the physical behavior is prohibited by law Rather, it is necessary to achieve the moral element which requires that this behavior was issued by a sinful will that directed it and controlled it, towards the will of the action and its result, or the will of the action without its result.

Since error is the basis of criminal responsibility, which assumes the availability of perception and discrimination on the one hand and freedom of choice on the other hand, and therefore failure of these two conditions (awareness and will), leads to the absence of the error or criminal intent, and then the failure to establish criminal responsibility is a matter that is legally agreed upon in abstaining from responsibility due to young age. Accordingly, some go to say that responsibility for juveniles cannot be established in international criminal law because it does not agree with the idea of international crime, since this crime is not easily committed and it is not possible for the juvenile to commit it, given that it requires prior preparation and preparation that assume discrimination and freedom of choice by perpetrator. In order for the issue of the perpetrator to be possible, it is necessary to issue material behavior that is prohibited by law, and a sinful will to direct this behavior, and thus criminal responsibility is based on two basic elements: freedom of choice and perception or discrimination (Kabish, 2012).

It is noticeable that the majority of modern legislation takes freedom of choice as the basis for criminal responsibility, so it is not sufficient for the perpetrator to conduct a criminal behavior, but rather he must have a sinful will, that is, freedom of choice, but if freedom of choice is lacking, then there is no reason for responsibility, as did the insane and the young child. If

the will of the juvenile is diminished, the responsibility must be reduced to the extent that it detracts from his choice, as in the act of a fool or a mentally disabled person, which diminishes the strength of consciousness and the choice of his actions, so freedom of choice is the necessary element for the availability of the moral element and the crime (Musa, 2008). Hence, perception or discrimination is the essence of criminal capacity and one of the elements of criminal responsibility, so whoever is unaware or discerning of the essence of his criminal act and the consequences thereof cannot be asked about a crime due to his inability to understand what he is doing and to assess its consequences. Discrimination is the reason for differentiating in the criminal treatment between juvenile and adult, and at the same time it is a guideline to distinguish between modernity and guidance, and from sound legal logic, the absence of responsibility when the will is not distinct or it loses its freedom of choice, does not mean that it does not exist in the event of a decrease in its amount due to special circumstances of the perpetrator. And then we must say the theory of reduced criminal responsibility (Odeh, 2018).

4. Jurisdiction for juvenile crimes.

The Juvenile Law in the domestic sphere is consistent with the Penal Code in terms of criminalization, as the latter is the first reference in criminalizing acts and criminal adaptation, while the Juvenile Law is independent from the Penal Code in terms of punishment, as it is unique with special provisions that guarantee the determination of reduced penalties commensurate with this age group. In addition to its independence by a specialized judicial system in this field, as the measures for juvenile delinquents are among the most prominent aspects of juvenile laws and distinguish them from the penal code, in addition to that the juvenile law is distinguished by special procedural rules, since these rules represent the most important aspect that expresses the identity of these laws and their independence from General criminal procedure laws (Al-Shammari, 2012).

At the international level, the matter has not yet been decided on the jurisdiction over violations of international humanitarian law. Despite the obligation of the state, which falls within its jurisdiction of serious violations of international humanitarian law, and which must prosecute and impede the perpetrators, other states can prosecute them as a result. Directly to the principle of universal jurisdiction related to international crimes, and the method of distributing this jurisdiction differs from one state to another, as it may depend on the status of the perpetrator at the time of committing the crime, especially his legal capacity to bear criminal responsibility, which resulted in a clear discrepancy between the legal systems of countries in this regard. The international system is to adopt universal principles governing jurisdiction and jurisdiction over crimes of an international character in order to achieve justice and not allow the perpetrators of those crimes to

escape punishment, towards the principle of complementarity between international criminal courts and the internal criminal courts of states (Al-Saghir, 1998).

Although the possibility of prosecuting juveniles for violations of international humanitarian law is not explicitly mentioned in the framework of international law, this does not mean that they are exempt from criminal responsibility. It is possible to be guided by what is stated in the Convention on the Rights of the Child of the year 18, which provides for a number of guarantees when prosecuting them with regard to violations of the local penal code, which makes it clear that they can be subject to justice if they commit serious crimes of an international character (Tarawneh, 2009).

4.1. The principle of judicial integration for trial events.

Under the principle of complementarity known in international criminal justice, which is based on the premise that the convening of jurisdiction of international criminal courts is not a substitute for the jurisdiction of the internal criminal courts of states, but rather is a complement to them in the trial of those who are accused of committing crimes of an international character (Al-Saghir, 1998). The International Criminal Court was mainly to ensure that no one escaped punishment for committing international crimes. The principle is the jurisdiction of the national criminal courts, even if the crime to be tried is of an international character. However, this does not prevent some of these international criminal courts from being granted joint jurisdiction or concurrent with judicial jurisdiction. Even giving priority to international courts over national jurisdiction, as is the case in the scope of the International Criminal Court in the former Yugoslavia, or the International Criminal Court in Rwanda (Odeh, 2018).

On the other hand, the complementary jurisdiction of the International Criminal Court came to emphasize the fundamental role of the national judicial authorities to carry out the prosecution of international crimes committed on its territory, contained in the Statute of the International Criminal Court. Thus, this court has universal reserve jurisdiction that guarantees international criminal justice in the event that states fail or are unable to achieve it properly (Zaidan, 2007). Therefore, Article 36 of the statute of the International Criminal Court states that "the court does not have jurisdiction over any person under the age of eighteen years at the time of committing the crime attributed to him." It can be justified that the international criminal judiciary, under the statute of the court, has exempted itself from prosecuting and holding this group of accused accountable, provided that what can answer the hypothesis of legal void derived from the provisions of Third and Fourth Geneva Convention and its optional protocols, is the commitment of the signatories and ratifying parties. Those conventions apply the internal texts in the criminal article, when it is proven

that children are involved and acts related to international conflicts, without entering into determining the legal nature of the crime in terms of being genocide, a crime against humanity or a war crime (Kabish, 2012).

From all of this, it becomes clear that minors are subject to the national jurisdiction in relation to the international crimes they committed on the territory of the competent state, not only because she has the original jurisdiction and is closer to the location of the crime, but also because she is the most capable of understanding the circumstances of these juveniles and punishing them in a way that ensures their reintegration into her society with the necessary reform and rehabilitation (Swaikat, 2010).

4.2. Judicial guarantees for juvenile justice.

In the international context, perhaps one of the most important guarantees that must be provided for the justice investigation of juveniles, which are emphasized by international standards as a whole, is the need for their cases to be examined in all their stages by a judicial body specialized in juvenile affairs and distinct in formation and competence from other courts and the state's judicial system. Thus, the court must come up with a formation that includes members from specializations from the human sciences, such as sociology, psychology, or education, as well as the gender judge, who also requires specialization and juvenile cases affairs (Abdel Sattar, 1998).

This matter finds its basis in many general international and regional instruments and treaties, as is the case in the Convention on the Rights of the Child of the year 18, where the second paragraph of Article 40 stipulates that "every child who claims to have violated the penal law or is accused of that at least has the following guarantees, a competent, independent and impartial judicial authority or body to adjudicate his case without delay in a fair trial according to the law, in the presence of a legal advisor or with other appropriate assistance and in the presence of his parents or legal guardians. Perhaps this is what was previously mentioned by the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules) for the year 18, which is based on a specialized juvenile justice system and which these rules emphasized that the juvenile justice system must be moderate and humane, and focus on dealing with juveniles and Ensures that the authorities respond in proportion to the circumstances of the delinquent juvenile and the seriousness of the crime committed. Likewise, the fifth paragraph of Article 5 of the American Convention on Human Rights of 1969 states that "minors, while undergoing criminal procedures, shall be isolated from adults, and brought as soon as possible before special courts to be treated in a manner consistent with their status as minors" (Odeh, 2018) .

Thus, the establishment of a specialized judicial system for the prosecution of juveniles must include all the components of the legal system

for juvenile justice, including special laws, both substantive and procedural, and specialized authorities to implement these laws, as well as institutions that carry out the tasks of implementing judicial rulings and remedial measures taken in their regard. Before this court, and then the behavior of the International Criminal Court in not subjecting those under the age of eighteen to its authority becomes justified, as it is consistent with legal standards and international norms calling for the need to find a specialized judiciary to consider juvenile cases, regardless of the type of crime or its severity (Owen, 2009).

In practice, the international criminal judiciary did not address such jurisdiction except in rare cases, and it did so within the framework of the International Criminal Court in Sierra Leone, as Article 7 of the Statute of the International Criminal Court for Sierra Leone indicated, under the clause of jurisdiction over persons of five years of age. Ten years of age "indicates that the court will not possess any jurisdiction over any person under the age of fifteen years of age at the time of the crime and for persons aged 15-18 years, and it also stipulated that they are included in special procedures when they are tried, as well as specify the penalties to be imposed. The court against them, as they were exempted from the prison sentence that the statute of the court did not allow to impose on them, and it referred to orders and measures for juveniles by which they are judged, taking into account their ages, reforming them, integrating them into society and rehabilitating them (Al-Shammari, 2012).

It should be noted at the conclusion of this research that there are many other judicial guarantees stipulated in the relevant international conventions in this regard, embodied in the confidentiality of the trial procedures and what this entails in terms of prohibiting the publication and preservation of case files, as well as the necessity to study the health, psychological and social factors of juveniles before and during the trial and the effects of judicial judgment on the psyche of the juvenile and the possibility of achieving its results by reintegrating and rehabilitating society, which are guarantees that we emphasize that they can only be achieved through judicial systems that have a long history in organizing litigation procedures, and have conditions and resources related to social and psychological sciences that affect aspects of the personality of juveniles and the society to which they belong mechanism (Tarawneh, 2009).

5. Conclusion.

This study deals with the criminal responsibility of juveniles and the requirements for their existence in terms of the availability of standards for fair trials in accordance with the provisions of international law. Where it will shed light on a set of findings and recommendations as follows:

First: Findings.

1. The necessity of dealing with the juvenile from a human perspective, regardless of the type and seriousness of the crime. Juvenile is the one most in need of protection monitored by human rights, because the seriousness of the crime is related to the person of the juvenile and not the type of crime or its gravity.
2. Despite the prohibition and criminalization of child recruitment in many international instruments and conventions that provide legal protection for the child, the precise definition of a child's concept and the legal age of his criminal issue is still contested within the framework of international law and the internal legislation of states.
3. It is always imperative that the community reaction be commensurate not only with the circumstances and seriousness of the offense, but also with the circumstances and needs of the event as well as the needs of society, as dealing with the juvenile is dealing with tomorrow not today, so the juvenile's interest is the best according to international standards.
4. The legal systems of states still differ in the age of criminal responsibility for children, which has resulted in their embarrassment from the issue of juveniles for the crimes of an international nature they commit, under the pretext that the international judiciary is the authority and jurisdiction over these crimes.

Second: Recommendations.

1. The necessity of defining an accurate concept of the child and working to find a fixed age for arranging international criminal responsibility, and criminalizing his recruitment or participation in armed conflicts within the framework of international law or domestic law alike.
2. Strengthening the legal protection established for children according to international instruments and conventions, and working to provide legal guarantees for their fair trial in case they commit serious crimes.
3. Work to unify the age of criminal responsibility for juveniles in all countries, especially those related to international crimes, by concluding international agreements that regulate this responsibility and the consequences thereof.

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