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International Jurisdiction and International Crimes in the Afghanistan Penal Cod

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Abstract

Global jurisdiction and international crimes as the latest achievement of human society, which is the result of new experiences of penal systems at the global level and some national systems, has enacted in the new Afghanistan Penal Code. Universal jurisdiction is the newest exception to the principle of territoriality of jurisdictions. Based on this jurisdiction, Afghan courts can even deal with crimes that neither the perpetrator nor the victim are related to Afghanistan, nor is the place of occurrence in Afghanistan, nor is it committed against national interests or Afghan nationals. International crimes are the most heinous criminal behaviors that hurt the collective conscience of the human society, disturb the order and security at the global level, and create a feeling of fear and insecurity in a wide circle, for all people, in it creates wherever they are. The common strategy of human society against this type of anti-human behavior has been to identify examples, criminalize and create coercive enforcement guarantees. Criminalization, due to the involvement of the governments themselves, first took place in the international arena and then reflected in the domestic systems. The result of this process is the criminalization of four new categories of crimes in the Penal Code, which has enacted in 11 articles in the form of 69 general titles and 123 criminal acts, and Afghan courts, in addition to territorial jurisdiction, have given global jurisdiction to deal with them.

Keywords: *International Crimes; Transnational Crimes; Global Jurisdiction; National Courts*

Introduction

Compilation and approval of the Penal Code of 2016 was an infrastructure and strategic measure to modernize, increase capacities and empower the judicial-judicial system, in order to respond more effectively to the necessities and needs of the country today. The achievements and shortcomings that we can enumerate for the new Penal Code include countless innovations, initiatives and positive aspects. Some most important instances are as follows:

1. Revision and re-legislation along with the adjustment and regularization of the content of all the legislative documents that in the last forty-six years (1355 to 1396), in their format, sporadically and according to different time conditions and requirements, criminalize behaviors The social anomaly has been discussed.

2. Consolidation of 34 separate legal documents into a single document under the title of Criminal Code. Some of these laws were in conflict and it was quite difficult to identify the applicable one among the multitude documents. Enforcing of the Criminal Code saved the judges, prosecutors, defense lawyers and other people involved in judicial and judicial affairs from confusion and wandering between several laws in some cases.

3. Criminalizing behaviors against new and unprecedented social norms, on a large scale that is appropriate for our era. These are the instances: cyber-crimes, tax crimes, election crimes, crimes against the administration of justice, money laundering crimes, human trafficking crimes, child-play crimes, crimes of historical monuments smuggling, crimes of usurpation of land and immovable property, crimes of discrimination in administration, crimes of violation of intellectual or intellectual property rights, commercial crimes, environmental crimes, water-related crimes, public health-related crimes, etc.

4. Quantitative increase in the Number articles of the penal code, compared to the former penal code as a single set of penal laws, from 523 articles to 916 articles, in response to the needs of the day.

5. Reviewing punishments based on the latest scientific theories in the fields of criminology, penal science, criminal sociology and criminal psychology, and determining punishments that are more appropriate to criminal behaviors and the circumstances and conditions of crimes.

6. Predicting the conditions and circumstances of punishments with great accuracy and obsession, on a very large scale and in variable and different situations, especially with regard to the situation and position of vulnerable and at-risk persons.

7. Reducing the death penalty to the minimum possible, considering their philosophical and theoretical foundations on the one hand and practical functionality and effectiveness on the other hand.

8. Predicting alternative prison sentences, considering the negative effects of applying this type of punishment in special circumstances and cases.

9. Criminalization of all the cases in which the government committed to take necessary legislative measures and criminalize certain behaviors based on international obligations arising from various conventions and covenants during recent years, but the government until now, had not taken sufficient efforts to fulfill them.

10. Accurate and comprehensive coverage of global jurisdiction and international crimes using the latest experiences of the international community in this field.

The need to explain the novel and innovative dimensions of the penal code and to provide suitable conditions for its proper implementation is a national necessity. The legal community of the country and the officials and trustees of the country's legal-judicial system bear a serious responsibility in this regard.

The new penal code approved and repealed at the end of the republican period. A number of experienced and highly educated lawyers and judges took responsibility for its scientific commentary. The author of this article was a member of the commentary team. In a short period, the authors prepared a comprehensive description and as soon as possible explained the ambiguities, comprehensive items and gaps. Compiling this description was the first step in the direction of properly introducing the code and providing a suitable platform for its uniform, useful and effective implementation, which published in five volumes (2500 pages). In the next step, the interpreters of the Penal Code trained judges, prosecutors and defense attorneys at the country level and gave them a wide awareness.

The de facto government does not care about the new penal code, but at the same time, it has not officially announced its abolition. It seems that the new penal code of Afghanistan, despite the current neglect, is a turning point in the history of judicial developments in Afghanistan. No government can ignore the importance and significant role of it from the history of Afghan justice and leave it to the archives of history; because it is a unique answer to the objective needs of our society.

In this article, a small but unprecedented axis in the new penal code of Afghanistan (global jurisdiction and international crimes) has introduced.

International Crimes

A. The Historical Background of International Crimes

International crimes, both in terms of content and concept and in terms of form as a term, is a new phenomenon at the level beyond national borders. It seems that the background of the clear and concrete design of this issue, in terms of ideas and opinions, goes back to the end of the nineteenth century (Wallace, 2005, 310). Gustave Moynier, one of the founders of the Red Cross, perhaps for the first time in 1872, following the disastrous war between France and Prussia, proposed a specific idea in this field. He believed that the anti-human behavior of soldiers during the wars should recognized as a crime at the international level and an international court should be established to try to punish the perpetrators (Wallace, 2005, 310). The governments did not welcome this plan.

The shocking anti-human tragedies that happened in the First World War made the public opinion more ready to accept this idea. The victors of the war tried to prosecute the German Emperor, Wilhelm II and his aides based on the customary rules of war, for the crime of starting the war and the crimes committed during the war, and to try to punish them through an international court. These efforts did not come to fruition due to Wilhelm's escape to the Netherlands and the acceptance of his asylum by the government of this country. However, after the Second World War, the Nuremberg and Tokyo International Courts successfully punished the perpetrators of the crime of rape and other international crimes (Robertson, 1383, 289). The documents and procedures of the Nuremberg and Tokyo courts added to the literature of this issue. Therefore, the establishment of these courts and the trial and punishment of the perpetrators of war crimes considered a turning point in the process of the evolution of international crimes (Chaisari, 1387, 29).

The third stage of the development of international crimes and international criminal law in general is the 1390s. In this decade, international crimes became more specific, and its executive system has organized better, based on the experience of the courts of former Yugoslavia and Rwanda, and finally took a more evolved form in the form of the statute of the International Criminal Court.

B. Definition of International Crimes

We can define International crimes from two dimensions:

First: From the Content Dimension

From the content dimension, international crimes or, in the interpretation of the Afghan Penal Code, "crimes against humanity" (Penal Code,2019, Arc335), are generally those criminal behaviors, which its negative effects in terms of order and social security are limited to the geographical framework of the country where the crime is committed. ; Its occurrence creates a feeling of insecurity and fear on a large scale in the international community and hurts the collective conscience of the human society. Unlike normal internal crimes, which its negative social effects are limited to the geographical circle of the country. Its occurrence creates a feeling of insecurity among the people of the same country and hurts the collective conscience in the same region and finally in the same country. For this reason, the principle

of territoriality prevails in the internal systems of criminal law. For example, the occurrence of the crime of suicide causes a feeling of insecurity in the country and hurts the conscience of the national fabric, but the occurrence of the crime of genocide creates a feeling of insecurity at the level of the world community and hurts the collective conscience of humanity. Regardless of where the crime of genocide occurred, who the perpetrators are, and to which country, race, religion, sect and nationality the victims belong. Comparing the negative social effects of a genocidal crime with the negative effects of committing a murder can show this difference.

Second: From the Formal Dimension

From the formal aspect, international crimes refer to behaviors that criminalized based on the free agreement of governments, independent of national systems, in the form of international conventions, and making coercive enforcement guarantees for it.

Behaviors with the aforementioned characteristics have criminalized during the last century of swimming and in general international documents, and an international enforcement mechanism has devised for them.

D. Entry of International Crimes into Domestic Systems

In the last few decades, in some countries, including in the new penal code of Afghanistan, this type of behavior has criminalized and national courts was given universal jurisdiction to deal with claims related to this type of crime, even if the perpetrator and the victim are foreigners. In addition, the place of committing it is another country. Therefore, the global jurisdiction is primarily the supervisor of global crimes.

The criminalization of international crimes in domestic systems and the prediction of universal jurisdiction for national courts are under the affection of three factors:

1. Converting the Immunity of the Ruling Authority to the Criminal Responsibility of Them.

Not so long ago, the high officials of the countries have been enjoying absolute immunity against the courts of other governments, against any type of crime (Cassese, 2005, 435). By establishing the criminal liability of individuals in international law and removing the immunity of the ruling authority, the red line of the immunity of the ruling authority in domestic systems was also broken. The theoretical basis of this evolution was the acceptance of some criminal behaviors as international crimes and the characteristics that considered in the international system for these types of crimes (Cassese, 2005, 436).

2. International Binding Obligations

Another important factor in this regard is the international commitment of governments in the form of international treaties and conventions, which obliges them to adopt the necessary legislative, judicial and executive measures in their internal systems.[1]

3. The Practical Confrontation of Some Systems with International Crimes

The third effective factor in the criminalization of international crimes in domestic systems was the emigrant of the perpetrators and the victims simultaneously from all over the world in to the western countries; they were facing each other in the countries such as the United States and Western European countries. These countries were targets of the peoples from the crisis-stricken areas, due to their high level of security and social welfare. Following a humanitarian disaster in a crisis-stricken country, both the perpetrators of war crimes and crimes against humanity and the victims sought refuge in one of these

[1] The four Geneva Conventions of 1949 and its two annexed protocols.

countries, the victims turned to the courts to plead. It created a new challenge for the courts of targeted countries. In this way, some countries according to the practical and actual necessity enacted universal jurisdiction for their domestic courts.

Some of the crisis-stricken countries in other parts of the world, after experiencing human disasters, have started criminalizing international crimes and granting universal jurisdiction to their national courts, among these countries, we can mention Iraq and Afghanistan.

It seems that the criminalization of international crimes and the provision of universal jurisdiction in the afghan penal code have influenced by three factors: 1.The continuation of human disasters and the frequent occurrence of international crimes, especially war crimes, crimes against humanity and even genocide. The occurrence of international crimes has become commonplace. 2. Afghanistan's membership in several international conventions, some of which oblige the member states to take necessary and effective national measures in this regard. 3. The pressure of the international community and international partners of the Afghan government in this matter.

Transnational Crimes

One of the concepts related to international crimes is transnational crimes. Regarding the difference between these two and drawing a precise border to separate these two types of crimes from each other, there is a difference of opinion and difference of opinion among jurists (Bassiouni, 2001, 20) Therefore, in order to clarify international crimes, we should explain transnational crimes very briefly.

A. Definition

Transnational crimes refer to those types of criminal behavior that states, based on international treaties, are committed to criminalize in their internal systems and provide grounds for legal prosecution and punishment of their perpetrators.

B. Differences between International Crimes and Transnational Crimes

International crimes differ from transnational crimes in three aspects:

1. Because of the Historical Record

The history of transnational crimes goes back to at least 1815. Probably, the first conventions containing transnational crimes has ratified on that time. Based on the provisions contained in them, the governments committed to consider criminal behaviors such as slave trade and piracy in the high seas as crimes in their legal systems, the process of legal prosecution and the mechanism to guarantee effective execution for the perpetrators of this type (Chaisari, 1387, 5).

Therefore, the history of transnational crimes goes back at least two hundred years. But international crimes, as explained, is a phenomenon of the 20th century. Although theoretically, it may have a relatively long history, but in practice, for the first time after the Second World War, it has found an objective and real difference.

2- Because of the Nature

Transnational crimes are basically national in nature; it is related to internal order and security. At least its territorial dimension is prominent and disturbs most of the national legal system. Unlike international crimes, which are independent of domestic systems. International crimes are global in nature. For this reason, jurists use the global suffix in some cases to provide a more accurate interpretation of the concept and use the title of global crimes.

Transnational crimes are actually a kind of harmonization of national criminal norms that governments take to deal more effectively with crimes that disturb their internal order and security. The process of accepting international obligations to criminalize certain behaviors in national systems and taking the necessary measures for effective enforcement guarantees in this field is similar to the process of unifying laws in the fields of personal status, conflict of laws and business. Conventions containing such obligations can be compared to the Convention on the International Sale of Goods (1980).

3- In Terms of Scope

There are many examples of transnational crimes. International crimes cover only the most severe and dangerous crimes that disrupt the order of the world community. The realm of transnational crimes can be easily expanded in the circle of bilateral, unilateral and multilateral conventions.

The result of a research shows that from 1815 to 1999, in the form of 276 international conventions related to criminal matters, 27 groups of criminal behaviors have been predicted (Bassiouni, 2001, 21). Theoretically, jurists consider a limited number of these twenty-seven groups (between 6 and 8 groups) as international crimes, and international jurisdiction can be invoked to try and punish their perpetrators. But in practical terms, as far as it can be discussed and cited based on the valid international legal documents and existing jurisprudence, only four groups of criminal behaviors are recognized as international crimes; Genocide, crimes against humanity, war crimes and crimes of aggression against the state.

All international organized crimes (such as human trafficking, arms trafficking, drug-related crimes, money laundering, terrorist financing and even cyber-crimes, administrative corruption, etc.) can be mentioned as examples of transnational crimes.

Another type of crime that has little resemblance to international crimes and more resemblance to transnational crimes is cross-border crimes. Cross-border crimes are defined as crimes that are foreseen in national systems, without connection to international obligations, in order to protect and protect national interests or protect nationals of the country. These types of crimes occur outside the territory of the respective government against nationals or against the national interests of the respective government, and at the same time national courts are given the jurisdiction to prosecute, try and punish. The national court prosecutes the perpetrators of these types of crimes based on the protection jurisdiction.

Universal Jurisdiction of National Courts

A. Definition

Universal jurisdiction in national systems is given to courts by law. In this sense, universal jurisdiction is a jurisdiction that a national court can use to deal with crimes that occur outside the territory of the country, the perpetrators and victims of the crime are not citizens of the state and the occurrence of a crime is not directly related to the national interests of the relevant government (Dixon, 2013, 154).

Global jurisdiction is actually the latest exception to the principle of territorial jurisdiction of the government in the field of crimes and punishments. There are two basic and fundamental principles in criminal law: 1.The principle of territoriality 2.The principle of universality (SANEI, 1382, 190).

The principle of territoriality means that the government's authority to criminalize behaviors and exercise judicial jurisdiction is limited within the territory of national sovereignty; the government does not have the authority to criminalize behaviors that occur outside of its territory, and prosecute its perpetrators.

The principle of inclusiveness also means that the authority of the government regarding the criminalization of behaviors and the exercise of judicial and executive jurisdiction to ensure it is comprehensive and general (Audah, 1384, 263); within the limits of national sovereignty, no one can be out of its circle.

Over time, exceptions have been added to both principles. The exception to the principle of universality is a set of immunities (diplomatic immunity, consular immunity, immunity of high officials of countries, special contractual immunities, etc.) which have been introduced gradually during the last few decades. This is out of our discussion.

The classic exceptions to the principle of territoriality are personal jurisdiction and protective jurisdiction, which were added to the territoriality principle of the state's criminal jurisdiction in the early 20th century. Of course, these two exceptions are usually discussed under the title of types of jurisdiction with the principle that criminal jurisdictions are on the ground. Universal jurisdiction is the last exception to the principle of territoriality. With the inclusion of universal jurisdiction among the previous exceptions, it would be better to divide them into two categories: 1.Classic jurisdictions, including the principle of territoriality and its two older exceptions. 2.The new jurisdiction that is the same as the global jurisdiction or the most recent exception to the principle of territoriality.

B. Background of Universal Jurisdiction

The historical background of universal jurisdiction is shorter than the historical background of international crimes. The issue of universal jurisdiction has come up in practice after the introduction of international crimes in national systems. International crimes should have been prosecuted through international judicial authorities; because the crimes in question are international and global in nature. But two things have caused this to not happen and the jurisdiction of the International Criminal Court is considered a supplementary jurisdiction and the primary and main responsibility is placed on the shoulders of the domestic criminal systems:

1. The youth of the International Criminal System

International law is generally a young legal system with little background. Criminal responsibility in particular and international criminal law in general is a new initiative in international law. Therefore, the evolution of the mechanism of executive guarantees in international criminal law requires the passage of time.

2. Dependence on Internal Systems

In the first step, the idea of the international criminal system, like any other part of international law, is rooted in domestic systems. The initial idea is usually proposed in domestic systems and developed by thinkers of nationally developed legal systems. Then, the elites of those societies, in order to create a more comprehensive mechanism, broad commitments and effective enforcement guarantees, proposed it at the international level.

Of course, we should not forget that international crimes are not outside the realm of national systems. For this reason, the rules, norms and requirements accepted at the level of the international community, which receive wider and more effective support, should be re-entered into the national systems. In this way, it is natural that the jurisdiction of the International Criminal Court is considered supplementary.

The International Criminal Court relies on domestic systems in various dimensions to fulfill its legal duties and responsibilities, whether it is in arresting the accused or in the implementation of the final judgments or other cases. It seems that this dependence is not final.

C. The conditions for Exercising Universal Jurisdiction by National Courts

National courts can exercise universal jurisdiction if the following conditions are met:

1. Internationality of the Crime

Global jurisdiction can only be applied to international crimes (global crimes). International jurisdiction cannot be used in dealing with national crimes, cross-border crimes, and transnational crimes.

In the field of crimes that have a national dimension, including transnational crimes that are considered to be national crimes, the high officials of the governments still enjoy full immunity before national courts. Therefore, at least the heads of states, high government officials, including the Minister of War, the highest commander of the armed forces, and senior military commanders, enjoy judicial immunity in the field of non-international crimes before the national courts of other countries. Therefore, it is not possible to try and punish them. But in the case of international crimes, even the immunity of the ruling authority has lost its validity.

2 Criminalization in Domestic Laws

The second condition for the exercise of global jurisdiction by national courts is that international crimes are criminalized in the national system. Mere prediction in international documents or its stabilization in international custom is not enough. The principle of the legality of crimes and punishments, which is recognized as a principle in all penal systems, prevents international crimes from being directly punishable simply by joining the international convention. The principles of criminal law, including the principle of legality of crimes and punishments, require that the content of international documents or even beyond that, be criminalized in the form of national law or laws.

3. Explicit Jurisdiction to National Courts

The global jurisdiction should be explicitly given to national courts by law. This condition also goes back to the principle of being a law in its general sense. The principle of legality cannot be reduced to two examples (the principle of legality of crimes and the principle of legality of punishments). The basic principle of the rule of law requires that the creation of courts, the scope of exercising the jurisdiction of the courts, and the principle of the jurisdiction of the courts and the proceedings of the courts, should all be determined by law. Just as territorial jurisdiction, personal jurisdiction and protection need to be specified in the law, global jurisdiction also needs to be specified. Fixing it in international documents does not allow national courts to deal with international crimes based on it.

4. The Impossibility of Applying Other Kind of Jurisdictions

In cases where the conditions for invoking territorial jurisdiction or personal and protective jurisdictions are met, the courts, depending on the case, deal with the cases of committing a crime based on them, even if the alleged crime is part of international crimes. Universal jurisdiction is invoked where territorial or personal and protection jurisdictions cannot be invoked.

Conditions and Cases of Invoking Universal Jurisdiction for Afghan Courts

The Penal Code has provided universal jurisdiction for Afghan courts (Penal Code, article 26). In this way, Afghanistan has joined the limited group of countries whose courts have global jurisdiction in prosecuting and punishing perpetrators of international crimes.

Now that Afghan courts have the authority to exercise international jurisdiction, two issues need to be explained in this context; first, under what conditions Afghan courts will exercise universal jurisdiction. Second, in which cases it will be possible to invoke universal jurisdiction for Afghan courts.

1. The Conditions for Applying Universal Jurisdiction by Afghan Courts

Afghan courts have the authority to deal with crimes that are recognized as crimes in international documents or as international crimes based on customary rules, subject to three conditions: 1. they are also criminalized in Afghan laws. 2. The perpetrator found in Afghanistan. 3. Territorial, personal and protective jurisdictions cannot be applied (Penal Code, article 26).

Therefore, in cases where the court can deal with relying on territorial jurisdiction, such as when a crime has occurred on the territory of Afghanistan, or in cases where a crime has occurred against Afghan nationals or Afghan nationals have committed these types of crimes, Article 26 does not apply, even if the committed crimes are examples of the second chapter of the second book (International Crimes).

2. Cases of Applying Universal Jurisdiction of Afghan Courts

Afghanistan's criminal courts have jurisdiction over all 69 criminal acts that are provided in four major categories, under the title of international crimes in international documents and under the title of crimes against humanity, in Chapter II, Book II of the Penal Code. According to Articles 16 and 26, the jurisdiction of Afghan courts is general and comprehensive in this case. In any case, it has jurisdiction over international crimes, but in dealing with these types of crimes, under different conditions, they must use different jurisdictions:

- Classic jurisdictions: territorial jurisdiction, personal jurisdiction and protective jurisdiction; in cases where the crime has occurred in the territory of Afghanistan, they will be dealt with using territorial jurisdiction. In cases where the perpetrators are Afghan nationals, the basis of Afghan courts' proceedings will be personal jurisdiction. However, in cases where international crimes have been committed outside of Afghanistan, against Afghan nationals, here the court can take advantage of protective jurisdiction and deal with the case. In these cases, there is no need to use universal jurisdiction, and there is no legal permission for universal jurisdiction.

- New Jurisdiction (Universal Jurisdiction): In cases where the place of crime is not Afghanistan, or the perpetrators or victims are not Afghan nationals, it is time to use universal jurisdiction. In such cases, the courts of Afghanistan can only invoke the universal jurisdiction provided for in the twenty-sixth article to try those accused of committing international crimes. For example, we assume that a Jordanian citizen has committed such crimes against Syrian citizens in the human tragedies of Syria and happens to be in Afghanistan. In such a case, Afghan courts have jurisdiction based on Article 26. This type of jurisdiction is the universal jurisdiction that the national court applies.

Examples of International Crimes in the Penal Code

The second chapter of the second book of the Penal Code is devoted to international crimes. This chapter consists of four chapters. In these four chapters, 69 more general criminal titles and a total of 123 criminal acts have been criminalized in detail and specific punishments have been provided for each. There are 5 criminal acts in the chapter of genocide crimes, 15 criminal acts in the chapter of crimes against humanity, 80 criminal acts in the chapter of war crimes and 23 criminal acts in the chapter of crimes of aggression against the government.

Under the general criminal headings of each of the four chapters, it is briefly explained:

1. Genocide Crimes

Each of the five criminal acts stipulated in the international documents and the penal code, which is done intentionally against a national, ethnic, racial or religious group, in order to destroy all or part of that group (Rome Statute, Article 7/Penal Code,2019, 333).

2. Crimes Against Humanity

Each of the fifteen criminal behaviors that are carried out in the form of a widespread or organized attack, with the intention of causing severe mental or physical suffering or injury, against the civilian population, such as killing, destruction, forced migration, etc. (Rome Statute, Article 6/Penal Code,2019, 335)

3. War Crimes

Each of the cases of violation of numerous international regulations (80 criminal acts) which are stipulated in the form of various documents related to war, including the four Geneva Conventions of 1949 and their two additional protocols of 1977, as well as the statute of the International Criminal Court and in the form of international customary laws. These rules are divided into four different categories: 1.Rules related to the wounded and sick of the armed forces on the battlefield 2.Rules related to the wounded, sick and shipwrecked 3.Rules related to prisoners of war 4.Rules related to civilians. Example: killing prisoners of war, forcing prisoners to fight against their own military forces, using prohibited weapons, destroying cultural and religious places, etc. (Rome Statute, Article 8/Penal Code,2019, 337)

Crimes of Aggression Against the State

The commission of any of the thirteen criminal acts by a person who leads the political or military power of a state, provided that it is considered a violation of the Charter in terms of severity and nature. Such as an armed invasion of the territory of another state, placing a part of its national sovereignty at the disposal of another state to invade a third state, sending armed forces or war mercenaries to another country, etc. (Rome Statute, Article 8 bis/Penal Code, 2019, 341)

Summary and Conclusion

The criminalization of international crimes and the granting of universal jurisdiction to Afghan courts are a small part of the worthy and appreciable innovations of the penal code implemented by the republican government. With the comprehensive criminalization of all examples of international crimes, including the most recent examples, such as war crimes in non-international armed conflicts and crimes of aggression against the state, the legal void in this field has been filled. Granting universal jurisdiction to national courts is a complementary measure that covers even special and exceptional cases, and no hypothetical or rare cases of international crimes are excluded from the jurisdiction of Afghan courts.

It is true that currently the Afghan penal system is facing major challenges and complex obstacles in the implementation of international crimes. But this does not mean that the development and evolution of the criminal system in terms of structure and infrastructure, in response to historical and social developments and the urgent requirements of the time, is a useless and unnecessary action. In the current situation, the challenges facing our criminal system are not limited to international crimes; in other criminal areas, including in the most traditional areas, such as murder, robbery, extortion, etc., it faces fundamental challenges in practice. Therefore, implementation challenges do not justify the lack of structural and fundamental corrective actions and measures. For the existing challenges in the implementation, other measures are necessary, which should be devised according to the changing

conditions of time. The positive point is that the de facto government has not announced officially the abolition of the new penal code.

The criminalization of international crimes and the granting of universal jurisdiction to national courts, in addition to being an appropriate response to the social necessity and urgent requirements of the existing conditions in our country, is a step, albeit a preliminary one, in the direction of aligning with the changes of the time at the global level, in dealing with Decisive with the bitter and heartbreaking initiatives of the human race in creating unprecedented human disasters.

Another facet of this initiative is the implementation of the international obligations that the government has undertaken voluntarily and with interest or expediency during the past few decades, especially in the last decade. According to several international conventions and agreements, the Afghan previous government has pledged to accept international crimes in its internal system and to create the necessary executive guarantees and appropriate enforcement mechanisms. The last valid international document of which Afghanistan is a member is the Statute of the International Criminal Court. International crimes, perhaps in its most comprehensive form, are provided in this statute. This means that the Afghan government is committed to the criminalization of all the cases provided for in this statute, and therefore, it is obliged to criminalize domestically. In addition, the jurisdiction of the court is provided supplementary, in the statute. (Rome Statute, Article 17) This also means that the Afghan government has the obligation to prosecute and punish those who commit these crimes in the territory of the Afghan government. A task that requires domestic criminalization and the granting of jurisdiction, trial and punishment through the national judicial system.

Obstacles and executive challenges remain in front of the country's legal and judicial system, which will take time to solve, as well as precise and expert measures, as well as the will of the nation.

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