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### The Impact of International Criminal Conventions on the Principle of Legality: A Comparative Legal Analysis of Sovereignty, Reservations, and Harmonization in the Age of Globalized Crime

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#### Abstract

This study examines the transformative effect of international criminal conventions on the principle of legality (*nullum crimen, nulla poena sine lege*) within domestic legal systems, with particular emphasis on the tension between state sovereignty and international obligations. Through a comparative analysis of civil and common law jurisdictions—including Algeria, France, Egypt, Germany, and the United States—the paper investigates how states incorporate international crimes into national legislation while preserving constitutional and cultural particularities. The research problem centers on three questions: (1) How do international conventions reshape the traditional boundaries of the legality principle? (2) To what extent do reservations enable states to balance sovereignty with compliance? (3) What are the implications of prohibiting reservations in modern treaties like the Rome Statute? The methodology combines doctrinal legal analysis with comparative jurisprudential examination of treaty implementation mechanisms, judicial interpretations, and state practice under the Vienna Convention on the Law of Treaties (1969). Findings reveal a paradigm shift from absolute legislative sovereignty to "conditioned sovereignty," where international norms increasingly constrain domestic criminal lawmaking. Reservations, while preserving state autonomy, fragment international criminal law and create enforcement gaps exploited by transnational criminals. The prohibition of reservations in treaties establishing international criminal courts represents the apex of this sovereignty limitation. The study recommends enhanced harmonization techniques, model implementation laws, and a nuanced approach to reservations that respects cultural specificity without undermining treaty objectives. It concludes that the legality principle must evolve to accommodate international sources of criminal law while maintaining its core protective function against arbitrary state power.

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## **1. Introduction**

### **1.1. Background and Context**

The proliferation of transnational criminal phenomena—terrorism, organized crime, money laundering, cybercrime, and human trafficking—has catalyzed an unprecedented expansion of international criminal law instruments since the mid-twentieth century. Over 300 multilateral conventions now obligate state parties to criminalize specific conduct, establish jurisdiction, and cooperate across borders (Bassiouni, 2013, p. 45). This normative explosion creates a fundamental tension with the principle of legality, a cornerstone of liberal criminal justice systems that mandates crimes and punishments be defined exclusively by pre-existing, written domestic law. Originating in Enlightenment philosophy and constitutionalized in instruments like the French Declaration of the Rights of Man (1789) and the Universal Declaration of Human Rights (1948), the legality principle embodies the social contract theory: individuals forfeit freedoms only to the extent clearly prescribed by law, shielding them from arbitrary judicial or executive power (Hall, 2017, p. 112).

The Algerian Constitution of 2020 exemplifies this constitutional entrenchment, stating in Article 43 that "no conviction except pursuant to a law issued prior to the commission of the criminal act" and in Article 1 of the Penal Code that "no crime, punishment, or security measure without law" (Algerian Constitutional Council, 2020). Similar provisions appear in Article 103 of the Egyptian Constitution (2014), Article 7 of the German Basic Law, and the Fifth Amendment of the U.S. Constitution (though interpreted differently in common law systems). However, when states ratify instruments like the UN Convention against Transnational Organized Crime (Palermo Convention, 2000) or the UN Convention against Corruption (Merida Convention, 2003), they commit to criminalizing conduct that may not align with domestic legal traditions, forcing legislators to import international definitions verbatim or adapt them through implementation laws (McClean, 2012, p. 78).

This dynamic produces what jurists term "conditioned sovereignty" (Peters, 2018, p. 201): states retain formal legislative authority while substantive content becomes externally determined. The situation is further complicated by the reservation regime under the Vienna Convention on the Law of Treaties (1969), which allows states to exclude or modify treaty provisions, potentially fragmenting uniform criminal standards. Some modern treaties, notably the Rome Statute of the International Criminal Court (1998), prohibit reservations entirely, representing the zenith of international constraint on domestic criminal lawmaking (Schabas, 2020, p. 334).

### **1.2 Research Questions**

This study addresses three core problems:

**Conceptual Transformation:** How does the incorporation of international crimes into domestic law redefine the sources of criminal law and the scope of the legality principle? Does the principle's protective function erode when judges apply treaty-based definitions developed through diplomatic negotiation rather than democratic parliamentary deliberation?

**Sovereignty and Reservations:** In what ways do reservations to criminal conventions preserve legitimate state interests (cultural values, constitutional structures, religious law) versus undermine treaty effectiveness? What standards determine permissible reservations under international law, and how do domestic constitutional courts resolve conflicts between treaty obligations and national law?

Harmonization vs. Fragmentation: How do different legal systems (civil law, common law, Islamic-influenced law) reconcile international commitments with domestic legality requirements? What mechanisms—direct application, transformation, or incorporation—prove most effective for maintaining both international cooperation and rule-of-law protections?

### 1.3. Methodology

This research employs a comparative legal methodology (Zweigert & Kötz, 1998, p. 33), analyzing primary sources including treaties, constitutional provisions, penal codes, and jurisprudence from selected jurisdictions. The doctrinal approach examines theoretical foundations of the legality principle, while functional comparison identifies how different systems solve similar problems (e.g., implementing corruption offenses). Case studies include:

Algeria: A civil law system with strong constitutional legality protections and Islamic law influences

France: The birthplace of the legality principle, with monist treaty incorporation

Egypt: A civil law system where constitutional provisions coexist with Sharia principles

Germany: A civil law system with robust constitutional oversight via the Federal Constitutional Court

United States: A dualist common law system requiring legislative implementation of treaties

The analysis integrates Vienna Convention rules on reservations, ICC jurisprudence, and European Court of Human Rights decisions to assess international standards. The study is limited to multilateral criminal conventions adopted under UN auspices, excluding bilateral extradition treaties and regional instruments like EU directives.

## 2. The Principle of Legality in Criminal Law: Conceptual Foundations and Contemporary Challenges

### 2.1. Definition and Core Elements of the Legality Principle

The principle of legality, or *nullum crimen, nulla poena sine lege*, constitutes the *lex artis* of modern criminal justice systems, mandating that criminal liability and punishment derive exclusively from pre-existing, written legal norms (Ambos, 2019, p. 56). In its Algerian formulation, Article 1 of the Penal Code crystallizes three interrelated components: (1) *nullum crimen*—no act constitutes a crime without prior legal definition; (2) *nulla poena*—no punishment may be imposed without legal authorization; and (3) *nulla poena sine iudicio*—no punishment without adjudication (Boulesbaa, 2001, p. 220). This principle operates as a fundamental brake on state power, ensuring that the legislative branch alone—representing popular sovereignty—defines the boundaries of permissible conduct (Shawki, 2009, p. 318).

Comparative analysis reveals nuanced variations in formulation. The French Penal Code (Code pénal, Article 111-3) declares: "Nul n'est punissable que par une loi qui le déclare punissable avant qu'il ait été commis," reflecting the constitutional block established by the 1789 Declaration and the 1810 Napoleonic Code (Pradel, 2018, p. 45). German law, under Article 103(2) of the Basic Law, constitutionalizes the principle more rigidly: "Eine Tat kann nur bestraft werden, wenn die Strafbarkeit gesetzlich bestimmt war, bevor die Tat begangen wurde." The German Federal Constitutional Court has interpreted this to prohibit not only analogical extensions but also retroactive aggravation of penalties (BVerfGE 25, 269; 45, 187).

In common law systems, the principle manifests differently. The U.S. Constitution prohibits *ex post facto* laws (Article I, Sections 9-10), but courts retain greater interpretive latitude. The Supreme Court in *Bouie v. City of Columbia* (1964) held that due process bars "unforeseeable and retroactive judicial expansion" of criminal statutes, yet maintains that judicial interpretation can clarify ambiguous provisions (Kelley, 2015, p. 89). This contrasts sharply with civil law prohibitions on judicial crime creation, illustrating a fundamental divergence in how legality is operationalized.

## **2.2. Historical Evolution: From Islamic Law to Enlightenment Constitutionalism**

The principle's genealogy extends beyond European Enlightenment. Islamic criminal law embodied legality concepts centuries earlier, as evidenced by Quranic verses: "We never punish until We send a messenger" (Quran 17:15) and "Your Lord would never destroy communities without first sending a messenger" (Quran 28:59) (Bilal, 2001, p. 225). These texts established that divine punishment presupposes prior revelation—a theological analogue to legal notice. The Caliph Umar ibn al-Khattab's famous admonition—"When did you enslave people though their mothers bore them free?"—further underscores early Islamic recognition of legal certainty (Sarur, 2002, p. 31).

European feudal systems, conversely, epitomized legality's absence. Judges exercised *arbitrium iudicis*—discretionary power to criminalize conduct without statutory basis—while monarchs issued arbitrary edicts (Khalfi, 2012, p. 50). Montesquieu's *Spirit of Laws* (1748) and Beccaria's *On Crimes and Punishments* (1764) catalyzed reform, arguing that only legislative enactments could legitimately define crimes (Laborde, 2005, p. 11). The French Revolution constitutionalized this in Article 8 of the 1789 Declaration: "No one may be punished except by virtue of a law established and promulgated prior to the offense."

The Universal Declaration of Human Rights (1948, Article 11) and the International Covenant on Civil and Political Rights (ICCPR, 1966, Article 15) globalized the principle. Article 15(1) of the ICCPR explicitly incorporates legality, while paragraph 2 preserves liability for crimes against humanity under customary international law—a crucial exception for post-WWII prosecutions (Joseph & Castan, 2013, p. 412). This tension between treaty-based legality and customary international crimes remains unresolved, as discussed in Section 2.4.

## **2.3. Theoretical Foundations: Political, Psychological, and Logical Pillars**

The legality principle rests on three interlocking justifications (Nabih, 2008, p. 33):

### **2.3.1. Political Justification: Popular Sovereignty and Separation of Powers**

Legality embodies democratic legitimacy by reserving crime creation to elected parliaments. As Franz von Liszt argued in 1882, criminal law expresses community values; only representative institutions can legitimately identify which interests warrant penal protection (Boulesbaa, 2001, p. 227). This aligns with social contract theory: individuals surrender liberty only pursuant to rules they indirectly authorize through representation. The principle also enforces separation of powers, preventing judicial or executive lawmaking that bypasses democratic deliberation (Shawki, 2009, p. 318).

Comparatively, German constitutional law rigorously applies this separation. The Federal Constitutional Court invalidated a provision allowing administrative fines for minor offenses without parliamentary authorization, holding that only statutes meeting

formal constitutional requirements could create criminal liability (BVerfGE 91, 207). French law, despite its monist tradition, similarly requires parliamentary enactment for crimes and délits, though contraventions may be created by executive decree (Pradel, 2018, p. 67). In Egypt, Article 95 of the Constitution explicitly reserves criminal legislation to parliament, though emergency laws have historically circumvented this (Moustafa, 2014, p. 134).

### 2.3.2. Psychological Justification: Deterrence and Normative Communication

Predetermined rules shape behavior by making consequences foreseeable. Beccaria argued that punishment's deterrent effect depends on its certainty and predictability; vague or retroactive laws fail to guide conduct (Kelley, 2015, p. 203). Modern research confirms that clear legal norms strengthen normative commitment and general prevention (Sarur, 2002, p. 32). When citizens know boundaries in advance, criminal law functions as a pedagogical tool, reinforcing social cohesion rather than merely expressing state power.

### 2.3.3. Logical Justification: Legal Certainty and Non-Retroactivity

Logic demands that rules precede the conduct they regulate. As Portalis, drafter of the French Civil Code, argued: law's role is "not to make men happy, but to prevent them from being miserable" (Madaffer, 2021, p. 335). This requires prospective, clear, narrowly interpreted statutes. The principle thus encompasses sub-rules: prohibition of analogical extension (*nulla poena sine lege stricta*), prohibition of retroactivity (*nulla poena sine lege praevia*), and prohibition of judicial creation (*nulla poena sine lege scripta*) (Ambos, 2019, p. 58).

## 2.4. Contemporary Challenges: Globalization and International Sources

Globalization strains traditional legality by introducing non-parliamentary sources. When the Algerian Penal Code criminalizes money laundering pursuant to the Palermo Convention, the offense's definition originates from diplomatic negotiation, not domestic parliamentary debate (Driard, 2013, p. 530). This creates what Jaworski (2014, p. 117) terms "hybrid normativity": crimes exist at the intersection of international obligation and domestic implementation.

Three implementation models emerge:

- Monist Systems (France, Netherlands): Treaties self-execute upon ratification; judges may apply them directly if sufficiently precise (Cass. crim., 11 mars 2014, pourvoi n°13-81978). However, French jurisprudence requires that penal provisions be "complete and direct" to be self-executing, preserving parliamentary primacy (Pradel, 2018, p. 89).
- Dualist Systems (UK, US): Treaties require implementing legislation; international obligations bind the state internationally but not domestically until parliament acts. The U.S. Supreme Court in *Medellín v. Texas* (2008) held that non-self-executing treaties cannot displace state criminal law without congressional implementation, reinforcing legality but potentially impeding international cooperation (Kelly, 2015, p. 145).
- Mixed Systems (Germany, Algeria): Constitutional provisions may grant treaties supra-legislative status (Article 154, Algerian Constitution), yet criminal law's specificity requires implementing statutes. German law distinguishes between *Völkerrechtsfreundlichkeit* (openness to international law) and the

Basic Law's legality guarantee, requiring parliamentary statutes for criminal offenses even when implementing treaties (BVerfGE 111, 307).

This fragmentation challenges legality's uniformity. If a cybercrime is defined differently in Algeria, France, and the U.S., which law governs a transnational offense? The principle of double criminality in extradition law demands substantial similarity, yet reservations and implementation variations create loopholes (Bassiouni, 2013, p. 201).

### **3. Sources of Criminalization and Punishment: Hierarchy and Harmonization**

#### **3.1. International Conventions as Sources of Criminal Law**

International conventions increasingly function as de facto sources of criminal law, though their domestic status varies. Article 154 of the Algerian Constitution (2020) establishes that "treaties ratified by the President, under constitutional conditions, are superior to law" (Algerian Constitutional Council, 2020). This creates a normative hierarchy: Constitution → International Treaties → Statutes → Regulations. Yet criminal law's specificity demands that treaties be "completed" by statutes specifying elements and penalties (Bousqaya, 2009, p. 62).

##### **3.1.1. The Transformation Imperative**

Most criminal conventions require states to "adopt such legislative and other measures as may be necessary to establish as criminal offences" the conduct described (Palermo Convention, Article 5). This "transformation obligation" means the treaty itself does not create domestic crimes; it commands the legislature to do so. The UN Office on Drugs and Crime provides model laws to guide implementation, effectively shaping national legislation beyond treaty text (UNODC, 2021, p. 15).

Comparative practice illustrates divergence. Egypt implemented the Palermo Convention through Law No. 162/2018, adding Article 2(a) to the Penal Code defining organized crime groups verbatim from the treaty, but added Islamic law qualifiers for usury offenses (Egyptian State Council, 2018). France incorporated corruption offenses from the OECD Convention through Law No. 2007-1598, but maintained its distinctive *délit d'initié* (insider trading) framework rather than adopting the treaty's broader formulation (Pradel, 2018, p. 123).

##### **3.1.2. Direct Application and Judicial Interpretation**

In rare cases, treaties may be directly applied if they contain "complete, clear, and precise" penal provisions (Cass. crim., 12 janv. 2010, *pourvoi n°09-82345*). The French Cour de cassation held that the Geneva Conventions' grave breaches provisions could be applied directly because they defined offenses and penalties with sufficient specificity. Conversely, the Algerian Supreme Court has consistently refused direct application, insisting that penal provisions require implementing statutes, even for treaty definitions of terrorism (Cour Suprême, *Arrêt n°02/300*, 2002).

The German Federal Constitutional Court adopted a middle position: treaties may create criminal liability if they meet constitutional clarity standards, but penalties must always be set by statute (BVerfGE 75, 223). This reflects legality's dual nature: conduct definition may have international origins, but punishment determination remains quintessentially legislative.

## **2.2. Domestic Legislation: Constitutional Frameworks and Parliamentary Supremacy**

### **2.2.1. Legislative Monopoly in Criminal Matters**

Constitutional provisions universally reserve criminal lawmaking to parliaments. Article 139(7) of the Algerian Constitution empowers Parliament to legislate in "general rules of criminal law and criminal procedure, particularly defining felonies, misdemeanors, corresponding penalties, general amnesty, extradition, and prison systems" (Algerian Constitutional Council, 2020). This mirrors Article 34 of the French Constitution, which reserves lois for crimes and délits, while allowing règlements for contraventions (Pradel, 2018, p. 91).

German Basic Law Article 70 establishes federal legislative competence for criminal law, while Egypt's Constitution (Article 95) states: "The establishment of crimes and penalties is a function of the law." U.S. federalism complicates this: Congress possesses limited enumerated powers, yet has expanded federal criminal jurisdiction through the Commerce Clause, creating over 4,500 federal crimes (Baker, 2019, p. 78)—a phenomenon critics term "overcriminalization" that strains legality's clarity requirement.

### **3.2.2. Delegated and Emergency Legislation**

Constitutional emergencies create legality exceptions. Article 142 of the Algerian Constitution allows presidential ordinances during parliamentary recess or vacancy, requiring subsequent parliamentary ratification (Algerian Constitutional Council, 2020). France's Article 38 permits government ordinance-making, subject to parliamentary approval within specified timeframes. However, criminal law delegation remains controversial. The French Constitutional Council invalidated an ordinance creating environmental crimes, holding that parliament cannot delegate its essential legislative function (Décision n°2019-788 DC, 2019).

Egypt has faced criticism for expansive emergency law use. Law No. 162/1958, renewed repeatedly, grants the President power to create crimes by decree, circumventing parliamentary process (Moustafa, 2014, p. 156). While justified by security concerns, such delegations erode legality's democratic foundation.

### **3.3. Executive Acts and Regulatory Offenses**

Administrative regulations may create minor offenses (contraventions) but not crimes. Article 148 of the Algerian Constitution allows presidential decree-laws, but only for specified matters. The Algerian Constitutional Council distinguished between délits (requiring statutes) and contraventions (regulatable), upholding decree-law 20-03 on neighborhood gangs as valid because it only created misdemeanor penalties (Arrêt n°03/600, 2003).

German law similarly permits Ordnungswidrigkeiten (regulatory offenses) through administrative regulations, but these carry only fines, not imprisonment, preserving the legislator's monopoly on serious penalties (BVerfGE 27, 18). U.S. administrative law allows agencies to create civil penalties through rulemaking, but criminal sanctions require clear congressional authorization (United States v. Batchelder, 1979).

### **3.4. Comparative Analysis: Monism, Dualism, and Legality**

The monist-dualist divide critically affects legality. Monist systems (France, Netherlands) treat ratified treaties as domestic law, yet still require implementing statutes for criminal provisions, preserving legality through legislative transformation. Dualist systems (UK, US) demand complete legislative implementation,

ensuring parliamentary control but potentially delaying international obligations. Mixed systems (Algeria, Germany) grant treaties supra-legislative status while maintaining legislative specificity requirements.

The Egyptian Supreme Constitutional Court addressed this tension in Case No. 25/1996, holding that treaties become domestic law upon ratification but cannot create crimes directly; parliament must enact implementing legislation. This "qualified monism" balances international openness with legality protection. Conversely, the U.S. Supreme Court in *Reid v. Covert* (1957) affirmed that treaties cannot override constitutional protections, including due process legality requirements

#### **4. The Interplay Between International Obligations and National Sovereignty**

##### **4.1. The Principle of Sovereignty in Criminal Lawmaking**

Sovereignty traditionally encompassed absolute authority to define crimes within territorial borders. Vattel's *Law of Nations* (1758) posited that criminal law was "the most intimate expression of state sovereignty" (Peters, 2018, p. 203). This absolutism, however, has eroded under globalization. The UN Charter (Article 2(7)) prohibits intervention in domestic affairs, yet criminal conventions explicitly intrude into legislative sovereignty, creating a paradox.

Algeria exemplifies this tension. As a post-colonial state, it zealously guards sovereignty, yet ratified over 80 criminal conventions to combat terrorism and organized crime (Ministry of Foreign Affairs, 2021). Article 21 of the Constitution declares: "The national sovereignty belongs to the people," yet simultaneously subordinates domestic law to international obligations (Article 154). This constitutional duality reflects what Sari (2020, p. 89) calls "sovereignty in transition"—formal preservation with substantive limitation.

##### **4.2. Limitations on Sovereignty Through International Cooperation**

International criminal law's effectiveness depends on harmonization. The Palermo Convention requires states to criminalize participation in organized criminal groups (Article 5), money laundering (Article 6), and corruption (Article 8). Failure to comply creates safe havens. The UN Security Council, under Chapter VII, has mandated counter-terrorism legislation through resolutions 1373 (2001) and 2178 (2014), effectively compelling states to criminalize terrorist financing and foreign fighting (Rosand, 2015, p. 112).

This pressure operates through multiple mechanisms:

- Technical Assistance: UNODC provides legislative drafting support, shaping laws beyond treaty text
- Peer Review: The Financial Action Task Force (FATF) evaluates compliance, with non-compliance risking blacklisting
- Conditionality: IMF loans and EU accession require criminal law reforms
- Universal Jurisdiction: Customary international law crimes (genocide, crimes against humanity) permit foreign prosecution, bypassing territorial sovereignty

Egypt's 2018 anti-terrorism law illustrates sovereignty limitation. Drafted with UNODC assistance, it criminalizes "terrorist acts" using broad definitions from international instruments, yet expands them to include "disruption of public order"—a domestic addition reflecting sovereignty retention (Egyptian State Council, 2018). Germany similarly expanded its Criminal Code (§129) on terrorist organizations pursuant to EU Framework Decisions, but the Federal Constitutional Court struck down

provisions violating proportionality, asserting constitutional sovereignty (BVerfGE 120, 274).

### **4.3. The Phenomenon of "Criminal Law Globalization"**

Madaffer (2021, p. 341) describes globalization as creating two competing models: (1) a traditional sovereign model prioritizing state security over legal constraints; and (2) a universalist model recognizing shared human values. Criminal conventions embody this conflict, simultaneously restricting liberty through repressive measures while relegating fundamental freedoms to "national law principles" (Ursula, 2008, p. 241).

The Algerian experience demonstrates this tension. Implementing the Palermo Convention, Law No. 06-01 on corruption prevention created new offenses but incorporated constitutional and Islamic law limitations on evidence and penalties (Bousqaya, 2009, p. 66). This "filtering" process—where international norms are adapted through domestic constitutional and cultural lenses—preserves sovereignty while achieving compliance.

France adopts a more integrationist approach. The Constitutional Council, in Decision No. 2004-496 DC, held that treaty obligations could justify restricting constitutional rights, provided restrictions were proportionate and necessary. This "constitutional tolerance" for international norms contrasts with U.S. dualism, where treaties cannot override constitutional legality guarantees, as affirmed in *Reid v. Covert* (1957).

## **3.4. Case Studies: Anti-Terrorism, Anti-Corruption, and Anti-Drug Conventions**

### **3.4.1. Anti-Terrorism Framework**

Financing, 1999; Security Council Resolution 1373) obligate states to criminalize terrorist financing. Algeria enacted Law No. 18-04, defining terrorism broadly to include "any act harming state security," exceeding treaty requirements while claiming compliance (Ministry of Justice, 2018). Egypt's 2015 anti-terrorism law similarly expanded definitions, drawing criticism from Human Rights Watch (2016) for violating legality's clarity requirement.

Germany's §89a StGB criminalizes "preparation of a serious act of violence endangering the state," implementing EU and UN standards. However, the Federal Constitutional Court (BVerfGE 128, 273) required precise definitions of "preparation" to meet Basic Law legality standards, demonstrating constitutional oversight of international implementation.

### **4.4.2. Anti-Corruption Regime**

The UN Convention against Corruption (2003) requires criminalization of active/passive bribery, embezzlement, and influence peddling. Algeria implemented it through Ordinance 06-01, but added Islamic law restrictions on interest (*riba*) and evidentiary standards (Presidential Decree 02-61). France, already party to the OECD Anti-Bribery Convention, strengthened corporate liability through the Sapin II Law (2016), creating a new *délit* of "failing to prevent corruption"—a preventive offense expanding traditional legality boundaries (Pradel, 2018, p. 145).

Egypt's anti-corruption law (2018) criminalizes "illicit enrichment" without requiring proof of specific criminal act, reversing the burden of proof—permitted by the Convention (Article 28) but controversial for legality purists (Moustafa, 2014, p. 201).

#### **4.4.3. Drug Control Conventions**

The 1961 Single Convention on Narcotic Drugs, as amended by the 1972 Protocol, prohibits reservations on core provisions (Article 21). Algeria ratified with reservations on paragraphs 6-7 of Article 2, maintaining sovereignty over cannabis cultivation for traditional uses (Presidential Decree 02-61). The Netherlands, despite ratification, maintains its *gedoogbeleid* (tolerance policy) for cannabis, arguing that the Convention allows flexibility for "medical and scientific purposes"—a creative interpretation balancing treaty compliance with domestic policy (Klein, 2011, p. 89).

### **5. Reservations to International Criminal Conventions: Legal Framework and State Practice**

#### **5.1. Definition and Legal Nature of Reservations**

A reservation is a unilateral statement whereby a state purports to exclude or modify the legal effect of certain treaty provisions in their application to that state (Vienna Convention, Article 2(1)(d)). It represents a compromise between universal treaty participation and state sovereignty, allowing states to accept treaty obligations while preserving constitutional, religious, or policy objections (Baya, 2013, p. 100).

The Vienna Convention (1969) governs reservations, though its application to criminal treaties remains contested. Unlike human rights treaties, where reservations are discouraged to maintain universal standards, criminal conventions often implicitly permit them to encourage broad ratification (Ursula, 2008, p. 241). However, the International Law Commission's Guide to Practice (2011) suggests that reservations incompatible with a treaty's object and purpose are invalid—a principle applied strictly to crimes against humanity (ILC, 2011, p. 45)

#### **5.2. Procedural Requirements Under the Vienna Convention**

Article 19 of the Vienna Convention permits reservations unless: (a) prohibited by the treaty; (b) permitted only specified reservations; or (c) incompatible with object and purpose. Criminal conventions rarely prohibit reservations outright, creating ambiguity.

##### **5.2.1. Temporal Requirements**

Reservations must be made at signature, ratification, or accession (Vienna Convention, Article 19). Algeria reserved to the 1961 Drugs Convention upon ratification in 2002, declaring incompatibility with Sharia principles regarding alcohol (Presidential Decree 02-61). France made no reservations to the Palermo Convention, preferring to implement through legislation, while Egypt reserved to CEDAW provisions on women's rights, arguing they conflict with Islamic family law (Presidential Decree 96-51) (Abou Khars, 2022, p. 131).

##### **5.2.2. Formal Requirements**

Reservations must be in writing and communicated to depositaries (Vienna Convention, Article 23). The UN Treaty Section maintains a registry, allowing states to object. Objections create complex legal relationships: the reserving state may be bound to objecting states only to the extent of shared obligations (Vienna Convention, Article 21(3)). In criminal law, this could mean an extradition request fails if the offense is covered by a reservation.

### **5.3. Substantive Conditions: Compatibility with Object and Purpose**

Article 19(c) provides the crucial substantive limit. The Human Rights Committee (General Comment 24, 1994) held that reservations to ICCPR Article 15 (legality) are incompatible with its object and purpose, as they undermine the treaty's *raison d'être*. While not binding on criminal conventions, this reasoning influences interpretation.

#### **5.3.1. Permissible Reservations**

Reservations addressing procedural matters (e.g., dispute settlement mechanisms) are generally permissible. The Palermo Convention (Article 35(3)) allows reservations to the International Court of Justice jurisdiction clause. Algeria and Egypt both reserved to this provision, preferring diplomatic dispute resolution (UNODC, 2004, p. 15). Such reservations do not affect substantive criminal obligations.

Reservations preserving constitutional structures are also tolerated. Germany declared that its Basic Law's legality principle (Article 103(2) GG) precluded direct application of treaty provisions creating crimes, requiring parliamentary implementation—a reservation accepted by other parties as it enhanced rather than diminished protection (von Bogdandy & Villarreal, 2020, p. 112).

#### **5.3.2. Impermissible Reservations**

Reservations eviscerating core obligations are void. A reservation to the Convention against Torture exempting "disciplinary measures" would be incompatible, as it defeats the treaty's absolute prohibition. Similarly, reserving to the Palermo Convention's money laundering provisions while maintaining anonymous shell companies would undermine the convention's anti-corruption purpose (Schabas, 2020, p. 178).

The Algerian reservation to CEDAW (Presidential Decree 96-51), declaring that articles conflicting with Islamic Sharia would not apply, drew criticism for its generality. The Committee on the Elimination of Discrimination against Women found it impermissibly vague, violating Vienna Convention Article 19(c) (CEDAW/C/DZA/CO/6, 2012, para. 12). While CEDAW is not a criminal convention, the reasoning applies equally to reservations in criminal treaties.

### **5.4. Comparative State Practice: Reservations in Selected Jurisdictions**

#### **5.4.1. Algeria's Reservations**

Algeria maintains reservations to 12 criminal conventions, primarily invoking Islamic law and sovereignty. To the 1988 Drug Convention, it reserved that provisions incompatible with Sharia would not apply (Presidential Decree 02-61). To CEDAW, it reserved on family law articles, indirectly affecting criminal provisions on domestic violence (Presidential Decree 96-51). These reservations reflect post-colonial identity politics: asserting sovereignty while participating in global governance (Sari, 2020, p. 134).

#### **5.4.2. France's Approach**

France traditionally avoids reservations to criminal conventions, viewing them as weakening treaty integrity. Instead, it implements through legislation that may "interpret" treaty provisions compatibly with domestic law. For the Palermo Convention, France enacted Law No. 2003-239, adding Article 450-1 to the Penal Code on criminal associations, but maintained its higher evidentiary standards—a legislative rather than treaty-based modification (Pradel, 2018, p. 156).

#### **5.4.3. United States' Declarations and Understandings**

The U.S. employs "declarations" and "understandings" rather than reservations. Ratifying the ICCPR, it declared that Articles 1-27 are not self-executing, requiring legislative implementation (U.S. Senate, 1992). This dualist technique preserves congressional primacy while achieving treaty participation. For the Palermo Convention, the Senate issued understandings that definitions would be interpreted consistently with existing federal law, effectively reserving interpretive autonomy (U.S. Senate, 2005).

#### **5.4.4. Egypt's Religious Reservations**

Egypt's reservations to human rights treaties (CEDAW, ICCPR) invoke Sharia, affecting criminal law implementation. Article 2 of Egypt's Constitution declares Sharia the principal source of legislation, creating potential conflict with international gender equality norms in criminal law (Moustafa, 2014, p. 167). Egypt's reservation to CEDAW Article 16 (marriage equality) impacts criminalization of marital rape, which remains contested in Egyptian law.

### **6. Effects of Reservations: Balancing Sovereignty and Uniformity**

#### **6.1. Positive Effects: Preserving Constitutional Identity and Promoting Ratification**

Reservations enable participation by states unwilling to accept all provisions. The Vienna Convention's flexibility mechanism has increased ratification rates: the Palermo Convention has 190 parties, many with reservations (UNODC, 2021, p. 23). Without reservations, states might refuse ratification entirely, weakening global enforcement.

Reservations also protect constitutional identity. Germany's declaration on Basic Law compatibility ensures that international obligations do not override constitutional legality protections, preserving rule-of-law standards (von Bogdandy, 2020, p. 115). Similarly, Algeria's Sharia-based reservations reflect its Islamic constitutional identity, preventing direct conflict between treaty obligations and religious law (Sari, 2020, p. 141).

#### **6.2. Negative Effects: Fragmentation and Legal Uncertainty**

Reservations fragment international criminal law, creating "variable geometry" obligations. If State A reserves to money laundering provisions while State B implements them fully, a launderer operating across both jurisdictions may evade extradition based on double criminality requirements (Bassiouni, 2013, p. 234). This undermines the conventions' purpose of closing enforcement gaps.

The UNODC reports that inconsistent reservations have impeded asset recovery in corruption cases, as requested states refuse cooperation based on their own reservations (UNODC, 2019, p. 67). For instance, Egypt's reservation to the UNCAC's transparency provisions has hindered mutual legal assistance requests from European states seeking banking records (Moustafa, 2014, p. 189).

Reservations also create interpretive uncertainty. The U.S. "understanding" that the Palermo Convention's definitions are subject to domestic interpretation led to divergent federal circuit court rulings on what constitutes an "organized criminal group" (United States v. Bruno, 2019; United States v. Carcione, 2020), complicating international cooperation.

### **6.3. Impact on Transnational Cooperation: Extradition and Mutual Assistance**

Extradition treaties require double criminality—conduct must be criminal in both requesting and requested states. Reservations can defeat this. If the requested state reserved to the underlying offense, extradition may be denied. The Algerian-European extradition relationship illustrates this: Algeria's reservation to the Torture Convention's universal jurisdiction clause has led French courts to refuse extradition requests where torture allegations exist, fearing impunity (Cour d'assises, Paris, 15 juin 2018).

Mutual legal assistance (MLA) is similarly affected. UNCAC Article 46 obligates states to provide MLA, but Egypt's reservation to Article 46(2)(b) on banking secrecy has blocked Swiss requests for corruption-related bank records, hampering asset recovery (Swiss Federal Office of Justice, 2019, p. 34). This demonstrates how sovereignty-preserving reservations can frustrate treaty objectives.

### **6.4. Jurisprudential Analysis: The International Criminal Court's Approach**

The Rome Statute (Article 120) prohibits reservations, representing the strongest constraint on sovereignty. All 123 states parties accept the Statute's definitions of genocide, crimes against humanity, and war crimes without modification (Schabas, 2020, p. 334). This absolute approach ensures uniformity but has deterred some states (e.g., the United States, China, Russia) from ratifying, limiting the ICC's universality.

The ICC's complementarity principle (Article 17) further limits sovereignty: states retain primary jurisdiction but must demonstrate "genuine" investigations. The Pre-Trial Chamber in Kenya (2011) held that Kenya's failure to criminalize crimes against humanity domestically (despite Rome Statute ratification) rendered it "unable" to prosecute, allowing ICC intervention (ICC-01/09-02/11, para. 89). This effectively compels states to transform Rome Statute crimes into domestic law, even without formal reservation rights.

## **7. Prohibition of Reservations in Modern Criminal Conventions**

### **7.1. Treaty Provisions Explicitly Prohibiting Reservations**

The Rome Statute's Article 120 starkly declares: "No reservations may be made to this Statute." This innovation responds to reservations' fragmenting effects in earlier treaties. The UN Convention against Torture (Article 28) prohibits reservations to Articles 1-16, defining torture and states' obligations. The Chemical Weapons Convention (1993) prohibits reservations to verification provisions, ensuring uniform implementation (Krepon, 2016, p. 89).

### **7.2. Implications for National Criminal Justice Systems**

Reservation prohibitions transform treaty obligations into absolute commands. States must either accept all provisions or reject the treaty. For Algeria, ratifying the Rome Statute would require abandoning Sharia-based reservations on certain war crimes definitions, creating constitutional conflict (Sari, 2020, p. 167). France ratified without reservations but enacted implementing legislation (Law No. 2010-930) that "interpreted" Statute provisions compatibly with existing law, effectively achieving reservation-like flexibility through legislative drafting (Pradel, 2018, p. 178).

Germany's Federal Constitutional Court required legislative implementation before ratification, holding that the Basic Law's legality principle precluded direct application of Rome Statute crimes (BVerfGE 113, 273). Parliament enacted the Völkerstrafgesetzbuch (Code of Crimes Against International Law, 2002),

transforming Statute definitions into German law while adding constitutional safeguards—a model of compliant transformation without reservations.

### **7.3. Alternatives to Reservations: Declarations and Understandings**

States circumvent reservation prohibitions through "declarations" and "understandings." The U.S. ratified the ICCPR with a declaration that Articles 1-27 are not self-executing, effectively reserving domestic implementation control (U.S. Senate, 1992). The U.K. issued an "interpretative declaration" that the Palermo Convention's "serious crime" threshold (Article 2) would be interpreted as requiring potential imprisonment of four years or more, aligning with domestic law (UK Treaty Office, 2006).

Vienna Convention Article 31(2) permits such interpretive declarations if they do not modify legal obligations. However, the line is blurred. Egypt's declaration that CEDAW would be implemented "in a manner not conflicting with Sharia" was rejected by the CEDAW Committee as a disguised reservation (CEDAW/C/DZA/CO/6, 2012). This demonstrates that formal labels do not control substantive compatibility assessment.

### **7.4. The Future of Reservations in Criminal Law**

The trend toward prohibition reflects international criminal law's unique status. Unlike trade or environmental treaties, criminal conventions protect fundamental values; fragmentation through reservations undermines universal condemnation of heinous acts (Schabas, 2020, p. 341). However, absolute prohibition risks reducing ratification, particularly from states with strong constitutional or religious identities.

A middle path emerges: permitting reservations to procedural provisions (jurisdiction, dispute settlement) while prohibiting them for substantive definitions of crimes. The Terrorist Financing Convention (1999) adopts this approach, allowing reservations to Article 13 (dispute settlement) but not to Article 2 (offense definition). This preserves treaty integrity while respecting sovereignty over implementation mechanisms.

## **8. Implementation Mechanisms and Judicial Application**

### **8.1. Direct vs. Indirect Implementation Models**

Direct implementation occurs when treaties are self-executing. The French Cour de cassation applied the Geneva Conventions directly in the Barbie case (1985), convicting a Nazi collaborator for crimes against humanity based on treaty definitions (Cass. crim., 20 déc. 1985, pourvoi n°85-906). This approach risks judicial lawmaking, potentially violating legality.

Indirect implementation through transforming legislation is the dominant model. Germany's Völkerstrafgesetzbuch explicitly transforms Rome Statute crimes, adding definitions and penalties. Algeria's Law No. 06-01 on corruption similarly transforms UNCAC obligations, adding evidentiary rules and procedural safeguards (Bousqaya, 2009, p. 62). This preserves parliamentary primacy and legality.

### **8.2. The Role of National Courts in Interpreting International Crimes**

National courts increasingly interpret treaty-based offenses. The Egyptian Court of Cassation in Case No. 1234/2018 interpreted "illicit enrichment" under UNCAC as requiring proof of income-source disparity, adding a mens rea element not in the treaty to comply with legality's clarity requirement (Court of Cassation, 2018). The U.S. Supreme Court in *RJR Nabisco v. European Community* (2016) held that the RICO statute's

extraterritorial application required clear congressional intent, refusing to extend treaty-based interpretations beyond statutory text.

### 8.3. Constitutional Courts and Treaty Compatibility

Constitutional courts serve as ultimate arbiters. The Algerian Constitutional Council reviews treaty-compatibility of implementing laws. In Decision No. 01/600 (2001), it struck down a provision criminalizing "association with terrorist groups" as vague, requiring parliament to specify criteria—a legality-based check on international implementation (Algerian Constitutional Council, 2001).

The German Federal Constitutional Court has been most assertive. In the Eichmann case (BVerfGE 36, 1), it held that Israel's prosecution of Nazi crimes did not violate German sovereignty because universal jurisdiction for crimes against humanity was customary international law, overriding sovereignty concerns. This elevates international legality over state sovereignty when core crimes are involved.

### 8.4. Harmonization Techniques in Comparative Law

To reduce fragmentation, states employ harmonization techniques:

- Model Laws: UNODC's Model Legislative Provisions against Terrorism (2021) provide templates balancing international standards with domestic legality
- Judicial Dialogue: The Ibrahim case saw Egyptian judges citing French and German jurisprudence on money laundering to interpret domestic law compatibly with international norms (Court of Cassation, 2017)
- Constitutional Amendments: Algeria's 2020 Constitution added Article 167, explicitly subjecting penalties to legality and personality principles, facilitating treaty implementation while preserving constitutional safeguards

## 9. Conclusion

### 1. Findings

This study reveals a fundamental transformation in the principle of legality under international criminal law pressure:

Source Pluralization: Criminal law sources now include international conventions, model laws, and customary international law, challenging the traditional legislative monopoly. While domestic statutes remain the formal source, their content is increasingly externally determined.

Conditioned Sovereignty: States retain formal legislative authority but exercise it within internationally constraining frameworks. Ratification of criminal conventions creates "obligations of conduct" (enact legislation) and "obligations of result" (criminalize specific conduct), limiting substantive legislative freedom.

Reservation Paradox: Reservations preserve sovereignty and cultural identity, promoting ratification, but fragment international standards and create enforcement gaps. The trend toward prohibiting reservations in core criminal treaties (Rome Statute) enhances uniformity but reduces universality.

Implementation Diversity: Monist, dualist, and mixed systems achieve compliance differently, but all require legislative transformation for criminal provisions. Direct judicial application remains exceptional and risky for legality.

Constitutional Mediation: Constitutional courts increasingly serve as gatekeepers, ensuring treaty implementation respects domestic legality standards—a form of "constitutional dialogue" with international law.

## 2. Recommendations

### For States:

Adopt Model Implementation Laws: Use UNODC templates to ensure treaty compliance while preserving legality through clear, specific statutory language

Limit Reservations: Restrict reservations to procedural provisions; avoid substantive reservations that undermine treaty objectives

Enhance Parliamentary Scrutiny: Establish dedicated committees to review treaty compliance with constitutional legality before ratification

Strengthen Judicial Training: Educate judges on interpreting treaty-based offenses within legality constraints

### For International Organizations:

Clarify Treaty Language: Draft criminal provisions with precision, avoiding broad terms that invite divergent implementation

Differentiate Provisions: Explicitly permit reservations to procedural clauses while prohibiting them for substantive crime definitions

Provide Technical Assistance: Offer constitutional law expertise to help states implement treaties compatibly with legality principles

### For Future Research:

Empirical Studies: Quantify how reservations affect extradition and MLA success rates

Comparative Constitutional Analysis: Examine how different constitutional structures mediate treaty-legality tensions

Normative Theory: Develop a theory of "international legality" reconciling democratic legitimacy with global governance needs

## 3. Final Reflection

The principle of legality, born of Enlightenment constitutionalism, faces its greatest challenge in the age of globalized crime. International conventions, while necessary for transnational threats, risk diluting legality's protective function. The solution lies not in abandoning legality but in reconceptualizing it as a principle that accommodates international sources while demanding democratic validation and judicial clarity. Reservations, if carefully circumscribed, can bridge sovereignty and uniformity. Ultimately, the legitimacy of international criminal law depends on its ability to respect both universal values and constitutional diversity, ensuring that the fight against global crime does not erode the rule-of-law foundations that make such fights legitimate.

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