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"Müstehcenliklik..."

Mehmet Aygün,

DİA Ktp. 371.004 MIL.G.
içinde, s. 57-63

interests of the accused over whom Islamic criminal jurisdiction is exercised.⁵

The prohibition of narcotic drugs in Islamic law not only has national characterization but an international characterization also. This is because, according to the theory of Islamic law, acts by individuals or their state within their own territories should not harm other nations in the universal. This is on the grounds that all men must be treated equally before the law of God. Analogies in narcotic offences under Islamic international criminal law may therefore be made with similar prohibitions stated in the system of conventional international criminal law. These includes aspects such as production, manufacture, extraction, preparation, offering for sale, distribution, sale, delivery in whatever way, dispatch, transport, importation and exportation of any narcotic drugs. This conclusion is with the reservation that the system of international criminal law has regulated certain provisions for all these activities in conventional international criminal law, while the same conclusions in Islamic international criminal law are deduced from its purposes, functions and sources which forbid, prohibit and make any intentional involvement in narcotic drugs a prosecutable and punishable crime. Clear examples of this practice can be examined in the legislations of many states in which the Islamic law has influence, such as the legislation and practice of Iran. An involvement with any type of illegal narcotic drugs can be specified under the principle of *taboo*.

Although we do not deny that the procedure for jurisdiction over prosecution and punishment may differ in Islamic law from other systems, this does not preclude the comparative integration of both systems of international criminal law. As an acceptable general principle of the system of international criminal law, so long as there is not yet established a permanent international criminal court in order to exercise jurisdiction over the perpetrators of international crimes for the purpose of effective prosecution and punishment, the implementation and enforcement of the system remains the privilege of various select legal systems.

⁵ It is useful to be noted here that Islamic criminal law does not punish those who are addicted to drugs while they attempt to stop their addiction. There will be inflicted *hudud* penalties, if after they have been cured of their dependency they become addicted again. Lippman, McConville and Yerushalmi, *Islamic Criminal Law and Procedure*, p.48.

Chapter Fourteen

Obscene Activities and Publications

1. Non-Effective Criminalization in International Criminal Law

Although the system of international criminal law has greatly developed in various fields of criminal law, the system still lacks certain effective provisions for the prohibition of certain activities which are harmful to individuals in general and the social interests of the international community in particular. For example the system of international criminal law has very limited provisions for the prohibition and prevention of obscene activities and publications. The relevant instruments applicable to this international crime are no longer useful in terms of the present epoch.¹ This is because there is still no effective movement(s) for the criminalization of obscene publications in the relevant legislations of states and governments are generally reluctant to adopt legal

¹ These instruments are: 1. Arrangement for the Suppression of the Circulation of Obscene Publications, 4 May 1910. 5 A.J.I.L. (1911), p.167.

2. International Convention for the Suppression of the Circulation of and Traffic in Obscene Publications, 12 September 1923. Hudson, II *International Legislation*, p.1051.

3. Protocol to Amend the Convention for the Suppression of the Circulation of and Traffic in Obscene Publications, concluded at Geneva on 12 September 1923, 1947. 46 U.N.T.S. 169.

4. International Convention for the Suppression of the Circulation of and Traffic in Obscene Publications, concluded at Geneva on 12 September 1923 and amended by the Protocol signed at Lake Success, New York, on 12 November 1947. 46 U.N.T.S. 201.

5. Protocol amending the Agreement for the Suppression of the Circulation of Obscene Publications, signed at Paris on 4 May 1910, 1949. 30 U.N.T.S. 3.

6. Agreement for the Suppression of the Circulation of Obscene Publications of 4 May 1910, amended by the Protocol of 4 May 1949, 1949, 47 U.N.T.S. 159, and

7. Convention on the Rights of the Child, 20 November 1989. Resolution 44/25, Adopted without a vote, Report: A/44/736 and Corr.1, U.N. Press Release, Department of Public Information, Press Release G.A./7977, 22 January 1990, Resolutions and Decisions Adopted by the General Assembly During the First Part of Its forty-fourth Session from 19 September to 29 December 1989. The 1910 Arrangement and the 1923 Convention regulate the most important provisions applicable to this international crime. Other instruments have only modified or adapted the provisions of the arrangement and the convention to the time.

