THE INTERNATIONAL CRIMINAL COURT AS A COMPLEMENTARY TO NATIONAL JUDICIARY

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Abstract
The idea of establishing courts was conceived in the minds of many after World War I, and the need for it became urgent after the repercussions of World War II. On December 9, 1994, the United Nations General Assembly established a specialized committee tasked with reviewing the major technical and administrative issues and considering the necessary arrangements for the preparation of an international treaty on the establishment of the International Criminal Court. On December 11, 1995, the General Assembly established, under Resolution 50/46, a preparatory committee to further discuss the emerging technical and administrative issues arising from the draft statute prepared by the International Law Commission and to formulate the text of the treaty. The committee continued its meetings during the years 1997-1998, based on United Nations General Assembly Resolution 51/207 issued on December 17, 1996, and referred to the Diplomatic Conference in Rome, which was held from June 15 to July 17, 1998, at the headquarters of the Food and Agriculture Organization. One of the significant implications of establishing the court as an international treaty is that it remains governed by the principle of the relative effect of international treaties.

INTRODUCTION:

In every specific society, there are overarching interests that must be safeguarded, primarily ensuring its security, stability, and the preservation of its entity. There is also a fervent need for the safety of society members to achieve harmony and cohesion, both within its own population and with other societies. No state can exist in isolation from other states in terms of relations, which should guarantee the fundamental interests of each state and protect them from the dominance and tyranny of other nations. Since self-interest and prioritizing private interests over the public interest are distinctive characteristics of the international community, it is impossible to envision this community without conflicts and disputes among its members, which have escalated into devastating and lethal wars, exacerbated by scientific and technological advancements. This reality prompted the United Nations, since its establishment in 1945, to take the reins and put an end to this deadly phenomenon that claimed millions of human lives during the First World War (1914-1918) and the Second World War (1939-1945).

Throughout history, the only means for people to hold oppressors accountable was through revolting against them, either killing them or waiting for their trial before the divine court in the afterlife. Nevertheless, there has always been a dream of establishing a court to prosecute perpetrators of crimes against humanity. This idea emerged into the scene after the First World War, and the need for it became urgent after the Second World War, which gave birth to deformed embryos of such courts. The Nuremberg Tribunal, which aimed to prosecute Nazi officers, was considered by observers as lacking complete impartiality since the victors were the ones trying the defeated. The Tokyo Tribunal, as well as the special tribunals for Yugoslavia and Rwanda, also faced similar criticisms. As for the International Criminal Court, which was stipulated in the Genocide Convention signed in 1948, it remained frozen for almost half a century due to the circumstances of the Cold War.

The persistent question resides in recognising how the International Criminal Court started (ICC) and became a reality.

Following the dissipation of the Cold War era, the General Assembly of the United Nations, on 4 December 1989, requisitioned the International Law Commission to deliberate on the matter of establishing the ICC. This request came in the wake of the conflagration sparked by the conflicts that erupted in the 1990s, which galvanized the collective consciousness towards the imperative need for this judicial institution. Notably, the wars in Yugoslavia and Rwanda bore witness to a litany of transgressions and organized crimes that transgressed the boundaries of international humanitarian law. Consequently, the realization of an international criminal court materialized, underpinned by the resolutions of the United Nations Security Council in 1993 and 1994. This court materialized as a permanent international judicial apparatus, affording access to both state parties and non-state parties within the framework of the court's statute. Its headquarters are situated in The Hague, the political capital of the Netherlands. How did the International Criminal Court evolve into an actuality?

Many individuals and organizations concerned with human rights rallied around the project of the court, making it a demand shared by numerous entities concerned with human rights. After multiple preparatory meetings, the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court was convened. The conference witnessed the participation of 160 countries, 31 international organizations, and 136 non-governmental organizations as observer and member entities. From this conference, the Statute of the International Criminal Court, the Final Declaration, and six additional resolutions were adopted.

The International Criminal Court (ICC) consists of several organs, including the Presidency, the Appeals Division, the Trial Division, the Pre-Trial Division, the Office of the Prosecutor, and the Registry. Its jurisdiction initially applied only to crimes committed after the accession of a state party. However, the ICC has the authority to prosecute individuals and states when the alleged crime took place within the territory of a state party or was committed by a national of that state. Additionally, the ICC can exercise jurisdiction when a non-state party voluntarily accepts its jurisdiction for a particular crime committed within its territory or by one of its nationals. The question of who falls under the jurisdiction of the International Criminal Court arises.

The jurisdiction of the International Criminal Court applies solely to natural persons who commit crimes after reaching the age of 18. It is noteworthy that no one is exempt from criminal responsibility based on official capacity. The Rome Statute stipulates that it is the duty of the Court to prosecute the most serious crimes, namely genocide, crimes against humanity, war crimes, and the crime of aggression. The Statute also recognizes the official languages and emphasizes the principle of complementarity between the Court's jurisdiction and that of the state parties, with national criminal jurisdiction always taking precedence. It is worth mentioning that Jordan and Djibouti were the first Arab countries to ratify the treaty, and there are other Arab countries that have already signed the Statute, but they may not have ratified it yet. The United States of America signed the Rome Statute on December 31, 2000, but did not ratify it and withdrew its signature in May 2002. The United States opposed the establishment of the International Criminal Court and advocated for the Security Council to have complete control over the Court's prosecutorial authority. One of the main concerns of the United States is the notion of prosecuting American military personnel for war crimes. As a result, the United States resorted to bilateral agreements with different countries to exempt military personnel and citizens from appearing before the International Criminal Court. Among the countries that signed such agreements are Israel and Egypt.

What are the reasons that led to establishing the International Criminal Court?

The establishment of a permanent International Criminal Court serves the common international interest and works towards solidifying the foundations of international criminal law. This law, which states participated in formulating and adopting, is a law that strives for effectiveness and respect for its provisions. However, it requires an independent and permanent judicial body to ensure the enforcement of these provisions and determine the responsibility of those who violate

them. The credibility of states in adhering to agreements and treaties that prohibit international crimes, and attribute the status of international crimes to certain actions, has only one meaning: that those states recognize the international responsibility of individuals that goes beyond the duties and obligations imposed on them by their own countries. Given the grave nature of the violations of prohibited acts in those agreements, they fall under the purview of international criminal jurisdiction, especially since these violations constitute a severe assault on human conscience and a disregard for international values, contradicting the objectives and principles of the United Nations. It poses a blatant challenge to all the progress and prosperity achieved by humanity. On the other hand, the international system has evolved significantly under the United Nations, establishing clear and well-founded standards. However, the application of these standards still faces limitations due to the absence of appropriate international mechanisms. As a result, the international community suffers from the commission of numerous international crimes during both times of war and peace. In order to address this flaw in the international system, it is necessary to establish an international criminal court specialized in prosecuting international crimes or crimes of an international nature. This would serve the idea of justice in accordance with the principles of international law, rather than leaving violations of this law without accountability or punishment.

Another argument put forward by jurisprudence as a justification for the establishment of the International Criminal Court is the referral of individuals accused of committing international crimes to national courts for prosecution. However, this approach can lead to contradictory judgments and different penalties in similar cases, which hinders the development of international criminal law. Additionally, another reason for the establishment of a permanent International Criminal Court is that any criminal law system must primarily aim to ensure that violators of its provisions are held accountable for the crimes they commit through fair trials.

One of the arguments in favor of establishing a permanent International Criminal Court is that in the absence of such a court, the alternative would be that the trial of international crimes, particularly war crimes, the crime of aggression, and crimes against humanity, would only be possible in cases where one side emerges victorious and the other side is defeated. In such cases, the victorious party establishes temporary courts to prosecute war criminals.

Indeed, the establishment of the International Criminal Court (ICC) can contribute to reducing acts of revenge or tit-for-tat behavior that states often resort to during times of war. By placing pressure on the will of enemy states, the ICC provides an alternative avenue for seeking justice. States that have been aggressed upon or victimized can turn to the ICC to demand the prosecution and punishment of responsible individuals without the need for retaliatory actions that were prevalent in the past.

Studying the subject of the International Criminal Court holds paramount importance in comprehending this singular and enduring judicial institution, which possesses jurisdiction to exercise its authority over individuals involved in the most serious crimes that plague the world, such as crimes against humanity.

First Subject: The Need for Establishing an International Criminal Court

In this section, we will address two aspects. The first is the nature of the International Criminal Court, and the second is the reasons for its establishment.

First Requirement: The Nature of the International Criminal Court

Throughout history, the only means by which peoples could hold their oppressors accountable was through uprising, resulting in their killing or their natural death, awaiting their judgment before the divine court in the afterlife. However, there has always been a dream of establishing a court to prosecute criminals against humanity. It can now be said that the dream has been realized with the establishment of the International Criminal Court in The Hague, the political capital of the

Netherlands. This court is the latest addition to a city filled with international courts[1]. The International Criminal Court is an independent and permanent judicial body, based on the international community, with the aim of prosecuting perpetrators of the most serious crimes that pose a threat to humanity, international security, peace, crimes against humanity, and war crimes.
The establishment of the court came after numerous negotiations and the Diplomatic Conference's adoption of the Rome Statute, the foundational system of the International Criminal Court. The Rome Statute was approved by 120 countries, while seven countries objected to it: the United States of America, Israel, China, India, Iraq, Libya, and Qatar. Additionally, 21 countries abstained from voting. The conference adopted the Statute and opened it for signature from July 18, 1998, to October 17, 1998, at the headquarters of the Italian Ministry of Foreign Affairs. Subsequently, from then until December 31, 2000, the signing continued at the United Nations headquarters in New York. The Statute also provided for ratification, acceptance, or accession in accordance with its provisions.[2]
If we examine the nature of this court, we find that it possesses a set of characteristics, as well as advantages and disadvantages.

First Issue: Characteristics of the International Criminal Court

1. The International Criminal Court is distinguished from other courts by its specialization in prosecuting individuals who commit international crimes as defined by law. It differs from the International Court of Justice, which deals with and resolves disputes between states only. Furthermore, the jurisdiction of the International Criminal Court is optional, unlike the compulsory jurisdiction of the International Court of Justice. It also differs from specialized international criminal tribunals in that it is a permanent court, with its distinctiveness stemming from its permanence, unlike temporary courts such as the former Yugoslavia or Rwanda tribunals.
2. The International Criminal Court possesses complementary jurisdiction to national courts, rather than being a substitute for them.
3. The International Criminal Court is the outcome of an international treaty, emerging as a result of an agreement reached among sovereign states that decided to cooperate and address the perpetrators of crimes that affect humanity[1].

All of these characteristics have instilled hope in the success of the International Criminal Court, despite the obstacles it has faced and continues to face. In concluding the discussion about the nature of this court, it is worth noting that the foundational Rome Statute named it the International Criminal Court. It prioritized the criminal aspect over the international aspect, so it should have been named the International Criminal Court, which is a more accurate and fitting name for a branch of international law. This name given by the Rome Statute does not create any confusion because the court is inherently not national but internationally recognized.

Second Issue: Advantages and Disadvantages of the International Criminal Court

1. The court has the ability to accept claims from individuals, states, and groups against other states or individuals accused of war crimes, genocide, or crimes of aggression, provided that these crimes were committed after July 1, 2002, and not retroactively.
2. The fact that a state has not signed the treaty does not exempt its officials from prosecution. Individuals from countries such as the United States and Israel, or any other state that refused to sign, can still be prosecuted[3].

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[1]This means that this city houses the International Court of Justice, which is specialized in resolving disputes between countries, and the International Criminal Tribunal for the former Yugoslavia, and then the International Criminal Court, which had a temporary headquarters in The Hague until its permanent headquarters was completed. The International Criminal Court prosecutes perpetrators.Islamonline.net.

[2]Dr. Abu Al-Khair Ahmed Atiya, Department of Public Law, Permanent International Criminal Court, Study of the Statute of the Court and the Crimes it deals with, 1999 edition, published by Dar Al-Nahda Al-Arabiya, p. 15.

[3]A. LandaYashui, previous reference, p. 94.

3. The existence of the court serves as a deterrent to many individuals and states accustomed to criminality and mass killings.
4. The distinction between this court and the International Criminal Court for the former Yugoslavia in The Hague, Netherlands, is that the latter prosecutes states, whereas the former prosecutes individuals accused of crimes against humanity.
Some of the disadvantages are:
1. It will not be able to prosecute anyone for crimes committed prior to its establishment, which is a condition imposed by major states.
2. The jurisdiction of the court is limited to citizens of states that have signed and ratified the founding agreement.
3. It diminishes national sovereignty in favor of international justice, allowing international justice to intervene in the sovereignty of countries to prosecute heads of state or officials.
4. Opponents of this court and those seeking to undermine its role are major powers from both the West and the East, including the United States, Russia, and China, while the signatories are smaller, less influential countries on the international stage[3].
5. There are no guarantees to compel a country like the United States or Israel to cooperate or enforce the decisions of this court. Countries like the United States have requested exemptions for their soldiers and officials from the jurisdiction of this court, arguing that their enemies will seek to target them. Therefore, we note the ongoing attempts to subject the court to the authority of the Security Council on one hand and pressure the Security Council to exempt all U.S. forces participating in peacekeeping operations from the court's jurisdiction on the other hand[4].

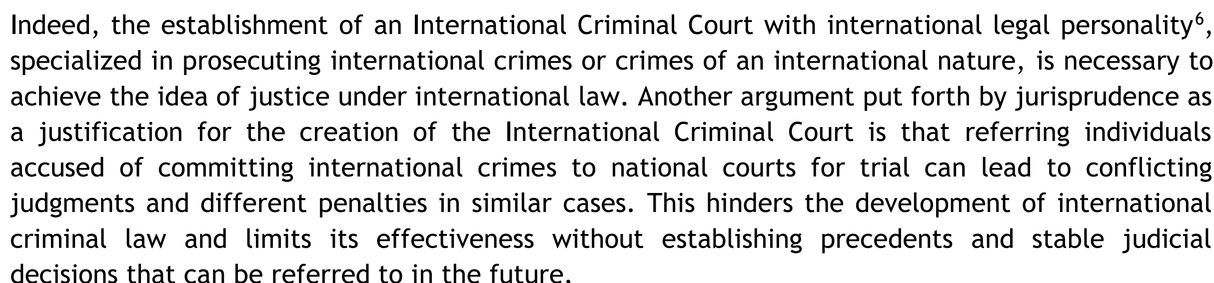
The Second Requirement: Reasons for the establishment of the International Criminal Court

The case of former Chilean dictator General Augusto Pinochet, who committed crimes against humanity during his rule, is a compelling example. He was arrested in London and extradited to Spain for trial based on the principle of universal jurisdiction[5]. However, he was not prosecuted due to lacking the necessary mental capacity, and he was released in March 2000. This incident highlights the actual need for the International Criminal Court, especially in the face of widespread human rights violations and violations of international humanitarian law. It is worth noting that the establishment of a permanent international criminal court would serve the common international interest and contribute to solidifying the foundations of international criminal law. This law, in which countries have participated in its formulation and adoption, seeks effectiveness and respect for its provisions, but it requires an independent and permanent judicial body to ensure the enforcement of these provisions, determine the responsibility of those who violate them, and hold them accountable. The credibility of states in complying with agreements and treaties that prohibit international crimes, which attribute international responsibility to individuals that defies their domestic obligations and commitments imposed by the states themselves, signifies that those states recognize an international responsibility of individuals. On the other hand, the international system has evolved significantly under the United Nations, establishing clear and well-founded standards and institutions. However, the implementation of these standards still faces challenges due to the lack of appropriate international mechanisms. As a result, the international community continues to witness the commission of numerous international crimes during both times of war and peace.

[3]Without an author, the year of the establishment of the first international criminal court. www.iccnow.org

[4]The principle of jurisdiction states that it is in the interest of every state to refer perpetrators of certain crimes that concern the international community as a whole to justice, regardless of the location of the crime or the nationality of the perpetrators or victims. The election of judges of the International Criminal Court is a landmark in the history of justice.www.newsarabic.com.

[5]Global jurisdiction: Previously defined (Disadvantages of the International Criminal Court)www.newsarabic.com



Indeed, the establishment of an International Criminal Court with international legal personality[6], specialized in prosecuting international crimes or crimes of an international nature, is necessary to achieve the idea of justice under international law. Another argument put forth by jurisprudence as a justification for the creation of the International Criminal Court is that referring individuals accused of committing international crimes to national courts for trial can lead to conflicting judgments and different penalties in similar cases. This hinders the development of international criminal law and limits its effectiveness without establishing precedents and stable judicial decisions that can be referred to in the future.

One of the other reasons calling for the establishment of a permanent International Criminal Court is that any criminal justice system must primarily emphasize that violators of its provisions will be held accountable for the crimes they commit after a fair trial[2].

Another argument advocating for the creation of this permanent court is that the alternative, in the absence of such a court, is to rely on ad hoc tribunals for the prosecution of international crimes, especially war crimes, crimes of aggression, and crimes against humanity. However, in such cases, the possibility of trials for these crimes is contingent upon the victory or defeat of one side. In this scenario, the victorious party establishes temporary courts to prosecute war criminals from the defeated party's nationals[7].

Indeed, there are other reasons for the establishment of the International Criminal Court. Impunity must come to an end, where individuals can escape punishment for their crimes. It is often easier to hold someone accountable for killing one person rather than for killing hundreds of thousands of people, especially when multiple non-governmental organizations are involved in the process[8].

Indeed, the establishment of the International Criminal Court would contribute to moving away from acts of revenge or retaliatory actions that states often resort to, especially during times of war. It would exert pressure on the will of hostile states, as the victim state or affected state can turn to the International Criminal Court to demand the prosecution and punishment of those responsible for their crimes, without the need for retaliatory actions.

The second Subject: Drafting the Statute of the International Criminal Court

After the Preparatory Committee completed the drafting of the agreement related to the establishment of the International Criminal Court and submitted it to the Conference, during its final meeting held from March 16 to April 3, 1998, the Diplomatic Conference took place in Rome from June 15 to July 17, 1998. The conference was held at the headquarters of the Food and Agriculture Organization. The General Assembly of the United Nations had requested the Secretary-General to invite all member states of the United Nations, members of specialized international agencies, or members of the International Atomic Energy Agency to participate in the conference. The conference was attended by delegations from 160 countries and 17 non-governmental organizations. Subsequently, the draft was presented to the conference, which, in turn, referred it back to the Preparatory Committee. Through deliberations, the conference adopted the Rome Statute, which was approved by 120 countries. However, seven countries objected to it, namely the United States of America, Israel, China, India, Iraq, Libya, and Qatar. Additionally, 21 countries abstained from voting. The conference adopted the Statute and opened it for signature on July 18, 1998, until October 17, 1998, at the headquarters of the Italian Ministry of Foreign Affairs[9]. The final deadline for accepting signatures was December 31, 2000. A total of 139 countries signed the

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[6]International legal personality is the authority of a specific political entity to acquire rights and bear obligations as determined by the rules of international law, established through the participation of other individuals with the ability to express independent will at the level of international relations. (Dr. Mohamed Youssef Alwan, Public International Law, 1990, p. 105).

[7]Fair trial: This principle is stipulated within the derived principles from the judgments issued by the Nuremberg and Tokyo military tribunals, which decided that anyone who commits or participates in the commission of an act that constitutes a crime under international law is responsible and deserving of punishment, i.e., personal responsibility. (Dr. Abu Al-KhairAtiya, Department of Public International Law, Permanent International Criminal Court, Dar Al-Nahda Al-Arabiya, p. 9).

[8]Selective justice: The determination of crimes that lead to the establishment of special courts is done without a clear criterion, making these courts more tied to political and military situations rather than aiming to achieve justice and peace. (A. LandaYishai, Master's thesis (Jordan), Permanent International Criminal Court, 2005, p. 79).

[9]Dr. Abu Al-Khair Ahmed Atiya, the former reference, page 15.

Statute, with the aim of establishing the International Criminal Court. This widespread support for the institution demonstrates a strong encouragement to put an end to the culture of impunity, making the 21st century distinct from previous centuries in terms of its approach.

It is worth noting that the United States of America strongly opposed the idea of establishing the Court and sought to convince other countries to enter agreements that would exempt their nationals from prosecution. Their goal was to prevent the surrender of their citizens accused of genocide, crimes against humanity, or war crimes to the International Criminal Court. The United Nations expressed concern regarding the signing of the Statute by two countries, namely Romania and Tajikistan, as this constituted a violation of Article 86 of the Rome Statute. After facing strong opposition, the United States eventually signed the treaty just before midnight on December 31, 2000, along with Israel and Iran. The reason behind their signing was to remain engaged and influence the functioning of the Court. However, this did not imply abandoning Washington's reservations[10]. The United States reiterated its commitment to the principle of responsibility[11].As for the Arab states that ratified the Rome Statute, they include Bahrain, Egypt, the United Arab Emirates, Jordan, Kuwait, Morocco, Oman, Syria, Sudan, and Yemen. Lebanon attended the conference in 1998 but refused to sign the treaty without clarifying the judicial and political reasons and objectives for its abstention.

The primary goal and purpose of the Rome Statute is to put an end to impunity for the most egregious crimes in the world, based on the principle of complementarity, which places primary responsibility on states to investigate and prosecute perpetrators of these crimes. It ensures that the International Criminal Court has the jurisdiction to exercise its judicial authority when states fail to fulfill their responsibility. One of the fundamental principles underlying the Rome Statute is that no one is above the law, and it enjoys immunity from committing genocide, crimes against humanity, or war crimes. Therefore, any possible exceptions to this principle in the Rome Statute should be strictly and consistently interpreted in line with its goal and purpose, as stated in Article 98.In any case, the Rome Statute has stipulated the following conditions in its general principles, which are applied by the International Criminal Court[12]:

1. The principles must be derived from recognized legal systems worldwide.
2. These principles should not contradict the Rome Statute itself, international law, or internationally recognized rules and standards.
3. The principles should be consistent with human rights.

After familiarizing ourselves with the key fundamental principles of the Rome Conference, as well as the objective and purpose of the statute, we move on to the first demand, which is the negotiation stage, and the second demand to present the system for signing and ratification.

First Requirement: Phase of Negotiation

The Preparatory Committee commenced its work in 1999 with the objective of establishing the International Criminal Court effectively. The drafting of the Court's statute took place through negotiations that lasted for over a month. The aim was to create an independent and efficient court. The Rome Statute, which serves as its foundational document, came into effect on July 1, 2002, and the Court was officially inaugurated on Tuesday, March 11, 2003. Eighteen judges took the legal oath, making the Court the first permanent institution responsible for addressing war

[10]Washington objected to the establishment of the court at the Rome Conference and demanded that the Security Council have full control over the prosecutor's authority in the court. One of the most concerning issues for the United States is the possibility of trying American military personnel for war crimes. Therefore, agreements were made to exempt American citizens and military personnel from appearing before the court.The Court, J. D., "Nations Prosecute Their Executioners," www.islamonline.net.

[11]The principle of accountability that the United States committed to stems from its participation in the Nuremberg Trials, where Nazi war criminals were brought to justice, and its leadership role in the efforts to establish international criminal tribunals in both Yugoslavia and Rwanda. Now, despite initially strongly opposing the establishment of this court for judicial reasons such as its broad authority to prosecute American soldiers involved in special units for peacekeeping, the United States has tried to maintain moral leadership in establishing the International Criminal Court.Human Rights Institute Issues, Issue 04, April 2001, email: www.iccnow.org.

[12]Dr. Abdel Fattah BeyoumiHegazy, Advisor to the State Council, Legal Advisor to the Federal National Council of the United Arab Emirates, International Criminal Court, Dar Al-Fikr Al-Jamei, 30 Sotir Street, Alexandria, 2004 edition, page 64

crimes and genocide, despite opposition from the United States[13]. This will be discussed through two subtopics: the first being the legal methodology employed during the negotiations, and the second focusing on the formulation of the Court's statute and the challenges it raised.

First Issue: Legal Methodology Employed in Negotiations

In negotiations concerning multilateral agreements, conferences are convened by states based on a draft agreement proposed by the state(s) calling for the conference. The final drafting of the agreement is usually carried out by a specialized committee, known as the drafting committee. Diplomats, rather than legal experts, often lead these negotiations. This was the case during the Diplomatic Conference on the establishment of the International Criminal Court in Rome, where delegates represented various legal traditions and organizations.

Throughout the negotiations, participating states, including Jordan, sought to make the Court as independent as possible from United Nations bodies and the Security Council. However, permanent member states aimed to link the Court to the United Nations and grant the Security Council the authority to refer cases to the Court and suspend investigations in specific cases for a period of 12 months. For instance, Western countries and some others granted the referral power concerning crimes of aggression, while the United States, Russia, and China advocated for full authority to be given to the Security Council in terms of referrals. On the other hand, countries such as India, Mexico, Iran, and certain Western nations objected to granting such authority to the Security Council.

One of the extensively debated topics was the role, powers, and authorities of the Prosecutor. Opinions diverged significantly on this matter. Western countries argued in favor of granting the Prosecutor the right to initiate investigations autonomously, while Germany and Argentina proposed limiting the Prosecutor's absolute independence. The United States, Russia, and Israel went to the extent of advocating for the elimination of the role of the Prosecutor. Arab countries, meanwhile, believed in the necessity of restricting the Prosecutor's powers, allowing investigation initiation only upon complaints filed by states, a state, or United Nations bodies[14].

Second Issue: Formulation of the Court's Statute and the Challenges Raised

The drafting committee, consisting of 25 delegations[15], was responsible for formulating the provisions of the Rome Statute. Each day, the committee received a specified number of completed articles, along with a small number of scattered paragraphs. The committee then conducted reviews and discussions, which necessitated dealing with six languages simultaneously. However, the translations lacked consistency due to the different translators involved. This was because a significant portion of the drafting process took place in both New York and Geneva. Despite these challenges, the committee made efforts to coordinate the translations and reviews. It took on the responsibility of both translation and review, which was necessary under the circumstances. Furthermore, the committee played a crucial role in objectively formulating the text, even though Article 49 explicitly stated that the committee was not responsible for this task.

Accordingly, the drafting committee received 111 articles until July 15, 1998, which include provisions on the establishment of the Court, the general part, procedural aspects, rules of international cooperation, and the Court's internal and judicial regulations. As of July 16, 1998, the committee received the second part of the statute, consisting of Articles 5 to 21, which addressed the powers of the International Criminal Court. Thus, the drafting committee fulfilled the mission

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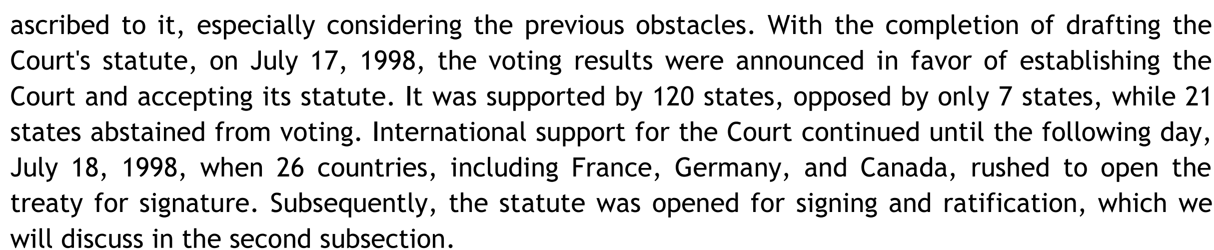
[13] American stubbornness: The United States signed the Rome Statute on December 31, 2000, but withdrew its signature in May 2002 before ratification. It opposed the establishment of the court at the Rome Conference and demanded that the Security Council have full control over the prosecutor's authority in the court. As a result, the Security Council adopted Resolution 1422, granting immunity for one year to all Americans participating in peacekeeping operations worldwide from the International Criminal Court. This resolution aimed to protect United Nations peacekeeping missions from the United States' use of veto power against them.

Dr. Abdel Fattah BeyoumiHegazy, previous reference, pages 65-66.

[14] Dr. LandaYishui, previous reference, page 94.

[15] The delegations are as follows: Cameroon, China, Dominican Republic, Egypt, France, Germany, Ghana, India, Jamaica, Lebanon, Mexico, Morocco, the Philippines, Poland, Korea, Russia, Slovenia, South Africa, Spain, Sudan, Switzerland, Saudi Arabia, the United States of America, and Venezuela.

Dr. Mahmoud Sharif Bassiouni, The International Criminal Court: Its Origins and Statute, page 105.www.sis.gov.eg



ascribed to it, especially considering the previous obstacles. With the completion of drafting the Court's statute, on July 17, 1998, the voting results were announced in favor of establishing the Court and accepting its statute. It was supported by 120 states, opposed by only 7 states, while 21 states abstained from voting. International support for the Court continued until the following day, July 18, 1998, when 26 countries, including France, Germany, and Canada, rushed to open the treaty for signature. Subsequently, the statute was opened for signing and ratification, which we will discuss in the second subsection.

Second Requirement: Opening the Statute for Signature and Ratification

The Rome Statute went through all the necessary procedures, leading to the adoption of the statute of the International Criminal Court in Rome on July 17, 1998, following a series of meetings and preparations that lasted several years. States varied in their commitment to signing or ratifying the statute, each based on their justifications[16]. This has been previously discussed, with the United States strongly opposing the idea of establishing the International Criminal Court. However, the United States eventually signed the statute at the last moment, just before midnight on December 31, 2000. This can be inferred from the statement made by President Bill Clinton, where he emphasized that the American signature allows them to remain in the game and influence the future functioning of the Court.

The second subsection is divided into two subtopics. The first subtopic discusses the signing and ratification of the statute. The second subtopic addresses the prohibition of reservations to the statute of the International Criminal Court.

First Issue: Signing and Ratification of the Statute

After the completion of the Statute of the International Criminal Court in the official languages, namely English, French, Arabic, Spanish, Russian, and Chinese, these texts were put to a vote. On July 17, 1998, the door was opened for signing, ratification, acceptance, approval, and accession, in accordance with Article 125 of the Statute, to sign the Statute in Rome at the headquarters of the Food and Agriculture Organization. This door remained open at the Italian Ministry of Foreign Affairs until September 17, 1998, and then it remained open at the United Nations headquarters in New York until December 31, 2000. By that date, the number of signatory states reached 139, including Israel and the United States of America. The number of Arab states that signed the Statute was 13, namely Jordan, Algeria, Bahrain, Oman, Sudan, Syria, Kuwait, Egypt, Morocco, Yemen, Djibouti, Comoros, and the United Arab Emirates.

As for ratification, Article 126 stipulates that the treaty becomes effective 60 days after 60 countries have ratified it. Ratifications began in 1999, and Jordan and Djibouti were the only two countries that ratified the treaty, despite several Arab countries having signed the Statute. If a country is among the first sixty to ratify, it has the advantage of becoming a member of the Assembly of States Parties, which has the right to elect judges and the Prosecutor, as well as establish the rules of procedure and the Court's regulations. This was indeed the case for Belize[17], and the United Nations expressed its welcome to this positive step when it deposited its instruments of ratification on April 5, 2000, at the Office of the Secretary-General. Belize became the eighth country to take this positive step, and the Court would be established once sixty countries ratified the Rome Statute. As of July 1, 2002, the date of the entry into force of the Statute, the geographical distribution of signatory states was as follows: 21 states had ratified, including 4 countries; 43 African countries had ratified, including 17 countries; and three countries

[16]Israel rejected the establishment of the court since the Rome Conference, where the legal advisor to the Israeli Foreign Minister stated that the current treaty puts the Prime Minister and any government member at risk of arrest. Israel fears that legal proceedings may be taken against its soldiers regarding their actions in southern Lebanon or against Palestinian citizens.
Dr. Nasser Amin, Reasons for Some Objections to the Statute of the International Criminal Court.www.acijip.org

[17]Belize is the second member state in the Caribbean Community (CARICOM) that ratified the Rome Statute, which is the commitment made by all member states of this group during the special meeting of their Ministry of Justice in April 1999. The aim of this commitment is to put an end to impunity and ensure that criminals do not escape justice. Therefore, Belize refused to be a safe haven for perpetrators of serious crimes.Dr. Nasser Amin, previous reference, (without a number).

from North America had ratified. It is noteworthy that European countries have shown the most commitment in supporting the Court, unlike other countries that have concerns about joining the Court, as discussed earlier.

Second Issue: Prohibition of Reservations to the Statute

Before addressing the prohibition of reservations, it is necessary to define reservations. According to Article 2(1) of the Vienna Convention on the Law of Treaties of 1969 and 1986, a reservation is "a unilateral statement, however phrased or named, made by a State when signing, ratifying, accepting, approving, or acceding to a treaty, whereby it purports to exclude or modify the legal effect of certain provisions of the treaty in their application to that State[18]."From this definition, it is evident that a reservation is an official action taken by a state or international organization when signing, ratifying, or acceding to an international treaty, with the aim of modifying or excluding certain provisions of the treaty's legal effect as they apply to that state.If a reservation is accepted, it limits the effects of the treaty for the reserving state(s) or international organization, vis-à-vis the parties to the treaty or those that may become parties to it.

The direct impact of a reservation is the nullification of the legal rule contained in one or more provisions of the treaty, considering that rule as inapplicable in relation to the state or international organization that made the reservation but under certain conditions not specified in the treaty. As for the importance of reservations, most international law commentators believe that reservations to international treaties are of significant importance due to the increasing number of states participating in international treaties, despite their political, economic, and legal system differences. The modern international practice has demonstrated that the use of reservations allows states to become parties to international treaties that they would otherwise not accept in their entirety. Therefore, reservations have become a means for states to overcome obstacles that hinder international cooperation. It is better for states to become party to collective treaties, even if in a partial manner, rather than being completely excluded from those treaties[19].

The provisions regarding reservations in Articles 19 to 23 of the Vienna Convention on the Law of Treaties for the years 1969-1986 were addressed. These provisions were considered to be among the most precise and challenging topics due to the interplay of rules, general principles, and relevant provisions. These articles encompassed provisions concerning the manner of expressing reservations, the procedures for accepting or objecting to them, as well as the consequences and withdrawal of reservations and objections.

Article 19 stipulated that a state is permitted to express a reservation to a treaty upon signing, ratifying, accepting, approving, or acceding to it, except the following cases[20]:

- If reservations are prohibited in the treaty.
- If the treaty includes specific reservations, but the mentioned reservation is not among them.
- In cases covered by paragraphs (a) and (b), if the reservation is incompatible with the object and purpose of the treaty.

Among the exceptions is the one adopted by the Statute of the International Criminal Court (ICC), which states in Article 120 that no reservations may be made to this Statute. The reason behind this is likely to avoid the legal implications of reservations, particularly the application of the principle of reciprocity. The reciprocal effect created by reservations means that the reserving state is not bound by the provisions or texts it reserved, and other states are not obligated to apply

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[18] Algeria joined the Vienna Convention on the Law of Treaties through Decree 87-222 dated October 13, 1987, which includes accession with reservations to this treaty.

[19] Professor Dr. Gamal Abdel Nasser Manaa, Professor of Public International Law, Dar Al-Alam for Publishing and Distribution, Legal Deposit 755/2005, pages 86-87.

[20] Reservations on international treaties are generally permissible by states or international organizations, but there are exceptions. It is understood that reservations may be made on provisions that explicitly allow reservations when these provisions are intended to limit the effects of other provisions.

Dr. Gamal Abdel Nasser Manaa, previous reference, pages 90-91.

those provisions or texts. Non-compliance would result in emptying the Statute of its content, thereby impacting the functioning of the ICC and potentially even its existence. Hence, the ICC Statute is considered indivisible, either taken in its entirety or left entirely[21]. The objective is to preserve the unity and coherence of the treaty and its provisions.

On the other hand, the ICC Statute allows States Parties to opt out of the Court's jurisdiction for a period of seven years from the entry into force of the Statute, specifically regarding war crimes. In practice, this provision can be seen as a reservation that any State party to the Statute can make, which contradicts the principle of non-acceptance of reservations. It undermines the function of the Court itself and leads to impunity for perpetrators, which undermines the purpose for which the Court was established.

Third Subject: The Relationship Between the Statute and Domestic Laws of the States Parties

There are issues raised by the relationship between the International Criminal Court's Statute and domestic legislation, which have been discussed by scholars of public international law in the search for the existing relationship between international law and domestic law, encompassing two theories mediated by the theory of coordination.

1- Monism Theory: Its proponents argue that the rules of domestic law and international law merge into one legal system, forming a unified body of rules. According to this theory, international treaties become part of domestic law as soon as they are formed internationally, and both natural and legal persons are bound by them. Thus, international treaties become a source of domestic law. However, supporters of this theory differ among themselves regarding the priority of applying the rules of the domestic legal system, emphasizing the principle of primacy.

2- Dualism Theory: Advocates of this theory view domestic law and international law as two independent and separate systems. Each system has its own subject matters, sources, scope, and judicial bodies. For instance, domestic law originates from the unilateral will of the state, while international law arises from agreements between two or more legal personalities in the realm of international law. Regarding judicial bodies, domestic law has its own judiciary derived from the existence of a legislative and executive authority, while international law lacks both of these powers.[22]

3- In addition to the aforementioned theories, there are juristic opinions that have emerged as a middle ground solution, characterized by integration and coordination. It is argued that both laws have their own scope, and each holds a higher status in its respective field. There is no inherent conflict between them. This is reflected in the Vienna Convention on the Law of Treaties of 1969, Article 27, with due regard to the provisions of Article 46. It is not permissible for a party to a treaty to invoke its domestic law as a reason for non-compliance with the treaty. This principle has been affirmed by the United Nations General Assembly.[23]

These theories have played a role in highlighting the existing relationship between international law and domestic law and determining the priority of applying one over the other based on acceptable opinions and justifications. Regarding the situation of conflict between international law and domestic law, jurists have resolved it by prioritizing the application of international law

[21]The Convention on the Prevention and Punishment of the Crime of Genocide of 1948 rejected reservations on its provisions because it contradicts the essential purpose of the convention.
Dr. LandaYishui, previous reference, page 103.

[22]The principle of the primacy of international law over domestic law, supported by this perspective, is based on a set of evidence, including:
- The lack of absolute sovereignty enjoyed by the international community.
- The elevation of international law as a result of the unity of communities and the theory of the hierarchy of legal rules.
- International law determines the jurisdiction of the state, and in case of conflict, international law prevails.
Dr. Gamal Abdel Nasser Manaa, previous reference, page 46.

[23]The UN Declaration on the Rights and Duties of States, in Article 13, states that every state is obligated to fulfill its treaty obligations and all other international obligations in good faith. States cannot invoke their domestic constitution and laws as a justification for failing to fulfill these duties.
Dr. Gamal Abdel Nasser Manaa, previous reference, page 48.

over domestic law. This is based on the understanding that a state cannot cling to its domestic laws or even its constitution to evade its international obligations or violate specific international rules that carry binding force. Therefore, it is incumbent upon the state to take necessary domestic measures to fulfill its obligations and make them effective internally. Regardless, the prevailing view is the primacy of international law over domestic law[24] and the elevated status of its principles, which obligates the state to harmonize its laws with the provisions of international law; otherwise, it may face international responsibility.

After clarifying the relationship between international law and domestic law, we move on to understanding the relationship between the foundational system and the domestic laws of states, which involves three demands.

First Requirement: Emphasizing Non-interference with the Sovereignty of Party States

The principle of sovereignty is considered one of the fundamental pillars of the international legal system, and its traditional concept is based on the non-subordination of a state in its actions to any external will beyond its own volition. This is one of the reasons for shortcomings in the international legal system. The adherence of states to this principle, in its traditional sense, hinders the possibility of establishing an international system to which states are subject in their actions. The reaffirmation of this principle is stated in the Charter of the United Nations, which states that "the Organization and its members shall act in accordance with the Purposes and Principles of the United Nations in pursuit of the goals mentioned in Article 1, in accordance with the principle of equality among all its members.[25]"

From this perspective, states viewed the idea of the existence of an international criminal court to address crimes occurring within their territories as a challenge to their sovereignty. This hindered the emergence of the court until the concept of sovereignty lost its absolute traditional meaning due to the evolution of international relations. After significant efforts and work, states were able to establish the court. However, the issue of sovereignty continues to be raised from time to time through several points:

1. Exercising judicial jurisdiction over crimes occurring within the territories of party states.
2. The dilemma of surrendering nationals of a state to foreign jurisdiction.
3. The authority of the prosecutor regarding the conduct of investigations within the territory of a party state.
4. The issue of prescribed penalties within the system.

In response to these challenges, it can be argued that the jurisdiction of the International Criminal Court (ICC) does not encroach upon national sovereignty, as explicitly stated in Article 10 of its Statute. The ICC's jurisdiction is complementary to national judicial systems. Moreover, regarding the argument that the ICC represents a foreign judiciary, it should be noted that the Court was established based on an international treaty governed by the principle of consent[26]. Therefore, states willingly engage with an international judiciary that they have participated in creating as party states.

As for the issue of surrendering nationals of a state, Article 102 of the statute distinguishes between referral to the court, which is the state presenting an individual to the court, and

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[24]In the realm of state obligations, such as the case of Albania-Arbitration in 1872 between the United States and Britain regarding the sale of a warship, and the issue of free zones between France and Switzerland in 1932.

Dr. Gamal Abdel Nasser Manaa, a previous reference, p. 51.

[25]"The International Court of Justice affirmed in the advisory opinion issued on May 28, 1951, in response to the request of the United Nations General Assembly on November 17, 1950, that the absolute application of the principle of sovereignty would contradict the very concept of sovereignty itself."

Dr. Gamal Abdel Nasser Manaa, a previous reference, p. 88.

[26]The principle of consent: Safeguarding the satisfaction of the parties, with consent referring to the expression of will through accepting a treaty or committing to its provisions. The will must be sound, free from any defects such as error, fraud, coercion, or deceit. The Vienna Convention on the Law of Treaties of 1969 has sought to regulate these defects.

Dr. Gamal Abdel Nasser Manaa, previous source, p. 115.

surrender, which is the state handing over an individual to another state. These are two different processes, and referral does not constitute an encroachment on state sovereignty.
Regarding the authority of the Prosecutor with regard to conducting investigations in the territory of a State Party, this is clarified in Article 99, paragraph 4 of the statute. Chapter IX of the statute states that it constitutes judicial assistance that is specifically provided for and accepted by the Statute. Therefore, it can be concluded that there is no encroachment on sovereignty. Accordingly:
1- The International Criminal Court (ICC) is a complementary judiciary to national criminal jurisdiction and not a foreign judiciary.
2- The ICC does not exceed national sovereignty. The Statute of the International Criminal Court has been formulated in a way that preserves the national sovereignty of all states. This is evident in the fact that states voluntarily ratified the establishment of the Court and joined it based on their own will and consent, in accordance with the principle of consent.

The second Requirement: Ensuring compatibility between the ICC Statute and various judicial systems.
According to Article 1 of the ICC Statute, the International Criminal Court is established as a permanent institution with the authority to exercise its jurisdiction over individuals for the most serious crimes of concern to the international community as a whole. Therefore, the jurisdiction of the ICC is considered complementary to national judicial systems. It is an international judicial system that originated from the will of the states that have ratified it. Its provisions are not applied retroactively, and its jurisdiction is prospective and complementary to national jurisdiction, emphasizing individual responsibility only[27].
Indeed, the ICC Statute has sought to establish a balanced relationship between the Statute and national systems. This was done to facilitate the acceptance of the idea of the International Criminal Court by participating states, making the relationship between national judicial systems and the ICC Statute complementary and integrated. It means that states party to the Statute have the primary jurisdiction over international crimes, and the ICC comes in the second place in this regard. The jurisdiction of the ICC is invoked when national courts are unable or unwilling to prosecute international crimes.
The principle of complementarity does not mean that the International Criminal Court (ICC) replaces national courts or acts as a supreme court to review national judicial decisions. It is not established to reconsider national judicial rulings. Instead, it is created solely to address gaps where impunity for international crimes hinders or undermines the jurisdiction of national courts, or when there is a lack of confidence[28] in the national judicial system. The ICC does not seek to supplant national courts but rather serves as a court of last resort when national courts are unable or unwilling to prosecute international crimes.
The Statute explicitly affirms its compatibility with national laws and legislations. Article 80 of the Statute specifically addresses the penalties imposed by the Court, which means:
1. The absence of a penalty in a state's law that is not included in the Court's Statute, or the presence of a penalty in a state's law that is not present in the Statute, does not constitute an obstacle between the Statute and the laws of that state.
2. Penalties imposed by a state, other than those stipulated in the Statute, can be applied if they are provided for in its domestic law, even if not explicitly mentioned in the Statute.
3. If an accused person is prosecuted before a national court and sentenced to a penalty harsher than those specified in the Statute, they cannot invoke the principle of the "most favorable law for

[27]All individuals bear the responsibility of promoting and respecting international law, both individually and collectively. This responsibility is contemporary and effective, acknowledged by international jurisprudence and customary rules, and arises as soon as treaties enter into force.
Dr. Omar Saadullah, Professor of International Law, University of Algeria, Introduction to International Human Rights Law, Diwan Al-Matabi'at Al-Jameia, July 2003, p. 230.
[28]National courts are considered to have original jurisdiction over criminal cases related to international crimes that can be brought before them. Their judgments in these cases are considered final and cannot be subjected to retrial for the same crime." (A. LandaYishu'i, previous reference, p. 116).

the accused.[29]" This is because their state has ratified the Statute, making it part of their domestic laws.

From all of this, it becomes evident that the Rome Statute Conference took great care in formulating the Statute of the International Criminal Court to respect the domestic laws of all participating states while considering the principle of complementarity and cooperation. This does not undermine the national sovereignty of the participating states, which is essential for any international system that the international community hopes to implement and adhere to[30].

The Third Requirement: The Arab stance towards the Statute of the Court.

During the preparation and adoption of the Statute of the International Criminal Court, there were disputes and discussions among legal scholars and experts, including the eminent international law professor, Dr. Mohamed Aziz Shukri. He stated that "the Rome Statute and the legal and judicial concepts it introduced, as well as the differences in perspectives, can be seen as creating graduates of the Rome Statute that established the Court. "However, these disputes and differences have diminished after the conference, and the Statute has become clearer. Nevertheless, some objections have led to many countries not ratifying the Statute, which we will discuss in detail.

First Issue: Reasons for objections to the Statute of the Court.

There are multiple reasons for objections, including those related to constitutional compatibility resulting from ratification. After reaching the required quorum of 60 ratifications, the Convention enters into force, and countries wishing to join must also ratify it. When ratifying, there should be compatibility between the provisions of the treaty and the constitutions of the ratifying countries, as well as the Statute of the International Criminal Court, which should align with the constitutions of the countries. Therefore, countries with legislation that contradicts the Statute and wish to join must make constitutional amendments. The difficulty lies in making these amendments, especially concerning immunity granted to officials[31], which is not recognized by the Rome Statute. These are the most significant reasons that led some countries to object to the Statute.

Some objections were raised regarding the definition of crimes falling within the jurisdiction of the Court. There was no issue regarding the crime of genocide as states had agreed upon the definition outlined in the 1948 Convention on the Prevention and Punishment of the Crime of Genocide. However, disagreements arose concerning crimes against humanity, which are derived from international human rights treaties such as the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights[32]. Some objections were also raised regarding the non-definition of the crime of aggression, despite it being one of the international crimes within the Court's jurisdiction. Therefore, Arab states sought to include it within the framework, while its definition remains pending for future determination[33].

One of the most contentious articles that sparked widespread debate among countries and objections was Article 16 of the Statute, which pertains to the deferral of investigation and prosecution upon a request from the Security Council. This provision raises concerns for many

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[29]Dr. Kamal Al-Saeed, Rights of the Accused during Trial.www.iccarabic.org

[30]Adherence to the international system holds significant importance, as evidenced by the fundamental attempts to circumvent the basic framework of the court, especially after the events of September 11. These events left a profound impact on the entire international system, affecting peace, international security, and the realm of international criminal justice.
- LandaYishui, Master's thesis, p. 119.

[31]The 1948 Convention on the Prevention and Punishment of the Crime of Genocide explicitly states in Article 4 the punishment of those who commit crimes regardless of their positions in the state. (Source: Dr. Abu Al-Khair Ahmed Atiya, previous reference, p. 211)

[32] Dr. Raafat Wahid, International Law and Human Rights, Egyptian Journal of International Law, Issue 33, 1977, p. 13.

[33]The jurisprudence has taken three approaches in defining the crime of aggression, as defined by the jurist Pella, defined by Professor Alfaro, and defined by the jurist George Sall. (Source: Dr. Abu Al-Khair Ahmed Atiya, previous reference, p. 102)

states due to the powers granted to the Security Council, as it has the authority to suspend investigative and prosecutorial proceedings as determined by the Statute.

It is true that these reservations raised by Arab states have been addressed and clarified by the provisions of the Statute. If these Arab states had ratified the Statute and been among the first 60 states, they would have enjoyed several advantages. Firstly, they would become members of the Assembly of States Parties, granting them the right to elect judges, the prosecutor, and the registrar. Additionally, they would have the opportunity to review the approval of the Court's budget, provide support to the Court, and participate in establishing procedural rules.

CONCLUSION

The idea of establishing the International Criminal Court was conceived by many after World War I, but the urgent need for it became evident after the devastating impact of World War II. This led to the establishment of various tribunals such as the Nuremberg Tribunal, the Tokyo Tribunal, and the Special Court for Sierra Leone. However, the project of creating the International Criminal Court remained dormant for almost half a century due to the circumstances of the Cold War. After the Cold War dissipated, the General Assembly of the United Nations requested on December 4, 1989, that the International Law Commission address the issue of establishing such a court. Consequently, countries around the world, regardless of their strength or status, made concerted efforts to present themselves as proponents of international law, committed to its principles, seeking to establish international justice, and preserving international peace and security. This aspiration had been pursued for a long time through various international bodies established throughout history, and the International Criminal Court was the latest culmination of this endeavor. It was the dream of human rights activists and legal professionals worldwide since 1948 and became a reality when its Statute entered into force on July 1, 2002. The Court was officially inaugurated on Tuesday, March 11, 2003, with 18 judges taking the legal oath, making it the first institution entrusted with the task of addressing war crimes and genocide, despite opposition from the United States of America.

The International Criminal Court (ICC) has been discussed in three chapters. The first chapter examines the historical evolution of the idea of establishing the ICC. The second chapter focuses on the establishment of the Court, its basic system, jurisdiction, procedural rules, and the judgments it issues. Through this study, we have reached the following results:

1. Throughout history, the only means by which nations could hold their oppressors accountable was through violent retaliation, resulting in their execution or death, with their trial left to the divine court in the afterlife.
2. The existence of the permanent ICC encourages governments to seriously investigate international crimes committed within their territories and punish the perpetrators. In cases where these states fail or neglect to do so, the jurisdiction to consider such crimes shifts to an international judicial body, namely the ICC. However, this is rejected by the majority of countries worldwide.
3. The presence of the ICC serves as both a preventive measure against international crimes and a means to preserve international peace and security. This is achieved by holding accountable those responsible for war crimes, crimes against humanity, and genocide.
4. Holding individuals accountable for their international crimes and eliminating the concept of immunity is a fundamental pillar in establishing the Court, making its success and effective performance possible.
5. Finally, despite the challenges it has faced, the permanent International Criminal Court is on its way to true international recognition, as evidenced by the continuous increase in the number of states ratifying its foundational system.

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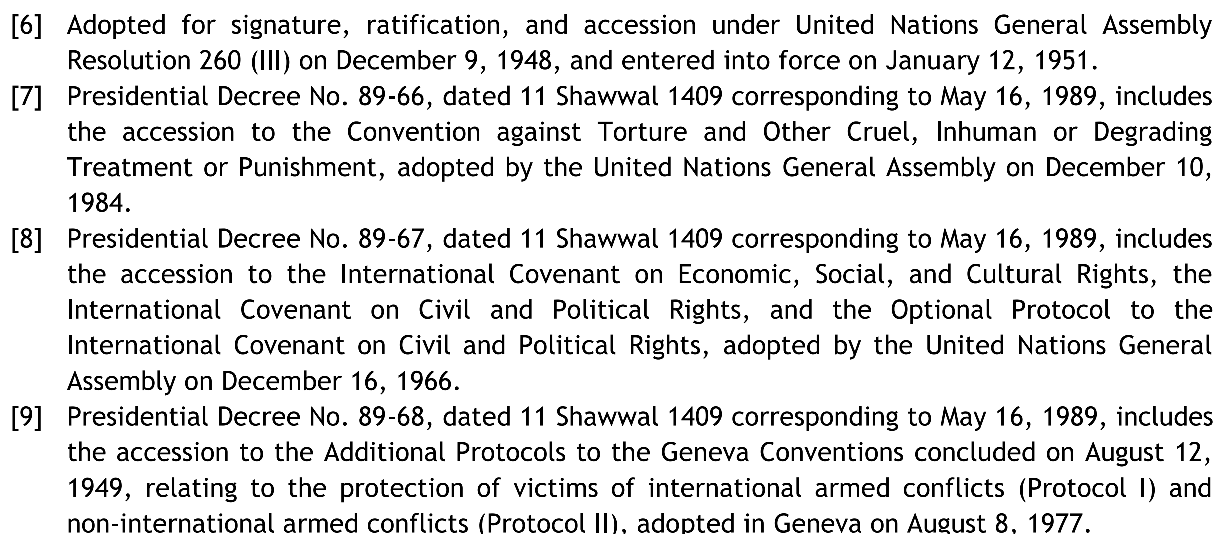

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