



INTERNATIONAL CRIMINAL LAW ROLE IN FACING HUMAN RIGHTS VIOLATIONS

Sulaf Abdullah HAMA RASHID

College of Law and International Relations, Bayan University, Erbil, Kurdistan, Iraq.

Email: Sulaf.abdullah. @ bnu.edu.iq

ABSTRACT

The study concluded the importance of the role played by international criminal law in trying to eliminate violations of human rights, by criminalizing acts that violate these rights and listing these acts such as genocide, crimes against humanity, crimes of aggression, war crimes, and other crimes. Also, it holds accountable and punishes those who commit these crimes by the means of the international criminal law of temporary criminal courts, and permanent International Criminal Court and which committing it is considered to be a violation of human rights.

Keywords: *International Criminal Law, Human Right, International Courts, International Crimes, International Penalty.*

INTRODUCTION

Throughout history, the world has seen the most brutal and ferocious crimes committed against humanity which resulted in the tragedies and disasters that the greater pessimists cannot describe. The international community tried to redress it and prevent its recurrence by finding means that the purpose of it, is protecting human beings through granting security and justice.

The international community has witnessed serious violations of the laws and norms of humanity, represented in the commission of war crimes, crimes against humanity, crimes of genocide and crimes of aggression which shook the conscience of humanity and this continued to happen since antiquity until the activation of the international criminal law. One of these violations is what the emperor of Germany "William II" committed. As well as the crimes against humanity committed by the Axis Powers, the violations and crimes committed during the two largest armed conflicts between old Yugoslavia and Rwanda and the crimes of murder and genocide located in many regions of the African countries and the Arab States, which led the international community to exert strenuous efforts to lay the foundations for the punishment for the perpetrators, which is approved by the International Criminal Court as it has jurisdiction over natural persons. Also, a person who commits an offense within the jurisdiction of the Court is responsible for it as an individual and deserves punishment according to its Statute.

As a result, international criminal law has become a major player in contributing to the prevention or mitigation of human rights violations.

The importance of studying:

The importance of the study clearly shows that the reduction of human rights violations, and accountability of the perpetrators and their punishment is the main objective of the international criminal law. This study is gaining importance from the seriousness of the subject matter. Violation of human rights negatively affects the coexistence of peoples. Global peace is the dream of generations throughout history and it will remain a dream as long as international organizations and global and regional bodies have not fulfilled the purpose that it was created for. Peace is considered one of the most important interests necessary for life survival in the international community and so, security and tranquility will prevail.

Objectives of the study:

This study deals with the visibility of human rights violations in the international community, the extent of global interest in this field and the role of the international community in the attempt to alleviate the pain inflicted on humanity. This pain was as a result of the commission of numerous heinous crimes against individuals especially during the First and Second World Wars and the civil, ethnic and racial wars that followed and the policies of racial discrimination that were committed against human rights and the humanity still suffer from it, in addition to the wars against innocent citizens in every corner of this world. In this study, we have worked to define international crime and illustrate its images through legalizing international criminal law, and how this law faces these human rights violations depending on International criminal jurisdiction as the most important mean of international law to protect human rights all around the world.

The hypothesis of the study:

International criminal law has an important role in preventing or mitigating violations of human rights by criminalizing acts that violate human rights and punishing those who violate this criminalization through international criminal courts, which represents the most important means of international criminal law for eliminating these violations.

Study Approach

The descriptive and analytical method is used to monitor various kinds of international crime, giving an understanding of it and knowing its elements and the different forms of these crimes, which are a violation of human rights, besides, studying the position of the international criminal law of these violations.

Structure of the study:

An introductory requirement: the concept of international criminal law and an explanation of its sources.

The first topic: Criminalization of international criminal law for human rights violations.

The first requirement: international crime concept under international criminal law.

The second requirement: international crimes punishable by international criminal law.

The second topic: means of international criminal law for protecting human rights.

The first requirement: the temporary international criminal courts.

The second requirement: the permanent international criminal tribunals.



CONCLUSION

Introductory requirement

International criminal law concept and its sources

First: international criminal law concept:

This law is defined as a set of customary legal rules that aim to defend peace, justice, and civilization, by conducting sanctions against all violators of the rules of international law, or by taking some measures that will prevent such crimes from occurring in the future.

This law is otherwise known as a set of legal rules related to the punishment for international crimes that violate international law. This law organizes the reactions against international crimes by taking severe measures as a punishment to criminals who threaten the international social system and expose them to danger and harm. It is also defined as one of the branches of criminal law that works on organizing a set of criminal problems presented at the global or international level. international criminal law concept is considered to be broader because it is closely related to several international or organized crimes within the framework of international law, whether concerning the sanctions or the resulting tariffs, for example, crimes against humanity and crimes committed in wars. (Al-Qahrahji, 2001)

Second: Sources of International Criminal Law:

Sources of international criminal law are divided into main sources including treaties, custom and general principles of law, and backup sources and include court rulings, doctrines of senior authors, and principles of justice and equity.

First: main sources:

- A. International treaties: International agreements and treaties are a source of international criminal law in the first place, and they are in the international system, serving as the legislation in the internal system. Treaties are defined in international law as formal agreements concluded between states and have a legal effect determined by the rules of public international law and among the basic charters in this field that can be considered as a source for international criminal law applied by international criminal jurisdiction. (Hameed, 2008)
- B. International custom as a source of international criminal law: International custom is a source of international criminal law alongside the treaty. There is an aspect of jurisprudence states that it would be more appropriate if Article 38 of the Statute of the International Court of Justice mentioned custom in a higher position compared to treaties. The reason for this is that the rules contained in treaties are often an expression and formulation of what was established by custom before the treaty and international custom-defined as an unwritten legal rule.

The legal persons who make up a certain group usually obey it, knowing that it is characterized by legal obligation resulting from the deviation of the group's implicit will, to entrust all its members to submit to its rule regarding the relationships that arise between them which is regulated by this custom. (Ventis, 2016)

- C. Principles and rules of the international law: The Rome Statute stipulated this source as a source of international criminal law, which confirms the close relationship between the two laws as a branch of the other, and the principles and rules of international law are equal if they are codified or not coded, and in this framework, the role of custom stands



out among the sources of international criminal law. Most of the principles and rules of international law sources are custom. If the system has stipulated the applicable treaties, then follow them with the principles and rules of international law, by that it meant the principles and rules that were not mentioned in the treaties which are the principles derived from international custom as one of the most important sources of international law in its unwritten rules. (Al-Shazly, 2002)

Second - backup sources.

- A. International Judiciary: The rulings of the international judiciary are the primary reserve source for international law. In this sense, the judiciary means the set of legal principles that are extracted from the provisions of international courts. The statute of the International Criminal Court is the most important source of international criminal law (Cassese, 2008), and We can point out that international court rulings are not considered judicial precedents, as the task of the judge is limited to the application of existing law, and does not go beyond it to establish new rules of international law, but it is possible to refer to it to infer existing and applied rules of international law and to interpret what is ambiguous (Ventis, 2016).
- B. International Jurisprudence: The doctrines of senior authors in public international law are considered the second assisting source in addition to international jurisdiction. Indeed, international law is indebted to large studies of scholars and jurists who took charge of explaining its principles and rules and building various theories and thus helped in the development and prosperity of international law, and the collection of published jurists' research is called international jurisprudence. (Hameed, 2008)
- C. General legal principles: They are the basic principles on which legal systems are based and decided in the various urbanized countries. Such principles have a general characteristic which is justice and therefore their application is not limited to individual relations but is also applicable to international relations if a legislative or permanent rule in a treaty or derived from the principles and rules of international law doesn't exist. (Khader, 2017)

The First Topic

International Criminal Law Criminalizing Human Rights Violations

We will address the criminalization of international criminal law for violations of human rights in two requirements, the first requirement: we define in it the definition of international crime in international criminal law and in the second demand we list international crimes punishable under international criminal law for violations of human rights.

The first requirement: international crime in international criminal law concept and its elements.

First: international crime concept:

There are many definitions of international crime, as there are those who define it as: "Every act or omission to do any act that violates the rules of international criminal law and it is committed in the name of a state, organization, or non-governmental organization and results in an attack on the interests protected by this law, particularly human rights, which causes a

violation of the International public order and justify criminalization and punishment " (Al-Issawi, 2012).

Some believe that the international crime: "It is the act or omission of the punishable act in the name of the international community because it is required to be previously criminalized by the international community before its commission and that the punishment is applied and carried out in the name of the international community. (Al-Abadi, 2016)

This requires the existence of a permanent international criminal court so that the punishment can be applied immediately after the act has occurred, but if such a court cannot be found, many acts will come out of criminalization despite the harm it inflicts on international interests of importance and human rights. (Muhammad Shibl, 2011)

According to Spiro Paulus (Reporter of the International Law Commission), international crime is: "Acts committed by the state or permitted to be committed in violation of international law and entail international responsibility, or are all violations of international law that done by an individual who is morally responsible and harming individuals and the international community based on this law. (Matar, 2010)

Or it is, as Lombois has defined it: "actions that are contrary to the rules of public international law, for violating the interests of the international community, which it decided to protect by the rules of this law, or is that crime that violates public order in more than one country" (Bayoumi Hegazy, 2009).

The jurist Karvin emphasized that the international crime is: "Those acts that contradict the provisions of international law and entail international responsibility, and they are only for acts of a special nature that constitute a violation of public order in more than one country. (Hisham, 2014)

Thus it becomes clear to us that international crime represents an attack on interests protected by international law, and that it is of a great level of seriousness because international crime in its reality is nothing but attacks on the values or interests of the international community as a whole, which was decided to be protected by the rules of international law, and these attacks acquire characteristic of international crime from international law, whether from the international custom that impinges these attacks on the character of international crime, as is the case in declaring an aggressive war or through international agreements that give the character of the international crime to prevent these attacks, as in the International Convention on the Prevention and Punishment of Genocide, as decided in its preamble and the first article of it. (El-Sawy, 1988)

We recall here that the crimes committed within the scope of international criminal law are among the important and serious crimes that threaten the human community when it is not accompanied by the development of legal rules to punish the people who commit these crimes, and the existence of a party to control it, otherwise it will cause devastating humanitarian catastrophes, therefore criminalization of these crimes is in terms of realism, not judicial and taking charge of trying criminals and imposing penalties against them is a must. (Fatlawi, International Criminal Court)

Second: The pillars of international crime:

International crime and internal crime share the three pillars: material, moral and legal, and add to the international crime the international pillar (Noufi, 2013)



1. The legal pillar: The fact that the unlawfulness of behavior as a pillar of the crime assumes that there is a positive element represented in the rule of criminalization that establishes illegitimacy and defines the criminal penalty as it requires a negative element that is represented in the absence of any reason that permits illegal behavior and strips it of the description of illegitimacy. (Noufi, 2013)

And from it, the principle of legality requires that it is not permissible to criminalize an act or to punish it without a legal provision. In the field of international criminal law, the application of this principle is explicitly felt in both its criminal and penal aspects in two successive texts of the Rome Statute in its third chapter on general principles of international criminal law. Where (Article 22) of the Rome Statute stipulates the principle "No crime except with a text by saying: "A person is not criminally responsible under this statute unless the behavior at the time of its occurrence constitutes an offense within the jurisdiction of the court." (Al-Qahraji, 2001)

2. The material pillar of the crime: what is meant by prohibited behavior, work or action that harms or endangers international interests. The material pillar of the crime is an activity that is represented by a movement issued by a person and has its tangible appearance in the external world, which creates a danger or threatens interests subjected to criminal protection. With this description, the material element is removed from mere unpunished intentions to the punishing external behavior. And from it is necessary for the material pillar to be issued by the perpetrator with a specific criminal behavior to establish the international crime, and the physical corner may require concerning another category of crimes besides the behavior achieving a certain criminal result, and whether it is related to the first or second category, the crime has occurred fully or completely. (Zaid Kassila, 2009)

3. The moral pillar of international crime.

The moral pillar is the voluntary assets of the material of the crime and its control, which is its internal and psychological face, as there is no accountability for any crime unless there is a link or relationship between its material and its will. From it, criminal intent is the knowledge of the perpetrator of all the facts that formulate the crime and his will to commit it. Therefore, the criminal intent is fulfilled by two elements: knowledge and will.

4. **The international pillar of international crime.**

The international pillar, which distinguishes international crime, appears through the interests or rights over which the attack occurs so that the international pillar of international crime is: "The establishment of international crime based on the arranged planning of a state or group of countries, and the state executes the international crime based on its strength, ability and its special means, and sometimes some individuals commit the crime, yet the crime has its international side whenever these individuals act in the name of the state or are when they are agents of this state. (crowns, 2014)

The second requirement: international crimes punishable by international criminal law.

The protection of human rights is the supreme international interest that international criminal law is keen to protect. From this standpoint, the Rome Statute came with the text and exclusively on international considered crimes, and they are according to the following details:

First: genocide crime.



It is that crime represented in committing acts to destroy a specific national, racial, religious or ethnic group by killing, or causing grave physical or mental harm to members of the group, or taking measures to prevent its reproduction or transfer the children of one group to another group, and these actions were mentioned exclusively in Article (6) of the statute (Al-Basyouni, 2004), genocide is considered as an international crime that has cost humanity throughout the ages huge losses, which imposed the cooperation of all countries to liberate humanity from its evils, and therefore "the crime of genocide today has become an integral part of international criminal law (Guenter, 2014) and united nations have adopted United International Convention for the Prevention of the Crime of Genocide issued on 9/12/198 Article Two, which quoted some of its provisions from the Nuremberg Courts, but it stipulated that genocide is a crime under international criminal law, whether committed in times of war or peace and thus we see that under the Nuremberg principles and this agreement, the legal responsibility of people for crimes against humanity has been internationalized.

The principles that included the Genocide Convention have become one of the principles of positive international law binding on all states regardless of the association and this is what the US delegate to the Third Committee of the United Nations General Assembly mentioned in its saying: "International law often recognizes that genocide murder, extermination, exclusion, and displacement constitute in certain circumstances crimes against humanity regardless of the nature of the political system in which those acts are committed. "The International Court of Justice indicated this in more than one case. (Al-Zahir, 2000)

Second: war crimes

Exemplified by grave violations of the Geneva Conventions of 1949 such as the destruction of property that does not justify it, intentionally attacking civilians, the necessity of warfare and the misuse of the armistice, the use of lethal and toxic weapons, and acts contrary to the laws and customs of war such as killing unarmed prisoners, misusing ties or clothing of the enemy or United nations. (Shebl, 2009)

War crimes are among the oldest crimes that humanity has suffered and the need to subject them to some humanitarian considerations that have been found under heavenly religions has arisen. Islamic jurisprudence was credited with praising an integrated theory in the law of war. The Islamic jurist Muhammad bin Hassan al-Shaibani is considered the first founder of the law of war, and the jurists expressed interest in his modern concept, and international conferences aimed to codify principles on which international jurisprudence and custom on war were established, such as the Brussels Conference 1974, The Hague 1907 and Geneva 1864. (Muhammad al-Far, 2007)

War crimes are those violations of the laws of war or international law that expose a person to individual criminal responsibility, and while restrictions on the disposition of armed conflict go back to the Chinese warrior Sun Tzu in the sixth century B.C., the ancient Greeks were among the first to consider these prohibitions as a law. The idea of war crimes with its most complete meanings appeared in the Indian principle of Manu (about 200 BC) and then forged its way into the Roman and European law. In general, the trial of Peter von Ha Manakhkh in 1474 in Austria and was sentenced to death for brutality in wartime, is the first real trial of war crimes.

The pillars of the crimes mentioned in Article (8) of the Basic Law include four common pillars that describe the material and personal realms of their validity as well as the accompanying



moral pillars, and two non-moral pillars of the crime were derived from the introductory paragraph of this article which refers to grave violations of the Geneva Conventions of 12/8/1949. Mahmoud Sharif Al-Basyouni, the International Criminal Court, an introduction to the study of the provisions and mechanisms of national enforcement of the statute. (Al-Basyouni, 2004)

Third: the crime of aggression.

This crime, which was defined very late and its accession to the group of serious crimes, which was one of the reasons that made the statute to come to light, and this crime was included in Article (5) of the statute provided that the International Court relaxed in applying its jurisdiction concerning it until the adoption of an agreed text and under the text of Articles 121/123 and setting conditions for the appliance of its jurisdiction over them, and there were two directions for defining the crime of aggression, and the closest is the definition of United Nations General Assembly Resolution No. 3314 of 12/14/1974 ": aggression is the use of armed force by a state against the sovereignty and territorial integrity or the political independence of another country or in any inconsistent way with the Charter of the United Nations, "provided that the actions mentioned in this definition came as an example, not exclusively, and the discretionary authority remains in the hands of the Security Council in the presence of another behavior that falls within the crime of aggression, under Article (4) of the aforementioned resolution (Muhammad al-Far, 2007).

As for the second definition, it was adopted by many countries, foremost among which is Germany: "planning, which is preparing for the start or waging of aggressive war or war in violation of international treaties, agreements, and undertakings, or participation in a general scheme or plot to achieve any of the previous results constitute a crime against peace" (Amrawi, 2011)

UN Charter added more than that when it criminalized the threat to use force or use it against the territorial integrity or political independence of any country or otherwise that is not consistent with the purposes of the United Nations, and then a series of UN General Assembly Resolutions explaining and confirming the Article (3/4) of the charter, one of them is the declaration of principles of international law governing friendship between nations under the provisions of the Charter issued by General Assembly Resolution No. 2625 adopted 24/10/1970. (Amraoui, 2016)

However, the aggression was not only limited to being armed, whether directly or indirectly, but the recent trends have created aggression of another kind, which is unarmed aggression, as one aspect of international jurisprudence has indicated that the concept of force contained in Article (2/4) of the United Nations Charter includes armed force only and its interpretation does not extend beyond economic and political pressures. It is worth noting that the United Nations Charter did not define aggression, but it contained terms that might be a pillar of aggression such as "the threat to use force," the use of armed force. " (Amraoui, 2016)

Fourth: Crimes against humanity:

Crimes against humanity are described as grave inhumane acts that fall exclusively to people or groups of people for political, racial, national, religious, ethnic, cultural, or gender issues, in the male or female community which is committed in the context of a widespread or systematic attack directed against any civilian population and with knowledge of the attack. It means any of the prohibited and specific acts of the ICC Statute. Crime against humanity is one



of the most recent international crimes that it did not appear explicitly until after World War II when the text came out in Article III of the Statute of the Nuremberg Tribunal, Which confirmed the court's jurisdiction to investigate the people who committed the behavior in favor of the Axis Powers. (Sa`dah, 2014)

The statutes of the Yugoslavia and Rwanda Tribunals also defined crimes against humanity in articles 3 and 4, respectively, and listed the same acts in both of them: murder, extermination, enslavement, imprisonment, rape, persecution for political, ethnic and religious reasons, and other inhumane acts. (Mahfouz, 2009)

However, Article 7 of the statute of International Criminal Court stipulates these crimes by saying: For this statute, any of the following acts constitutes a crime against humanity, Whenever it is committed in a widespread or systematic context directed against any group of civilians and with knowledge of the attack: (Laroussi, 2009)

Intentional homicide is one of the crimes against humanity, which are criminal acts directed against one or more civilians of the State practiced by the State or one of the gangs that follow it in implementation of a general policy pursued by the State (Robinson, 1999).

- Extermination.
- Slavery.
- Removal or Forced expulsion of the population.
- Imprisonment or severe deprivation, in any manner other than physical freedom, in contravention of the basic rules of international law.
- Torture
- Rape, sexual slavery, coercion of prostitution, forced pregnancy or forced sterilization, or any other form of sexual violence of this degree of severity.
- Persecution of any specific group or specific population for political, racial, national, ethnic, cultural or religious reasons.
- Enforced disappearance of persons.
- The crime of apartheid.
- Other inhumane acts of a similar nature intentionally causing great suffering or serious injury to the body, or mental or physical health.



The second topic

International Criminal Law Means for Protecting Human Rights

We will proceed to outline the means of international criminal law to protect human rights in two requirements: the first: we clarify the temporary international tribunals, and in the second demand: the permanent international criminal court and how they contribute to protecting human rights.

The first requirement: the temporary criminal courts.

First: Yugoslavia Court 1993.

- A. **Formation of the Court:** The Court's headquarters are located in Hague, Netherlands, and its sessions are held in this headquarters, according to Article (31) of the Statute of the Former Yugoslavia Court. Article eleven of the aforementioned system clarified that the Court consists of three organs which are (Al-Abadi, 2016)

The Chambers: It consists of two Trial Chambers in the first instance and an Appeals Chamber.

- The Prosecutor.
- The Registry, which helps Chambers and the Prosecutor together "

The International Court and the various organs constituting it enjoy the immunities and privileges stipulated in the United Nations Convention on Immunities and Privileges issued on February 13, 1946, Article 30 of the Court's System. (Al-Qahrahji, 2001)

B. Court jurisdiction: The statute of the former Yugoslavia court clarified the court's jurisdiction, whether it is subject, spatial, temporal, or in person. We will briefly talk about each type:

1. Objective jurisdiction.

The statute of the former Yugoslavia court has defined the scope of its substantive jurisdiction. The said court is competent to try those responsible for serious violations of international humanitarian law and human rights violations in the former Yugoslavia. These violations include the following: (Al-Qahrahji, 2001)

Grave breaches of the 1949 Geneva Convention, we refer to the foregoing, to prevent repetition.

Violating the laws and customs of war, such as: using a toxic weapon, destroying cities, or looting of public or private property, etc.

Genocide crimes.

Crimes against humanity.

2. Personal jurisdiction.

It is clear from the statute of the court that it is concerned with the trial of only natural persons (Article 6 of the statute of the former Yugoslavia court) who commit any of the violations of international humanitarian law, which have already been mentioned when talking about the objective jurisdiction of the court, its jurisdiction does not extend to states or legal persons such as organizations Associations and companies. (Abkal Al-Bakhit, 2004)

3. Spatial and temporal jurisdiction: The statute of the court clarified that the spatial jurisdiction of the court is limited to every region of the former Socialist Federal Republic of Yugoslavia, and it covers all the crimes that were talked about in explaining the objective jurisdiction of the court if it was committed in that region.

However, the temporal jurisdiction of the court is concerned with the crimes and grave violations committed since January 1, 1991, and the end of the court's work is determined by the Security Council after the establishment of security and peace in the region of the former Yugoslavia. (Za'abal, 2007)

Second: The Rwanda Court.

A- Forming the Rwanda Court:

The Tanzanian city of Arusha is the seat of this court, after the Rwandan city (Kigali) was the seat of it, and Article 10 of the statute of the Rwanda Court clarified the bodies involved in the formation of the court, and they are completely identical to the bodies stipulated in the statute of the former Yugoslavia court, thus, the court consists of the three following organs (Al-Abadi, 2016):

The Chambers: It consists of two Trial Chambers in the first instance and an Appeals Chamber.

- prosecutor.



The Registry, which assists the Chambers and the Prosecutor together.

The Courts of Rwanda and the former Yugoslavia share a single Appeals Chamber, as Article 12 of the Statute of the Rwanda Court clarified that appeals against the rulings of the Rwanda Court are being considered before the Appeals Chamber of the Former Yugoslavia Court, as has been clarified in Article 15 of the Statute of the Court of Rwanda The Prosecutor of the Rwanda Court is the same as the Prosecutor of the Yugoslavia Tribunal (Itani, 2009).

Despite the difference in the statute between the courts of Rwanda and Yugoslavia, they shared the same prosecutor and the same appellate chamber, which is equivalent to an odd combination of two separate tribunals created by two unrelated decisions of the Security Council, which led some to say that the decision to link the two courts is not based on legal justifications. ... And the choice of one public prosecutor for both tribunals was a choice that no one, regardless of their efficiency, can monitor the work of a chief prosecutor office separated by 1,000 miles, since the mere idea of traveling from The Hague to Arusha to perform his work is illogical, and the participation of the two courts in One appeal has faced two legal problems. The first is that the substantive law for the two Tribunals is different. Secondly, the judges of the International Criminal Tribunal for the former Yugoslavia have alternated in occupying the seats of the Appeals Chamber, unlike the judges of the Rwanda Court and indeed this caused one of the two Tribunals to suffer, and it was already Rwanda that suffered (Muhammad Shebl, 2017).

To solve this problem, the Security Council approved the creation of the post of Prosecutor of the Rwanda Tribunal, which plays a similar role to that of the Prosecutor in the former Yugoslavia court in the areas of prosecution and investigation. (Al-Makhzoumi, no date)



B- The jurisdiction of the Rwanda Court

The statute of the Rwanda court clarified the court's jurisdiction, whether objectively, temporally or spatially, and is similar in many rulings to that of the former Yugoslavia court, with some differences between them. (Al-Abadi, 2016)

1. Substantive jurisdiction: The statute of the Rwandan Court determined the scope of its substantive jurisdiction, which came in tandem with the nature of the conflict in Rwanda, where the aforementioned court is competent to try those responsible for the following crimes: (Jamil Harb, 2010)

Genocide crimes.

Crimes against humanity.

War crimes

Violations of Common Article Three of the Geneva Conventions of 1949 and the added protocol to these Agreements of February 8, 1997: Article 4 of the Statute of the Rwanda Court stipulates the jurisdiction of the court to consider these violations (violence against life, physical health, and safety of persons, collective punishment, taking Hostages, acts of terrorism, the humiliation of personal dignity, looting, and looting, execution without trial, threats of any of the aforementioned actions. (Matar, 2010)

2. Personal jurisdiction:

The aforementioned concerning the personal jurisdiction of the former Yugoslavia court is identical to the personal jurisdiction of the Rwanda court, as it is clear through Article 6 of the court's statute that it is concerned with the trial of natural persons only, so its jurisdiction does

not extend to states or legal persons such as organizations, associations, and companies. (Abkal Al-Bakhit, 2004)

3. Spatial and temporal jurisdiction:

The statute of the court explained that the spatial jurisdiction of a court covers the territorial and air Rwandan region, as well as the territories of the neighboring countries where the crimes occurred, while the temporal jurisdiction of the court, is concerned with the crimes committed from 1/1/1994 to 12/31/1994. (Al-Qahrahji, 2001)

The second requirement: the permanent International Criminal Court.

A- Introducing the International Criminal Court.

Professors and jurists of international law say the existence of international law, and the international community has concluded criminalizing certain crimes such as war crimes, genocide, and crimes against humanity, as these crimes pose a great threat to the peace and security of mankind. The rules governing the state of war have also been defined. War crimes violate human dignity and waste human rights, whether by killing the wounded or mistreating prisoners and hostages, which constitutes a grave violation of human rights. Moreover, documents of a great degree of sophistication were written both in terms of their content and in terms of how they were drafted for the International Criminal Court.

The International Criminal Court is an independent permanent criminal judicial body created by the international community in 2002 to prosecute perpetrators of the most serious potential crimes under international law so that it undertakes investigation and trial procedures for genocide, crimes against humanity and war crimes when local authorities at the national level are unable or unwilling to do that.¹

And there was a need to establish this court despite the establishing of international and regional systems by the international community to protect human rights throughout the past century, genocide, crimes against humanity and war crimes continued to fall on millions of people, and only a few of perpetrators of those crimes were brought to the national trial.²

The trial of persons who committed international crimes in an international criminal court created for that purpose (i.e. private) proved to be a failure, as the court created for this purpose is subjected to political polarization and the balance of international powers within the United Nations, and therefore was the best way to reduce the spread of international crimes is the trial of the perpetrators of those crimes, before a permanent international criminal court specializing in the consideration of serious international crimes, which undermine the pillars of the international community and threaten its fundamental interests with danger. (Al-Zanati, 2013)

The statute of this court which is the Rome Statute of the International Criminal Court was adopted in 1998 and entered into force on July 1, 2002, with the ratification of the sixtieth state. The statute of this court stipulated in Article (4) that the court has an international legal personality and the necessary legal mandate to practice its functions and achieve its goals, and the court can practice its jurisdiction and authority on the lands of member states, and on the lands of another country according to a special agreement with the concerned countries concerned. (Sharif Bassiouni, 2001)

¹ <http://www.amnesty.org/ar/international-justice/issues/international-criminal-court> View date 11/28/2018

² <http://www.amnesty.org/ar/library/asset/IOR40/001/2004> view date 11/28/2018

B- The jurisdiction of the International Criminal Court.

We will review the jurisdiction of the court, under the statute of the International Criminal Court

1. Objective jurisdiction:

It falls within the jurisdiction of the court, according to the statute of the International Criminal Court, and according to the provisions of Article 5 thereof, the court is competent to rule on the most severe crimes, which are genocide, crimes against humanity, war crimes, and the crime of aggression, and it was mentioned in (Articles 6,7, 8) The Rome Statute provides a detailed definition of the elements of these crimes.

2. Integrated jurisdiction:

The preamble of the Rome Statute of the International Criminal Court has indicated this principle, stipulating in the tenth paragraph: "The International Criminal Court established under this Statute will complement the national criminal jurisdiction." That is, the court did not come to replace the national judiciary, so that it would be a substitute for it; rather, it would complement it, and therefore the international character of the crime is not sufficient to pass the jurisdiction of the court over it, it only includes the most serious crimes that are characterized by the international characteristic, and this principle benefits the convening of the jurisdiction of the national judiciary first If its jurisdiction does not commence due to the inability to conduct the trial or the unwillingness to conduct this trial, the court has jurisdiction over it (Al-Qudsi, 2004).

According to Article (17) of the Rome Statute, the court can practice its jurisdiction when the crime is brought before the national courts of the state; but that country does not have the capacity or will to initiate the investigation and conduct the trial, or that the case is brought before the courts of the state in its place spatially, but it did not commence the investigation. After all, she decided not to try him, because it did not want to, or that it delayed the investigation procedures without justification.

3. Time jurisdiction:

The statute of the court includes the general rule in the criminal law, which stipulates that the law may not be applied retroactively, meaning that the court has jurisdiction only to consider crimes committed after the entry into force of the statute. ³

As for the countries that join the statute after entry into force, the court is only competent for crimes that occur after the entry into force of the system for this country, and this is considered to apply the general principle prevailing in the criminal law, which is the validity of the legal rule with immediate and direct effect, to encourage states to join the statute of the court without fear of reverting to the past and researching the crimes that the state may have committed before joining the court. Unless that country has issued a declaration deposited with the court's record accepting the court's exercise of its jurisdiction concerning the crime in question, committed before the enforcement of the system concerning that state. Also, crimes within the jurisdiction of the court are not subject to the statute of limitations. ⁴

4. Personal jurisdiction:

³ Article (11), paragraph (1) of the statute of the International Criminal Court

⁴ Article (11), paragraph (2) of the statute of the International Criminal Court



Personal jurisdiction means the extent of the court's jurisdiction in holding countries and people to account, and the Rome Statute has dealt with the provision of individual criminal responsibility, so that the jurisdiction of the court applies to natural persons, so the person who commits a crime that falls within the crimes of the court is responsible for him in his capacity.

⁵

Criminal responsibility of the individual does not affect the responsibility of states under international law. However, the state remains responsible for the harm caused to others as a result of its unlawful actions, so it has to compensate them for the damage as stipulated in the provisions of international liability.⁶

5. Spatial jurisdiction:

The spatial jurisdiction of the court means: It is concerned with the crimes that occur in the territory of every state that becomes a party to the Rome Statute, but if the state that signed the crime is not a party to the treaty, the court does not have jurisdiction concerning that crime, unless that country accepts the court's jurisdiction over it, and this is only in the implementation of the principle of relativity of the impact of treaties. This is because this court was established by agreement based on an international treaty, in which the basic principle is embodied in the law of treaties, which is the principle of consent since states, in this case, do not deal with a foreign court or a foreign jurisdiction, but rather deal with an international judicial organ that participated in its creation as a state party, and it plays a role concerning the procedures related to its conduct, as this is considered as one of the members of the Assembly of States Parties, so it participates in appointing judges and other matters related to the court, and accordingly the criminal court is an extension of the jurisdiction of the national judiciary. (Al-Qudsi, 2004)

It is not permissible to reserve some provisions of the statute, as it constitutes one unit, so the state must accept it all, or refuse it all, as it is indivisible. Some believe that this matter is consistent and compatible with the traditional trend, which sees the necessity of the integrity and unity of the treaty.

But by reading the rest of the articles of that system, we find it mentioned an exception when it stipulated that when the state becomes a party of this statute, it is permissible for the state to declare that it does not accept the jurisdiction of the court for seven years starting from the date of entry into force of the statute, and this is concerning the crimes mentioned in Article (8) when a claim is submitted that a national of that country has committed one of those crimes, or that the crime has been committed on its territory. ⁷

CONCLUSION:

Human rights are among the important means sought by the countries of the world, as it is a common issue among all countries, and this is because of the individual and group's position in international criminal law, that the freedom and dignity of the individual and the rights of people should be respected and the people should be able to live in the welfare and administration of justice and equality, and protect this right in war Or armed conflict, even in

⁵ Article (25), of the statute of the International Criminal Court

⁶ Article (25) Paragraph (4) of the statute of the International Criminal Court

⁷ (Article 124) of the statute of the International Criminal Court



peacetime, is not an easy thing, because human rights are a legacy and human responsibility that requires everyone to work to protect them from serious violations that harm him from killing, torture, slavery and others.

In our study, we have concluded that the activation and development of international criminal law tools by international criminal courts have become a necessity in this era which is characterized by conflicts and limitless wars committed in the form of international and non-international conflicts and the most heinous types of international crime is committed toward humanity. To make matter worse, these violations coincide with the acceleration of impressive progress in the military field, All of that was considered an entry point and an impetus for the international community to make every effort to prosecute the perpetrators of international crimes before the international criminal courts.

RESULTS

- 1) The Rome Statute is the constitution and law of the International Criminal Court, which defines its terms of reference and its work system, as well as the examination of the most serious crimes of international concern which are genocide crime, crimes against humanity, war, and aggression crime.
- 2) The presence of the International Criminal Court would secure human rights from grave violations that pose a threat to it.

Recommendations:

- 1) Working for the sake of even the non-signatories to the Rome Statute, respecting the high principles for which the International Criminal Court was established, and seeking to persuade them to join them.
- 2) The ICC's work is not limited to one country in the world without the other countries where the most heinous human rights violations are committed, without questioning the perpetrators.
- 3) Academic and educational authorities and universities have an essential and effective role in conducting thematic studies and have to allocate quotas of international teaching criminal law in all disciplines, in a separate curriculum, highlighting the assigned role of the International Criminal Court, and the terms of reference of the legal and political obstacles encountered.

References

- Al-Abadi, Z. A. M., (2016). *The Role of Special International Criminal Courts in Defining and Punishing the Crime of Genocide*, Master Thesis, Faculty of Law, Middle East University, Jordan.
- Al-Bakhit, A. A., (2004). *The Permanent International Criminal Court compared to the Temporary International Criminal Courts*, Master Thesis, Faculty of Law, University of Amman.



- Al-Basyouni, M. Sh. (2004). *The International Criminal Court, An Introduction to the Study of Provisions and Mechanisms for National Enforcement of the Statute*, Dar Al-Shorouk, Cairo, 2004
- Al-Fatlawi, S. H. *International Criminal Court*, 1st floor, Dar Al-Thaqafa, Amman.
- Al-Makhzoumi, O. M., (no date). *International Humanitarian Law in the Light of the International Criminal Court*, 1st edition, Dar Al-Thaqafa, Amman.
- Al-Qahraji, A. A. Q., (2001). *International Criminal Law, The Most Important International Crime*, International Criminal Courts, Al-Halabi Human Rights Publications, Lebanon.
- Al-Qudsi, B. (2004). *The International Criminal Court, Its Nature and Jurisdiction, and the position of the United States of America and Israel regarding it*, Damascus University *Journal for Economic and Legal Sciences*, 20(2).
- Al-Shazly, F. A., (2002). *State Criminal Law, Priorities of International Criminal Law*, The General Theory of State Crime, University Press, Egypt.
- Al-Zahir, M., (2000). *International Criminal Law: International Sanctions*, Center for Legal Studies and Research, New United Library of Books, Beirut, Lebanon.
- Al-Zanati, A. H., (2013). *International Criminal Justice and the Permanent International Criminal Court*, a study published online on the website of the Ministry of Justice, Libya, date of the visit, 11/11/2013.
- Amraoui, M. (2016). *Deterring International Crimes between International Judiciary and National Judiciary*, Ph.D. Thesis, Faculty of Law and Political Science - University of Mohamed Khadr Biskra, Algeria.
- Amrawi, M., (2011). *The International Criminal Court's Relationship with Judicial Systems*, Master Thesis, Faculty of Law and Political Science - University of Tunis.
- Bayoumi Hegazy, A. F., (2009). *The International Criminal Court: An In-depth Study of International Criminal Law*, i 1, Cairo.
- Cassese, A., (2008). *International Criminal Law*, Second Edition, OUP, p: 15.
- Crowns, S., (2014). *International Criminal Responsibility for Violations of International Humanitarian Law*, Dar Houma for Printing, Publishing, and Distribution, Algeria.
- El-Sawy, M. M. (1988). *Provisions of International Law - In the field of combating international crimes of drugs, genocide, hijacking of aircraft and other crimes*, University Press House, Alexandria.
- Guenther, L., (2014). *Outlawing Genocide Denial (The Dilemmas of official Historical Truth)*, The University of Utah Press, Ann Arbor, Michigan, 154.
- Hameed, H. Abdul-Razzaq, (2008). *The Evolution of International Criminal Justice from the Provisional Courts to the Permanent State Criminal Court*, Dar Al-Kutub Al-Legal, Egypt.



- Hisham, F. M. (2014). *The Role of the International Criminal Judiciary in Combating International Crime*, Faculty of Law and Political Science - Muhammad Khidr University in Biskra.
- Itani, Z. (2009). *International Criminal Court and the development of international criminal law*, Al-Halabi human rights publications, Beirut.
- Jamil Harb, A., (2010). *The International Penal System (International Sanctions Against Individuals)*, 1st edition, Al-Halabi Human Rights Publications, Beirut.
- Khader, M., (2017). *Sources of International Criminal Law*, Afaq Journal for Science - the University of Djelfa, (2).
- Laroussi, H. (2009). *The responsibility of chiefs and leaders before the international criminal court*, Ph.D. thesis. , Faculty of Law - University of Gelali Elias, Sidi Bel Abbes, Algeria.
- Mahfouz, S. Abd Al-Hameed, (2009). *Drew, the International Tribunal for the Former Yugoslavia in the Development of International Humanitarian Law*, Arab Renaissance House, Egypt, 2009.
- Matar, Abdel-Fattah. (2010). *International Criminal Court*, 1st floor, New University Publishing House, Alexandria, 253-254.
- Muhammad al-Far, A. al-Wahid, (2007). *International Crimes and the Power of Punishment over them*, The Arab Renaissance House, Cairo, 2.
- Muhammad Shebl, B. Al-Din, (2017). *Substantive International Criminal Law*, 1st floor, Dar Al-Thaqafa, Amman, 2011, Part 1, Algeria.
- Noufi, J., (2013). *War Crimes in Contemporary International Law*, Home Home Printing, Publishing and Distribution, Algeria.
- Robinson, D. (1999). *Defining (Crimes Against Humanity) At the Rome Conference*, *American Journal of International Law*, 93(1), 4.
- Sa`dah, O. (2014). *Fair Trial before the International Criminal Courts*, Darhomah, Algeria.
- Shamran Al-Issawi, S. (2012). *The Criminal Role of the UN Security Council under the Rome Statute*, 1st Edition, Sabah Library, Baghdad.
- Sharif Bassiouni, M. (2001). *The International Criminal Court*, New Rose Al-Youssef Press, Egypt.
- Shebl, B. Al-Din, (2009). *International Criminal Protection of Human Rights and Fundamental Freedoms, a study in the sources, theoretical mechanisms and practical practice*, Ph.D. thesis, Faculty of Law - Muhammad Khidr University in Biskra.
- Ventis, A. (2016). *The Principle of the Legitimacy of Crimes and Punishments in International Criminal Law*, Master Thesis, Faculty of Law and Political Science - Kassadi University Mirbah and Ouargla, Algeria.



Za'abal, M. (2007), *Litigation Procedures and Defense Rights Guarantees before the International Criminal Tribunal for the Former Yugoslavia*, Master Thesis, Faculty of Law and Political Science - Mentouri University of Constantinople.

Zaid Kassila, S. (2009) *International Criminal Protection Protection Rights*, Arab Renaissance House, Cairo.

