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The Role of the International Criminal Court in the Protection of Human Rights

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Abstract

In light of the increasing international need to protect human rights and fundamental freedoms, it became imperative for the international community to devise a mechanism for the protection of these rights and freedoms, and to establish deterrent legal mechanisms against reckless actions that could escalate to genocide without accountability or oversight. From this premise, the International Criminal Court (ICC) was established as a mechanism intended to safeguard humanity, protect the common human heritage, and preserve the acquired rights of humankind. This Court, possessing universal jurisdiction that disregards ranks and positions, was adopted at the United Nations Diplomatic Conference of Plenipotentiaries in 1998. Furthermore, it is a complementary court, meaning it does not investigate or rule on cases that have been conclusively dealt with by national judiciaries.

Keywords: Criminal Court, International Criminal, Human Rights, Fundamental Freedoms, Legal Rules, Controls on the Assumption of International Jurisdiction.

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1. INTRODUCTION

The increasing magnitude of international and national interest in the protection of fundamental human rights and freedoms in recent years has led to the rightful assertion that this era is the Age of Human Rights. This is primarily attributed to the sublime and elevated value of humankind, in confirmation of the Almighty God's saying: "And We have certainly honored the children of Adam and carried them on the land and sea and provided for them of the good things and preferred them over much of what We have created, with [definite] preference." The international community's concern for human rights protection has intensified, and today, many concepts and ideas concerning human rights and freedoms are widely discussed. These rights are, in reality, an ancient truth born with man throughout numerous stages of development in various political and social spheres. Human rights are considered natural rights that are inherent to the individual from birth, without requiring legal recognition by the State. This distinguishes them from public freedoms, which are a subset of human rights that the State recognizes, regulates, and protects. Furthermore, discussing the existence of human rights without accompanying mechanisms and means for their implementation amounts to merely theoretical and unrealistic aspirations. The mere establishment of specific rules, whether in the domain of human rights or the domain of law in general, is insufficient to ensure their practical, effective, and real exercise. Instead, it is essential to ensure their application and protection by creating ways and means to achieve this goal. Therefore, the subject of The Role of the International Criminal Court in the Protection of Human Rights holds significant importance because it directly impacts a person's life and future, aiming to safeguard human rights and guarantee international criminal justice (or due process). The Court, as a distinct international body, constitutes an unprecedented mechanism for the protection of human rights and fundamental freedoms. However, the major question raised in this regard is:

What is the extent of the efficacy and effectiveness of the strategies adopted by the International Criminal Court in solidifying the legal protection of human rights? And to what extent can the International Criminal Court be considered to have a role in achieving a fair trial? To answer this fundamental question, the outline has been divided as follows:

Chapter One: The Nature of the International Criminal Court as an Effective Mechanism for the Protection of Human Rights

Section One: Definition of the International Criminal Court

Section Two: Characteristics of the International Criminal Court

Chapter Two: The Legal System of the International Criminal Court

Section One: General Principles Governing the International Criminal Court

Section Two: Guarantees of Human Rights Before the International Criminal Court

I. The Nature of the International Criminal Court as an Effective Mechanism for the Protection of Human Rights

The desire to establish an international criminal judicial mechanism has preoccupied many jurists, judges, and victims of international crimes throughout the twentieth century, after the world's peoples tasted the scourges of War Crimes, Crimes Against Humanity, Genocide, and Crimes of Aggression. In order to preserve the integrity of individuals, foster a more peaceful and secure world, and uphold the right of all countries to independence and territorial integrity against occupation, the International Criminal Court (ICC) was established. It functions as a mechanism intended to ensure the benefit of humanity by protecting the common heritage of mankind and safeguarding the acquired rights of individuals. It also serves as a reminder to all governments worldwide that a policy which sacrifices justice at the altar of political settlements is no longer acceptable, and that impunity for perpetrators of crimes against humanity, war crimes, and genocide is no longer permissible. Therefore, we will address the following:

1. Definition of the International Criminal Court

The Court is defined as a permanent establishment or an independent permanent criminal institution, created by an independent treaty and dedicated to judicial individuals. It possesses the necessary judicial capacity to carry out its functions and complete its mission of upholding and promoting the supremacy of law and combating impunity for serious international criminal offenses, such as genocide, crimes against humanity, and war crimes. Thus, it is the means by which the international community enforces criminal justice. The ICC's authority is complementary to national criminal jurisdictions. Article 3 stipulates that the seat of the Court shall be in The Hague, Netherlands, "the host State"¹.

The Preamble to the 1998 Statute states that the United Nations resolved, for the benefit of current and future generations, to establish a permanent, independent International Criminal Court linked to the United Nations Organization, having jurisdiction over the most serious crimes of concern to the international community². Accordingly, the Court does not infringe upon national sovereignty or transgress the lines drawn by national judiciaries, provided the latter are willing and able to exercise their legal and international obligations. This confirms the view that the Court assumes the jurisdiction of national judiciaries only in the event that the latter are unable to exercise the mandate assigned to them by law. Consequently, the Court has been defined as the international community's means of establishing criminal justice, and it is a successor to the ad-hoc tribunals. It aims to prosecute senior civil and military officials who perpetrate the most heinous, dangerous crimes that threaten international peace and security and jeopardize the stability of humanity as a whole³.

2. Characteristics of the International Criminal Court

A review of the preceding definitions of the International Criminal Court reveals a set of features that collectively define this Court:

- The Court is a criminal judicial body vested with the jurisdiction to hear the most serious crimes concerning humanity.
- It is a permanent international institution with permanent jurisdiction, unlike the ad-hoc criminal tribunals whose existence was tied to a temporary period and were established by legal arrangements through the Security Council based on Chapter VII of the United Nations Charter. The ICC is not affiliated with any international organization or international body, nor is it subject to the will of any State, regardless of its status or power. Its relationship with the Security Council is limited to the provisions of Article 13 of the Rome Statute, which identifies the Council as an entity having the right to refer to the ICC Prosecutor crimes falling under the Court's jurisdiction⁴.
- It possesses universal jurisdiction that disregards legal positions or official capacities, and consequently, its authorities encompass all individuals in State Parties.
- It is complementary, meaning it lacks jurisdiction to investigate and adjudicate cases that national judiciaries are willing and able to genuinely prosecute.
- It was established at the United Nations Diplomatic Conference of Plenipotentiaries in July 1998⁵.

II. The Legal System of the International Criminal Court

The legal system of the International Criminal Court (ICC) is key to its role as a mechanism ensuring human rights guarantees. This system encompasses its foundational general principles, as well as the specific human rights protections afforded before, during, and after trial. We will therefore address the following:

1. General Principles Governing the International Criminal Court

The most important principles and controls upon which the International Criminal Court operates include the rule of jurisdiction, its mechanisms for convening, the legal controls it employs, and its organizational structure. We will specifically examine:

1.1. The Jurisdiction of the International Criminal Court

The Rome Statute of the International Criminal Court was approved at the Rome Diplomatic Conference on July 17, 1998, stipulating that it would enter into force on the first day of the month following the sixtieth day after the date of deposit of the sixtieth instrument of ratification, acceptance, approval, or accession with the Secretary-General of the United Nations. The Statute indeed entered into force on the first day of July⁶.

Jurisdiction, generally speaking, refers to the competence of authorities to undertake specific actions. Just as national jurisdictions are defined by specific competencies, so too is international jurisdiction, whether civil or criminal. For criminal jurisdiction, it signifies the Court's competence to hear and decide upon a criminal case. Jurisdiction is generally divided into: subject-matter jurisdiction, temporal jurisdiction, territorial jurisdiction, and personal jurisdiction.

A. Subject-Matter Jurisdiction

The Rome Statute provides for the criminal protection of human rights from the most serious crimes of concern to the international community. The ICC has jurisdiction to consider the following crimes:

- ❖ Genocide
- ❖ Crimes Against Humanity
- ❖ War Crimes
- ❖ Crimes of Aggression

Article 6 specifically protects individuals from Genocide, defined as any of the following acts committed with intent to destroy, in whole or in part, a national, ethnic, racial, or religious group, as such: killing members of the group; causing serious bodily or mental harm to members of the group; or deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part.

Furthermore, the ICC protects individuals from Crimes Against Humanity according to Article 7 of the Statute. These include murder, extermination, enslavement, deportation or forcible transfer of population, imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law, torture, rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity⁷.

The ICC also strives to protect human rights from persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, or religious grounds, enforced disappearance of persons, the crime of apartheid, and other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

Regarding the criminal protection of human rights concerning War Crimes: The International Criminal Court protects individuals, pursuant to Article 8 of the Statute, from grave breaches of the 1949 Geneva Conventions, including willful killing, torture or inhuman treatment (including biological experiments), and from willfully causing great

suffering or serious injury to body or health . It also protects individuals from other serious violations of the laws and customs applicable in international armed conflict, such as unlawful deportation or transfer, or unlawful confinement⁸.

The Statute further protects individuals from: attacking or bombarding, by whatever means, undefended towns, villages, dwellings, or buildings which are not military objectives; killing or wounding a combatant who, having laid down his arms or having no longer any means of defence, has surrendered at discretion; using poison or poisoned weapons, or asphyxiating, poisonous, or other gases; using bullets which expand or flatten easily in the human body, such as bullets with hard envelopes which do not entirely cover the core or are pierced with incisions; prohibiting the use of weapons, projectiles, material, and methods of warfare which are of a nature to cause superfluous injury or unnecessary suffering or which are inherently indiscriminate in violation of the international law of armed conflict; ¹committing outrages upon personal dignity; rape, sexual slavery, enforced prostitution, forced pregnancy; intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including willfully impeding relief supplies; and conscripting or enlisting children under the age of fifteen years into the national armed forces or using them to participate actively in hostilities⁹.

The Court also seeks to protect human rights from Crimes Against Humanity, which are unlawful acts affecting the security and safety of humankind, including: killing members of the group; causing serious bodily or mental harm to members of the group; deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; and imposing measures intended to prevent births within the group¹⁰. And criminal protection from the Crime of Aggression (Article 8 *bis*). The Review Conference dedicated to defining the Crime of Aggression convened in Kampala, the capital of Uganda, from May 31 to June 11, 2010. This meeting was held in accordance with Articles 121 and 123 of the Statute, concerning the amendment of the Court's provisions, seven years after the Statute's entry into force. A definition for the Crime of Aggression was proposed, and the Review Conference ultimately adopted the insertion of Article 8 *bis* into the Rome Statute of the International Criminal Court, which defined the concept of the Crime of Aggression, with the Court's jurisdiction over this crime suspended until 2017¹¹.

It is, however, necessary to point out the Principle of Criminal Legality, which represents one of the fundamental pillars in domestic criminal legislations¹². This principle dictates that no person shall be tried for an act that was not explicitly defined by law as a crime at the time of its commission, with its elements and conditions predetermined. International criminal law, like any other body of law, must rest upon a legislative foundation.

This principle is enshrined in Articles 22 and 23 of the Court's Statute. Article 22 states:

1. A person shall not be criminally responsible under this Statute unless the conduct in question constitutes, at the time it takes place, a crime within the jurisdiction of the Court.¹

2. The definition of a crime shall be strictly construed and shall not be extended by analogy. In case of ambiguity, the definition shall be interpreted in favor² of the person being investigated, prosecuted or convicted¹³.

This Article does not affect the characterization of any conduct as criminal under international law outside the framework of this Statute. This provision is a direct application of Article 15 of the 1966 International Covenant on Civil and Political Rights (ICCPR). This principle signifies that a person cannot be tried before the International Criminal Court for a crime that is not stipulated in Article 5, which defined the subject-matter jurisdiction of the Court to include Genocide, War Crimes, Crimes Against Humanity, and the Crime of Aggression once it enters into force¹⁴.

Furthermore, Article 22/2 prohibits analogy, meaning a person may not be prosecuted for an act not explicitly criminalized by the Statute based on an analogy with a criminalized act, even if there is similarity or proximity between the two acts. In the case of ambiguity in the text, it must be interpreted in favor of the person under investigation, prosecution, or conviction.

In addition, paragraph three of Article 22 confirms that the provisions of the Statute concerning the crimes within the Court's jurisdiction do not affect the characterization of an act or conduct as an international crime under international law.

A fundamental consequence of applying this principle is the exclusive and restrictive application of the penalties provided for in Article 77 of the Statute to the convicted person.

The principle of legality of crimes and penalties also entails another core principle: the prohibition of double jeopardy, or *Non-Bis-In-Idem*, as stipulated in Article 20 of the Court's Statute¹⁵.

B. Personal Jurisdiction

Article 25 of the Statute sets forth a number of principles related to the individual criminal responsibility of persons:

- a) The International Criminal Court does not have jurisdiction over legal entities (juridical persons).

- b) A person who commits a crime within the jurisdiction of the Court shall be individually responsible for it and liable to punishment.
- c) An individual shall be criminally responsible whether they commit the crime in their individual capacity or jointly with others.

Nationality forms the second basis for the ICC's personal jurisdiction. Personal jurisdiction is primarily restricted to the nationals of State Parties who are 18 years of age or older at the time of committing the crime. This jurisdiction extends to include:

- ❖ Nationals of Third States (Non-State Parties) based on the Court's *ad hoc* jurisdiction, where that State has made a declaration accepting jurisdiction.
- ❖ Nationals of Third States accused of committing one of the crimes stipulated in Article 5 on the territory of a State Party¹⁶.

C. Temporal Jurisdiction (\$Ratione Temporis\$)

As previously mentioned, this is stipulated in Article 24 of the Statute, which affirms that no person shall be criminally responsible under the Statute for conduct prior to its entry into force. The Court's jurisdiction is thus prospective. Consequently, the International Criminal Court has jurisdiction only over the crimes listed in Article 5 that were committed after the Statute entered into force on July 1, 2002—the first day of the second month following the sixtieth day after the deposit of the sixtieth ratification instrument by States.

For States that accede to the Statute after its entry into force, the International Criminal Court can exercise its jurisdiction only with respect to crimes committed after the date of that State's accession to the Statute. This condition applies unless the acceding State has made a declaration prior to its accession, which it deposited with the Court's Registrar, thereby accepting the Court's exercise of jurisdiction with respect to the crime under investigation¹⁷.

1.2. Mechanisms for Triggering the Jurisdiction of the International Criminal Court

The jurisdiction of the International Criminal Court to consider the crimes specified in Article 5 of its Statute is triggered by three fundamental mechanisms, defined in Articles 13 through 15:

A. A State Party refers a situation to the Prosecutor, pursuant to Article 14, in which one or more of such crimes appear to have been committed.

B. The Security Council, acting under Chapter VII of the Charter of the United Nations, refers a situation to the Prosecutor in which one or more of such crimes appear to have been committed.

C. The Prosecutor has initiated an investigation with respect to one of these crimes pursuant to Article 15¹⁸.

1.3. Legal Rules Applied by the Court

In accordance with Article 21 , the International Criminal Court applies the following rules :

- ❖ Its Statute, the Elements of Crimes (which are the specific components of each crime approved by a two-thirds majority of the States Parties), and the Court's Rules of Procedure and Evidence .
- ❖ Applicable treaties and the principles and rules of international law , including the established principles of the law of armed conflict.
- ❖ The general principles of law derived by the Court from the national laws of the legal systems of the world.
- ❖ The Court may apply principles and rules of law which it has taken as precedent in its previous decisions (this embodies the idea of judicial precedents—*Stare Decisis*—applied in Anglo - Saxon legal systems)¹⁹.

1.4. Controls Governing the Triggering of the International Criminal Court's Jurisdiction

The Principle of Complementarity is the basic principle governing the relationship between the International Criminal Court and national courts, and it is one of the fundamental pillars upon which the ICC's jurisdiction is triggered. The Preamble to the Rome Statute refers to this principle by stating that "the International Criminal Court established under this Statute shall be complementary to national criminal jurisdictions." This is further emphasized in Article 1 of the Statute: "The Court shall be complementary to national criminal jurisdictions"²⁰ "

The provisions of the ICC Statute clearly urge States Parties to the Rome Statute to proactively investigate any facts constituting crimes under the Convention's provisions, carried out by their national authorities and in accordance with their domestic legislation, considering this to be the first line of defense in dealing with such crimes. However, if the national authorities are unable or unwilling to carry out this mission for one reason or another, jurisdiction will inevitably be triggered for the International Criminal Court in accordance with the rules and conditions set out in its Statute. Therefore, the Court's role is appropriately described as that of a "permanent standby court," meaning its function is complementary to that of the national judiciary, thereby achieving the principle of complementary jurisdiction²¹.

Consequently, the International Criminal Court may not consider a case if national criminal authorities have effectively carried out their duties by investigating and prosecuting the perpetrators of international crimes within their jurisdiction. This principle is embodied in Article 17 of the ICC Statute, concerning admissibility, which states that "...the Court shall determine that a case is inadmissible where:

- a) The case is being investigated or prosecuted by a State which has jurisdiction over it, unless the State is genuinely unwilling or unable to carry out the investigation or prosecution.
- b) The case has been investigated by a State which has jurisdiction over it and the State has decided not to prosecute the person concerned, unless the decision resulted from the unwillingness or inability of the State genuinely to prosecute.²
- c) The person concerned has already been tried for conduct which is the subject of the complaint, and a trial by the Court is not permitted under Article 20, paragraph 3."

Based on the foregoing, it can be stated that jurisdiction is fundamentally national, and international jurisdiction intervenes only in specific circumstances to achieve justice for the victims of Genocide, War Crimes, Crimes Against Humanity, and the Crime of Aggression. The Rome Statute obliges States to take the necessary and appropriate measures at the national level to end impunity for the perpetrators of these crimes. It reminds States of the essential role they bear and stresses their responsibility in this regard, encouraging them to exercise their jurisdiction over the crimes specified in Article 5 of the ICC Statute and to establish the necessary controls for the transfer of jurisdiction over the prosecution of these crimes to the International Criminal Court.

Article 17 of the ICC Statute defined two essential criteria for the Court's jurisdiction to be triggered over the crimes specified in Article 5, displacing national jurisdiction and applying the principle of Complementarity: unwillingness to genuinely carry out the investigation or prosecution, and inability to genuinely carry out the investigation or prosecution. Article 17 (1) of the Rome Statute states that "The Court shall, subject to paragraph 10 of the Preamble and Article 1, determine that a case is inadmissible where:

- a. If the case is being investigated or prosecuted by a State which has jurisdiction over it, unless the State is genuinely unwilling or unable to carry out the investigation or prosecution.
- b. If the case has been investigated by a State which has jurisdiction over it and the State has decided not to prosecute the person concerned, unless the decision resulted from the unwillingness or inability of the State genuinely to prosecute.
- c. If the person concerned has already been tried for conduct which is the subject of the complaint, and a trial by the Court is not permitted under Article 20, paragraph 3.
- d. If the case is not of sufficient gravity to justify further action by the Court²².

1.5. Composition of the International Criminal Court

The International Criminal Court is composed of 18 judges, selected from the most highly qualified individuals required to fill this important function, provided that the Court does not include more than one judge who is a national of the same State. The judges of the Court exercise their functions in complete independence. Furthermore, the Court's judges, the Prosecutor, the Deputy Prosecutors, and the Registrar enjoy the privileges and immunities accorded to heads of diplomatic missions in the exercise of their functions²³.

In addition, the Court consists of several organs, summarized as follows²⁴:

- ❖ The Presidency, consisting of the President, the First Vice-President, and the Second Vice-President.
- ❖ The Appeals Division, the Trial Division, and the Pre-Trial Division.
- ❖ The Office of the Prosecutor (OTP), responsible for receiving and examining referrals and information on crimes within the Court's jurisdiction, conducting investigations, and sustaining the charges before the Court.
- ❖ The Registry, headed by the Registrar, responsible for the judicial and administrative aspects of the Court.

2. Guarantees of Human Rights Before the International Criminal Court

An individual subject to proceedings before the International Criminal Court enjoys numerous international guarantees derived from the principle of a fair trial (due process), with the aim of ensuring a just hearing in accordance with various international human rights conventions. These guarantees are divided into those related to the investigation (pre-trial) phase, those specific to the trial phase, and those concerning the post-trial phase, as detailed below.

2.1 The Investigation Phase

The Rome Statute of the International Criminal Court guarantees several rights to the individual during the investigation, or pre-trial phase. Article 55 of the Rome Statute enshrines many important, internationally recognized guarantees, such as the person's right not to be compelled to incriminate himself or to confess guilt. Article 55/1b prohibits subjecting the person to any form of coercion, duress, or threat, and prohibits torture or any other form of cruel, inhuman, or degrading treatment or punishment. A person questioned in a language they do not completely understand and speak has the right to the free assistance of a competent interpreter and to necessary written translations to meet the requirements of fairness, in addition to the prohibition of arbitrary arrest or detention, and the prohibition of deprivation of liberty except on the grounds and in accordance with the procedures established in the Statute.

In the same context, Article 55/2 of the Rome Statute stipulates that, before questioning a person when there are grounds to believe that they have committed a crime within the jurisdiction of the Court, and that person is about to be questioned either by the Prosecutor or by national authorities pursuant to a request made under Part 9 of the Statute, that person shall be informed of a set of rights and guarantees summarized as follows :

- ❖ The necessity of being informed, before being questioned, that there are reasons to believe that they have committed a crime within the jurisdiction of the Court.
- ❖ The right to remain silent, without such silence being a factor in the determination of guilt or innocence .
- ❖ The right to legal assistance of their choosing, and if they do not have legal assistance, to have such assistance provided in any case where the interests of justice so require, without payment by the person in any such case if they do not have sufficient means to pay for it.
- ❖ The necessity of being questioned in the presence of counsel , unless the person has voluntarily waived their right to counsel.

Furthermore, an arrested person also has the right to have an expert appointed to assist them by the Pre - Trial Chamber, or to retain counsel of their choosing, pursuant to Article 56, paragraph 2. Moreover, the Pre - Trial Chamber must protect the privacy of victims and witnesses, in addition to arrested persons or those appearing before the Court upon its request, pursuant to Article 57, paragraph 3. The ICC Statute represents a significant development regarding the status of witnesses, especially given that, for example, the International Criminal Tribunal for Rwanda suffered greatly from interference with witness testimony and poor witness management .

2.2. The Trial Phase

The Rome Statute grants the individual—whether an accused, a witness, or a victim—a number of guarantees during the trial phase. These include the requirement of a trial in the presence of the accused, pursuant to Article 63/3 of the Rome Statute, thereby excluding trial in absentia.

Article 64/2 of the ICC Statute imposes an obligation on the Trial Chamber to ensure that the trial is fair and expeditious and is conducted with full respect for the rights of the accused and with due regard for the protection of victims and witnesses. Furthermore, trials are to be held in open court, though the Trial Chamber may decide that certain circumstances require specific measures to be conducted in a closed session for the purposes set out in Article 68, or to protect confidential or sensitive information to be presented as evidence, in accordance with Article 64/7 of the Rome Statute.

Among the rules comprising the right to a fair trial, Article 67/1, sub-paragraph (a) stipulates the right of the accused to be informed in detail of the nature, cause, and content of the charge against them, in a language they fully understand and speak. Therefore, the accused has the right to know the charges brought against them so that they can respond to those charges. The defense cannot be effective unless the accused is aware of everything related to the case; otherwise, the right to defense becomes vague and loses its effectiveness.

In addition, Article 67/1, sub-paragraphs (b) and (c) of the ICC Statute provide several guarantees for the individual within the framework of a fair trial, including providing the accused with adequate time and facilities for the preparation of their defense, and the right to select legal counsel to defend them, in an atmosphere of confidentiality (4). The accused has the right to be enabled to prepare their defense before the Court commences the trial, to respond to the alleged crimes, and to be able to choose counsel for their defense and consult with that counsel free from any monitoring. For the lawyer to prepare the defense, they must be allowed to meet their client whenever the lawyer or the accused requests it; they need to meet alone, in private, and away from any monitoring. If the accused does not have sufficient means to retain counsel, the Court shall provide this assistance without charging any fees.

Furthermore, Article 67/1 sub-paragraph (c) grants the accused the right to be tried without undue delay. This requires balancing the accused's right to be given adequate time to prepare their defense with their right to a trial without unlawful delay.

Among the rights also guaranteed to the accused are the right to defend themselves, to object to any unlawful procedure, the right to be present during the trial, to examine witnesses against them and to present any admissible evidence under the Statute of the Court, and to make an oral or written statement. The accused also has the right to the assistance of a competent interpreter if proceedings before the Court or documents presented to it are in a language the accused does not fully understand and speak.

2.3. The Post-Trial Phase

An individual enjoys several rights before the International Criminal Court during the post-trial phase. These include the necessity of providing a reasoned criminal judgment issued by the Court. A reasoned judgment constitutes the collection of factual evidence and legal arguments upon which the Court relied to form its conviction regarding the solution contained in its judgment. Before the judge states the operative part of their judgment, they must first detail the totality of the reasons and evidence that led them to that conviction, to the exclusion of any other. This must be based on evidence established in the case file, along with citing the legal texts applied to the case presented.

Article 74/2 of the Rome Statute explicitly obliges the Court to state the reasons for its judgment, stipulating that: "The decision of the Trial Chamber shall be based on its evaluation of the evidence and the totality of the proceedings. The decision shall not exceed the facts and circumstances described in the charges and any amendments thereto. The Court may draw no conclusions as to guilt or innocence only on evidence submitted and discussed before it at the trial."

❖ The Statute also guaranteed the right of the person who suffered harm, as set out in Article 75/1 of the Rome Statute. Furthermore, the Rome Statute obliged the Trial Chamber to impose the appropriate sentence, taking into account the evidence and submissions presented during the trial that are relevant to the sentence. In addition, the judgment should be issued publicly and, whenever possible, in the presence of the accused.

❖ The Rome Statute excludes the death penalty in cases of conviction, in response to various international calls demanding its abolition in order to protect the human right to life as the most prominent right enjoyed by individuals.

❖ Article 78 obliges the Court, when determining the sentence, to consider several factors such as the gravity of the crime and the particular circumstances of the convicted person, in accordance with the Rules of Procedure and Evidence.

In return, the Statute grants the convicted person the right to appeal the judgments issued by the Court. Part 8 of the Rome Statute sets out the means of challenging the judgments and decisions issued by the Court, whether they are judgments of acquittal, conviction, or sentence. An appeal may be filed by the convicted person or the Prosecutor in the case of a procedural error, an error of fact, or an error of law, or for any other reason that affects the fairness or reliability of the proceedings or the decision. Both the convicted person and the Prosecutor may also appeal the sentence if the crime is not serious, or if there are no aggravating circumstances, yet a grave sentence was imposed.

❖ Article 82 of the Rome Statute grants the convicted person the right to appeal other decisions issued by the Court, such as those concerning jurisdiction or admissibility, a decision granting or refusing release of the person being investigated or prosecuted, or any decision that involves an issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial, as determined by the Trial Chamber.

❖ In the same context, the State concerned or the Prosecutor may, with the permission of the Pre - Trial Chamber, appeal a decision issued by that Chamber under Article 57, paragraph 3 /d. Such an appeal shall be considered on an expedited basis. The legal representative of the victims, the convicted person, or a *bona fide* owner of property adversely affected by an order under Article 73 may appeal the order

for the purpose of obtaining compensation, as provided for in the Rules of Procedure and Evidence.

Furthermore, the Rome Statute established the right of the convicted person, or, after their death, their spouse, children, parents, or any person alive at the time of the accused's death who had received explicit written instructions from them to that effect, or the Prosecutor on the person's behalf, to submit an application to the Appeals Chamber for the review (revision) of the final judgment of conviction or sentence based on the following grounds:

- a) That new evidence has been discovered that was not available at the time of the trial.
- b) That it has been newly discovered that crucial evidence considered at the trial and relied upon for the conviction was false, fabricated, or falsified.
- c) That one or more of the judges who participated in the conviction or confirmation of the charges has committed grave misconduct or a serious breach of duty in that case of sufficient gravity to justify the removal of that judge or judges under Article 46 of the Rome Statute.

However, Article 84, paragraph 2, of the ICC Statute affirms the right of the Appeals Chamber to reject the application for review if it considers it unfounded. If it deems the application worthy of consideration, it may reconvene the original Trial Chamber, constitute a new Trial Chamber, or retain jurisdiction over the matter with the aim of reaching a decision, after hearing the parties as provided for in the Rules of Procedure and Evidence, on whether the judgment should be reviewed.

Finally, we note that Article 85 of the Rome Statute grants the arrested or convicted person the right to compensation. This applies if they were victims of an unlawful arrest or detention, or if a person was convicted by a final decision of a criminal offense, and their conviction was subsequently reversed on the ground that a new or newly discovered fact showed conclusively that there had been a miscarriage of justice. In this case, the person who suffered the punishment as a result of the conviction shall receive compensation in accordance with the law, unless it is proved that the non-disclosure of the unknown fact in due time is wholly or partly attributable to the convicted person themselves. The Court may also, in exceptional circumstances where it discovers undeniable facts demonstrating a grave and manifest miscarriage of justice, as determined by its assessment, decide to award compensation, consistent with the standards set out in the Rules of Procedure and Evidence, to a person who is released from custody following a final decision of acquittal or the termination of proceedings for the aforementioned reason²⁵.

Conclusion

The concern of international law with human rights issues has progressed gradually. Initially, it focused only on certain groups, such as workers and minorities, and did not address human rights as a whole because it considered them matters of the States' domestic jurisdiction, influenced by the principle of national sovereignty.

However, the real development of human rights at the international level began with the emergence of the United Nations, following the horrors of the two World Wars. The experience of these wars led to a widespread belief that effective international protection of human rights is a fundamental prerequisite for achieving international peace and security. The Charter of the United Nations confirmed in its principles and objectives that human rights and respect for them are paramount priorities for the organization, and that the treatment of peoples and individuals by States has become a subject of concern for international law. Thus, the Charter laid the foundations for the development that international law has witnessed in the field of human rights.

There is no doubt that the global focus on human rights currently represents a targeted value of the international legal system. It has become common practice to evaluate governments' conduct based on their respect for human rights at both the domestic and international levels. Furthermore, the assessment of social and economic systems themselves is subject to the extent of rights and freedoms those systems secure for their citizens. To achieve this goal and ensure effective and required protection for human rights and fundamental freedoms, efforts must be made to activate the rules pertaining to the International Criminal Court (ICC) through the concerted efforts and cooperation of States to prosecute and punish the perpetrators of international crimes.

Recommendations

- ✓ Activate the process of accession to the International Criminal Court for all States.
- ✓ Limit the power and dominance of the Security Council over international affairs, given that the Council's authority is dedicated to maintaining international peace and security.
- ✓ Do not exclude Non-State Parties from the authority to refer cases to the International Criminal Court.
- ✓ Call for increased attention to documenting all material and moral violations perpetrated by Israel against the Palestinian people.
- ✓ Call for finding a formula for coordinating efforts among various international and regional parties that are pursuing legal action against the Israeli occupation.
- ✓ Push toward the establishment of a special international criminal tribunal for Israeli crimes.

– Political considerations driven by the general interests of States should not be a fundamental and essential factor in mobilizing the work of the International Criminal Court. The prime evidence is what happened in Gaza and Southern Lebanon, which failed to stir either the Security Council or the Prosecutor into action, yet they mobilized the world when their oil interests were threatened in Libya, going so far as to seek an arrest warrant for the Libyan President in a period of less than three months. This represents the *coup de grâce* delivered to criminal justice.

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The Algerian legislator consecrated the principle of the legality of crimes and penalties (Article 46 of the 1996 Constitution and Article 1 of the Penal Code).

Preamble to the Statute of the International Criminal Court. Paragraph 10

Footnotes

¹ Rome Statute of the International Criminal Court, adopted on 17/07/1998, and entered into force on 01/07/2002. See Articles 4 and 6.

² Khidr Muhammad Aal Khattab, *Guarantees for the Accused in the Pre-Trial Phase in the Statute of the International Criminal Court (Damānāt al-Mutahham fī Marḥalat Qabl al-Muḥākamah fī al-Niẓām al-Asāsī li-al-Maḥkamah al-Janā'īyyah al-Dawliyyah)*, Master's Thesis, Al-Isra University, Jordan, 2009, p. 8.

³ Sameh Gaber El Beltagy, *The Protection of Civilians in Times of Armed Conflict (Ḥimāyat al-Madaniyyīn fī Zaman al-Nizā'āt al-Musallaḥah)*, Al-Fikr Al-Jami'i, Alexandria, 2007, p. 137.

⁴ Khidr Muhammad Aal Khattab, *Guarantees for the Accused in the Pre-Trial Phase in the Statute of the International Criminal Court*, op. cit., pp. 8-9.

⁵ Faïd Najib Mahmoud, *The International Criminal Court: Towards International Justice (Al-Maḥkamah al-Janā'īyyah al-Dawliyyah Naḥwa al-'Adālah al-Dawliyyah)*, 1st ed., Halabi Legal Publications, 2006, pp. 47-48.

⁶ Boujelal Salah Eddine, *Lectures on Human Rights Law (Muḥāḍarāt fī Qānūn Ḥuqūq al-Insān)*, Faculty of Law and Political Science, University of Sétif, 2013-2014, p. 30.

⁷ The Rome Statute of the International Criminal Court, op. cit., Articles 4, 6, 8.

⁸ Muntaser Said Hammoudah, *The International Criminal Court (Al-Maḥkamah al-Janā'īyyah al-Dawliyyah)*, Dar Al-Fikr Al-Arabi, Alexandria, 1st ed., 2009, p. 109.

⁹ Badr Eddine Mohamed Echible, *International Criminal Protection of Human Rights and Fundamental Freedoms (Al-Ḥimāyah al-Janā'īyyah al-Dawliyyah li-Ḥuqūq al-Insān wa-Ḥuriyyātihi al-Asāsiyyah)*, Dar Al-Thaqafa for Publishing and Distribution, Algeria, 2011, p. 220.

¹⁰ Issam Abdel Fattah Matar, *International Humanitarian Law: Its Sources, Principles, and Most Important Rules (Al-Qānūn al-Dawlī al-Insānī: Maṣādiruhu, Mabādi'uhu wa-Aḥam Qawā'idih)*, Dar Al-Jami'a Al-Jadida for Publishing, Alexandria, 2008, p. 255.

¹¹ Ahmed Abdel Zaher, *The Role of the Security Council in the Statute of the International Criminal Court (Dawr Majlis al-Amn fī al-Niẓām al-Asāsī li-al-Maḥkamah al-Janā'īyyah al-Dawliyyah)*, 1st ed., Dar Al-Nahda Al-Arabiya, Cairo, 2012, p. 5.

¹² The Algerian legislator consecrated the principle of the legality of crimes and penalties through constitutional texts and in the Penal Code, including Article 46 of the 1996 Constitution: "No conviction except by virtue of a law issued before the commission of the criminalized act"; Article 1 of the Penal Code: "No crime, no penalty, or security measures without law."

¹³ text of Article 22 of the Rome Statute of the International Criminal Court.

¹⁴ Article 15 of the International Covenant on Civil and Political Rights (ICCPR).

¹⁵ Ibrahim Mohamed El-Anani, *Principles of Criminal Justice in the Statute of the International Criminal Court (Mabādi' al-'Adālah al-Janā'īyyah fī al-Niẓām al-Asāsī li-al-Maḥkamah al-Janā'īyyah al-Dawliyyah)*, Human Rights Journal, Assiut University, Issue 5, January 2002, p. 85.

¹⁶ Faïd Najib Mahmoud, op. cit., p. 141.

¹⁷ Muntaser Said Hammoudah, op. cit., p. 176.

¹⁸ Article 14 of the Rome Statute.

¹⁹ Article 21 of the Rome Statute.

²⁰ paragraph 10 of the Preamble to the Statute of the International Criminal Court, available on the Court's electronic site: www.icc-cpi.int/ar.

²¹ Adel Majed, *The International Criminal Court and National Sovereignty* (Al-Maḥkamah al-Janā'iyah al-Dawliyyah wa-al-Siyādah al-Waṭaniyyah), Center for Political and Strategic Studies, Cairo, 2001, p. 81.

²² Salem Al-Ojali, *The Relationship Between the International Criminal Court and National Courts* (Al-'Alāqah Bayna al-Maḥkamah al-Janā'iyah al-Dawliyyah wa-al-Maḥākim al-Waṭaniyyah), Intervention in the Symposium "The International Criminal Court: Ambition—Reality—and Future Prospects," Academy of Graduate Studies, Tripoli, Libya, 10-11 January 2007, p. 11.

²³ See Article 36 of the Rome Statute of the International Criminal Court.

²⁴ See Article 34 of the Rome Statute of the International Criminal Court.

²⁵ Hassani Khaled, *Lectures on Human Rights* (Muḥāḍarāt fī Ḥuqūq al-Insān), Faculty of Law and Political Science, Abderrahmane Mira University, 2014-2015, pp. 52-57