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**THE POLITICIZATION OF THE PROCEEDINGS OF THE  
INTERNATIONAL CRIMINAL COURT AND THE DUPLICATION IN  
THEIR APPLICATION: ISRAEL IS A MODEL**

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**ABSTRACT**

The trials of the Second World War in Nuremberg and Tokyo are vivid evidence of the interaction between international humanitarian law and international criminal law. This is illustrated by two manifestations : First: The Charter of the Tribunals was based on the principles of international humanitarian law derived from the Hague Act of 1907 Second, the term war crimes, crimes against humanity, and crimes against peace were used for the first time, making international criminal law relevant to the Nuremberg and Tokyo Conventions.

The establishment of these tribunals underscores the fact that there are aspects of the human rights issue that the United Nations has not neglected to punish war criminals or perpetrators of crimes against humanity, human rights in the occupied territories, and other rights The United Nations' interest in human rights has been confirmed by the creation of the International Criminal Tribunal for the Former Yugoslavia (ICTY) to try war criminals in both the former Yugoslavia and Rwanda.

The International Interaction and Intervention Department for the Protection of Human Rights and Fundamental Freedoms, in particular through the United Nations, is being established with the establishment of the International Criminal Court in 1998. Hence, the objective of our research is to highlight two things: Explains the role of the International Criminal Court as an international sanction in providing international criminal protection of human rights and in determining international criminal responsibility for these rights.

The UN Security Council issues its decisions regarding the establishment of two international criminal tribunals in the former Yugoslavia and Rwanda and has been entrusted with the prosecution of serious violations of human rights principles committed in the territory of the United Nations, These two countries, the Security Council, stand helpless against the war crimes and gross human rights violations committed by Israeli forces in Palestine and Lebanon This fact, the other objective of our research, is to highlight the political implications of the work of the International Criminal Court.

**Keywords:** Politicization. Proceedings. International Criminal Court duplication. Application. Israel. Model

## 1.0 INTRODUCTION

As a result of the growing interest in human rights and fundamental freedoms, the United Nations Charter has paid particular attention to the promotion of due respect for human rights and fundamental freedoms. The preamble states that the peoples of the United Nations must reaffirm their faith in fundamental human rights and the dignity and worth of the human person, Nations, large and small, have equal rights.

The Charter of the United Nations has been implemented because the issue of human rights and fundamental freedoms is an issue outside the internal jurisdiction of the State and that it has an international character within the jurisdiction of the United Nations. Thus, public international law transcends its character as a legal system between States, and the individual is given increased rights in peacetime and in times of war.

However, human rights today are in dire need of specialized international instruments and mechanisms, which provide them with international criminal protection against serious violations and violations of all international human rights instruments and declarations. It is no longer acceptable for States to be entrusted solely with national legislation. Protecting basic human rights in times of peace and war.

This study examines the political considerations and influences on the functioning of the International Criminal Court as the most important and most important means of international criminal protection of human rights today, especially since States have never abandoned their principle of not subjecting them to a system other than their own. Or to legislations other than those which it recognizes, as a manifestation of its sovereignty.

In fact, the various countries in the world today, large and small, consider the idea of an international criminal court to deal with the crimes in their territory, It was a violation of the sovereignty and then that idea always collided with the positions of some countries and in particular some of the major countries, especially the United States of America, which was a barrier to prevent the development of the idea and its emergence only in 1998, which was adopted by the Statute of the International Criminal Court creditors Of which entered into force in 2002.

### **The importance of research is determined in the following:**

**First:** The existence of the International Criminal Court is consecration and politicization of an effective international regime for the international criminal protection of human rights and freedoms

**Second,** the International Criminal Court (ICC) is a deterrent mechanism or a real guarantee to protect human rights from serious abuses.

**Thirdly,** the ICC's system is based on international legal rules of a specific penal nature, especially in legal mechanisms and means by which to enshrine the principle of international criminal justice and provide some form of international criminal protection to individuals and groups of various components from any serious violations that may be committed to them.

**Fourth:** The Statute of the International Criminal Court recognizes that immunity relating to the official character of persons subject to prosecution and prosecution shall not be considered as falling within the jurisdiction of the Court, and the lack of respect for the official character of the persons. This would entrench the absence of impunity under any provision, including immunity.

In a more precise sense, the official character of a person at the national and international levels is to prevent the Court from exercising its penal jurisdiction over it

## **2.0 RESEARCH PROBLEM**

The precise reading of the Statute of the International Criminal Court clarifies two things.

The quality of the jurisdiction of the International Criminal Court is to consider the following crimes (crimes of genocide, crimes against humanity, war crimes, crimes of aggression).

### **Second: Determination of criminal responsibility and sanctions:**

The research problem stems from the fact that the purpose of any criminal legal system is to prevent the commission of the criminal act and to contribute to the protection of humanity from these crimes of global gravity and extreme gravity.

But the Statute of the International Criminal Court has introduced into the new international tribunal a new role for the UN Security Council, demonstrating its validity in seeking to defer the court's jurisdiction for a certain renewable term if it concerns international peace and security.

### **This power produced problematic:**

Disruption of the work of the court due to political considerations and pressures and means realistically several things including:

Impose a kind of political control by the permanent powers of permanent membership, foremost the United States of America on the work of the Court.

To politicize the procedures and mechanisms of the International Criminal Court and to selectively and devise a policy of double standards in the field of international criminal protection of human rights and fundamental freedoms.

Increasing the duality of the possibility of prosecuting the Israeli perpetrators of international crimes before the Criminal Court in the cases of Israeli settlement as a continuing war crime based on the text of Article 8 of the Rules of Procedure of the International Criminal Court as well as the text of Article (85) of Protocol I to the Geneva Conventions Of 1949 as a serious violation and classified as war crimes and the same as for the arrest of Palestinian prisoners because their continued detention violates the provisions of international law, particularly the Third Geneva Convention of 1949 on the treatment of prisoners and other crimes And the use of bullets that extend or flatten easily in the human body, such as bullets with hardcovers, bullet-proof bullets, etc., which fall under the jurisdiction of the International Criminal Court

### 3.0 RESEARCH METHODOLOGY

We have adopted the historical approach because it is a necessary approach that can be dispensed with by reference to the historical roots of the establishment of the International Criminal Court. We also adopted the analytical and legal approach in the examination of the mechanisms of international criminal protection of human rights and the determination of court procedures. In addition to the role of the Court in determining the criminal responsibility of perpetrators of crimes against humanity and the appropriate penalty.

#### 3.1 Legal texts on the criminal protection of human rights Contained in international declarations and covenants

Article 22 of the Statute of the International Criminal Court provides that:

1. No person shall be criminally liable under this Statute unless the conduct in question at the time of its occurrence falls within the jurisdiction of the Court
2. The definition of the crime shall be strictly interpreted and may not be extended by analogy. In the case of ambiguity, the definition shall be interpreted in favor of the person under investigation, prosecution, or conviction

This article does not affect the adaptation of any conduct as criminal conduct under international law outside this statute's framework (1).

It is clear that the last paragraph of the previous article left the door open for not limiting international crimes within this system. Article 23 of the Statute of the International Criminal Court stipulates that: "Any person convicted of the Court shall be punished only following this Statute. In other words, there is no penalty without a text, which is derived from the principle of the legality of crimes and punishments, since this principle provides that there is no crime or punishment except by a legal provision, and also the principle of presumption of innocence, which prescribes that the accused is innocent until proven guilty by court. Final issued following applicable law.

In addition to an advanced reference to a set of criminal safeguards, a set of fundamental judicial guarantees provided for in Article 55 of the Statute of the Court apply to: a person may be compelled to incriminate himself or to plead guilty; the person may not be subject to any form of coercion or Coercion or threat and may be subjected to torture. If the person is interrogated in a language other than the language he fully understands and speaks, he is entitled to use free of charge an interpreter, obtain the necessary translations to meet the requirements of fairness and the accused has the right to remain silent, In the determination of guilt or innocence, and is being questioned in the presence of a lawyer, money the person voluntarily waive his right to counsel (2).

The right of the accused to a fair trial, public trial, oral proceedings, equality of adversaries before the court, and the presumption of innocence. In addition to the principle not to take the person twice in one case, and the right of the accused to pronounce the verdict in public, and the right of the accused to alert him to his rights in the judicial appeal (3)

And the accused has the right to question the prosecution witnesses himself or by a lawyer and to provide him with the presence and interrogation of the witnesses of exile on the same conditions as the evidentiary witnesses. The accused shall also have the right to make defense and to provide other evidence admissible under the Statute of the International Criminal Court (4)

Article 27 of the Statute of the International Criminal Court provides for equal treatment of accused persons, regardless of their official status, whether as head of state or government, member of a government, parliament, elected representative, However, these immunities or special procedural rules which are related to the official character of the person, whether under national or international law, to prevent the ICC from exercising its jurisdiction over that person (5)

### **3.2 Procedures and mechanisms of the International Criminal Court in the protection of human rights**

The quest of the international community to establish a global penal system that ensures the prosecution, prosecution, and punishment of the perpetrators of international crimes requires the passage of several stages, in which millions of people have suffered the scourge of international and civil wars, which has undermined many aspects of their civilization.

The end of the Cold War, the changing of the balance of power in favor of the United States of America, and the nature of modern warfare provided an incentive for the development of the concept of criminal protection of human rights by calling for mechanisms to bring perpetrators of serious violations of international humanitarian law and human rights to justice. The International Law Commission of the United Nations has been able to convene a diplomatic conference resulting from the Statute of the Permanent International Criminal Court known as the ROE System. 1998.

However, the jurisdiction of the International Criminal Court covers crimes committed only after July 1, 2002, when the Rome Statute entered into force, and the mechanisms and procedures for investigating crimes against humanity by the Court fall into three stages, The mechanism of consideration of such offenses as follows :

First: The Prosecutor General of the International Criminal Court.

Under the Statute of the Court, the Prosecutor-General of the Court may proceed

An investigation in the event of the following offenses

#### **Genocide**

Concerning the crime of genocide, it is defined in Article 6 of the Statute of the Court in conformity with the definition of the Genocide Convention of 1948 as follows (for this Statute, genocide means any of the following acts committed with the intent of collective national, ethnic, As such, in whole or in part, such as the killing of members of the group, causing serious bodily or mental harm to the individual of the group, deliberately subjugating the group to conditions of life intended for its actual or total destruction (6 ),

### **Crimes against humanity**

Article 7 of the ICC Statute defines these crimes as:

A murder that constitutes a crime against humanity, which occurs when the accused kills one or more persons as part of a widespread or systematic attack directed against a civilian population; criminal conduct constitutes a mass killing of a civilian population, the deportation of populations, or forcible transfer of the population constituting a crime Torture, rape, sexual slavery, enforced prostitution, forced pregnancy, forced sterilization, sexual violence, enforced disappearance of people and apartheid are all crimes against humanity it should be noted that the following elements must be available in all crimes against humanity

There should be a state policy or policy by a non-governmental organization.

The crimes shall be of the offenses mentioned and specified exclusively in Article VII of the Statute of the International Criminal Court.

These crimes are committed on a large scale or systematic basis.

Considering the above-mentioned article 7, it has been added that the acts constituting the physical component of the crime against humanity have not been included in any of the statutes of the former special courts (the Nuremberg Tribunal and the Yugoslavia Tribunal), such as the crime of enforced disappearance and the crime of racial discrimination The commission of either of these crimes, if carried out in a widespread or systematic manner, constitutes a crime against humanity ( 7 ).

### **War Crimes**

Article 8 of the Statute of the International Criminal Court referred to these crimes as follows:

Serious violations of the Geneva Conventions of 1949, ie those committed in international armed conflicts( 8)

Serious violations of laws and customs applicable in international armed conflicts, and serious violations of the laws and customs applicable to non-international armed conflicts Grave breaches of Common Article 3 of the Geneva Conventions of 1949, ie, those committed in non-international armed conflicts.

The fact that the crime of establishing settlements as a war crime within the jurisdiction of the International Criminal Court was one of the main reasons for Israel's reluctance to approve the Statute of the International Criminal Court ( 9 ).

Despite the gravity and importance of the war crimes, Article 124 of the Statute of the International Criminal Court provided that a State was allowed to declare when it became a party to this Statute, that it would not accept the jurisdiction of the International Criminal Court for war crimes committed by its citizens and committed on its territory for a period of seven years from the date of entry into force of the Statute for which the State may withdraw such declaration at any time.



The justification for adding this provision is to reduce the fear of countries that usually send their soldiers abroad to try these soldiers before the International Criminal Court for war crimes they may commit( 10 ).

However, the provision of this article contradicts the provision of Article 120 of the Statute of the International Criminal Court, which allows any reservations to be made to such a system. Although this article is included as a transitional provision, it does not constitute a temporary reservation to texts The treaty, in addition to its inclusion logically unacceptable, is a slander enslaving from the trial before the International Criminal Court, one of the most important crimes for which the tribunal was established, for a long period of time ( 11 ).

The proceedings of the Prosecutor in initiating the trial and the jurisdiction of the Court in the issuance of the resolution and the sanctions regime therein.

After the confirmation of the procedures for the investigation, trial, determination of the preliminary matters, and the provision of the above-mentioned guarantees to the accused, victims and witnesses,( 12 )

The Court shall be held at its permanent headquarters in The Hague, the Netherlands unless the Presidency decides otherwise. 11 The trial shall be before a Trial Chamber, The Trial Chamber shall be composed of three judges, 12 and a judge of the nationality of the complaining State may be among the judges of the Chamber dealing with the case. (13)

The trial begins with the presentation of the indictment by the Trial Chamber and the defendant is charged with the charges previously adopted by the Pre-Trial Chamber. The accused is asked whether he pleads guilty to the charge against him, after ascertaining that the accused has understood the nature of the charges against him ( 14 ).

The prosecutor then makes an opening statement, presents the witnesses of the charge and the evidence. The defendant then gives an opening statement, presents the witnesses of the negation and the evidence of the denial of the charges on behalf of the accused. The court may order witnesses to be brought, testify, evidence, General shall submit new evidence, and the Prosecutor shall have the burden of proving that the accused is guilty (15 )

After the conclusion of the evidence and defense procedure, the Prosecutor submits a final statement, followed by a final statement to defend the accused, asking the accused whether he has other and final statements ( 16),

The Trial Chamber judges try to pronounce their verdict unanimously, and the judgment of the Court must be written and substantiated and contains a full statement of the merits of the evidence and the results on which the judgment was based. The decision of the Trial Chamber shall include the views of the majority and the views of the minority, and the judgment shall be pronounced in a public hearing ( 17 )

After the conviction, the Trial Chamber shall consider signing the appropriate judgment, taking into account the evidence and defenses provided during the trial and related to the judgment, and shall place certain factors such as the seriousness of the crime and the special

circumstances of the convicted person. Article 77 of the ICC Statute sets forth penalties; Trial shall be governed by the convicted person as follows (18)

Imprisonment for a term not exceeding thirty years life imprisonment, if the penalty is justified by the gravity of the crime and the special circumstances of the convicted person.

The Court may impose fines following the criteria laid down in the Rules of Procedure and Evidence

The confiscation of proceeds and property obtained directly or indirectly from the commission of the crime, without prejudice to the rights of others of good faith.

Decisions and judgments issued by the Court may be appealed by appeal or by a request to review the judgment based on the provisions of Article 81 (P / 2) of the Statute of the International Criminal Court ( 19 ).

The sentences of imprisonment of the International Criminal Court shall be binding on the States Parties to the Statute. 20 A prison sentence shall be imposed in a State designated by the Court from a list of States which have been given the opportunity by the Court to do so (20).

The court may decide to commute the sentence if it is found to have any of the factors that prove the person's early readiness to cooperate with the court in the course of carrying out investigations and prosecutions or a clear change in circumstances sufficient to justify the reduction of the sentence. [21]

Second: the power of referral and postponement of the International Criminal Court, which is vested in the Security Council ( 22 )

Article 13 (b) of the Statute of the International Criminal Court refers to the role of the UN Security Council in referring a case to the International Criminal Court, 23 the referral authority of the Council based on Chapter VII of the UN Charter on the maintenance of peace If the nationals of a State commit a crime or more of the crimes outlined in the Statute of the International Criminal Court, when the Security Council considers that such crimes constitute a threat to international peace and security( 23 ).

"Giving the Security Council, which is a political body, the right to trigger a measure that would undermine confidence in the neutrality and independence of the court and thereby discredit it, will make it possible for the permanent members of the Security Council to make the court a tool for exerting pressure on small and developing countries ( 24),

The referral by the Security Council carries the same legal value as a referral by States Parties, if it does not follow the Prosecutor's obligation to initiate trial proceedings but only draws his attention to facts that may necessitate the investigation and the sufficient evidence provided by that investigation constitutes a reasonable basis for trial ( 25) )

In return, Article 16 of the Statute of the International Criminal Court was granted



The Security Council has the power to delay the investigation or prosecution. Under this article, the Security Council has the power to suspend or obstruct the work of the Court in connection with the commencement or continuation of an investigation or trial for a renewable period of twelve months, Under Article VII of the UN Charter.(26)

The sensitivity in the text of the article (16), according to some researchers, to the nature of the relationship that must link the ICC as a judicial body of the Security Council as a political body, and the possibility of granting him the authority to stop investigations or trials initiated by Meh, and does not understand why the Security Council needs to be asked to suspend the period of investigation goes on to (12), and he does not Npaa the court to become a mere appendage of the Council (27))

Because of the United Nations Security Council resolution under Article 16 above, it is a resolution on a substantive question and needs to be approved by nine members, including the five permanent members of the Security Council, so that the work of the International Criminal Court The situation of the permanent members of the Council, in a manner that undoubtedly affects the work of the Court and the achievement of the objectives for which it was established, if political considerations played its role in the exercise of the powers conferred upon it by the Security Council under Articles 13 and 16 of the Statute of the International Criminal Punch

The reality is that the UN Security Council is turning the country into many crimes against humanity, extermination, ethnic cleansing, war crimes, etc., to the International Criminal Court because it is subject to the interests of the permanent members.

This creates selective and duplicative treatment by the Security Council. With crimes committed (28)

### **3.3 Politicization and duplication of the criminal court procedures: Israel is a model**

There were numerous Israeli war crimes in the Arab territories, both before and after Israel's establishment. Since the beginning, violence and terrorism have been at the core of Israel's plan to occupy the Arab territories, establish its entity, expand the borders of its occupation and empty the occupied territories. We decided to divide this subject as follows;

First: Israeli war crimes in occupied Palestine

Second: The jurisdiction of the International Criminal Court to try Israeli war criminals

Third: The impact of Palestine's recognition of the Statute of the International Criminal Court On the trial of Israeli war criminals

First: Israeli war crimes in occupied Palestine

A / Settlement crime

The adoption by the Jewish communities and organizations of the settlement policy as a tool for building and consolidating the state dates back to the pre-1967 period of the establishment of Israel and, in particular, after 1967, and includes Israeli settlement activity, the

expropriation of areas to be acquired by the population, The establishment of colonies and the settlement of Jews in the planned areas of their seizure (29)

In its advisory opinion on the text of Article 49 (6) of the Geneva Convention of 1949, the International Court of Justice concluded that the establishment of Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, constitutes a violation of international law. (30)

Especially as article 49 (6) of the Geneva Convention stipulates that the Occupying Power shall not deport or transfer any of the civilian population to the territory it has dissolved, and the contents of this provision shall apply to the situation of the Israeli settlements in the occupied Arab territories.

B) Forced displacement, Israel has practiced terrorist operations and economic pressure, encouraging the population to leave their homes and travel outside the occupied territories, and the crime of displacement related to settlement and land confiscation, ie forcibly evicting the Arab population from their villages and preventing them from returning to it in preparation for the confiscation of their land.( 31).

Individual and collective killings Israel used force in its public policy to achieve its goal of seizing Palestine through individual and collective assassinations, assassinations of political leaders, and religious symbols, and the Israeli Air Force carried out more than 90% of assassinations. Yassin to Qutbiya and Kafr Qasim, to Sabra and Shatila, the Al-Aqsa massacre, the Ibrahimi Mosque, and Qana, and Israel continue its crimes so far.

These crimes are classified as war crimes, crimes against humanity, and genocide committed by Israel against the Palestinian people (32)

Second: The jurisdiction of the International Criminal Court to try Israeli war criminals

Article 11 of the Statute of the International Criminal Court states

The Court shall have jurisdiction only concerning crimes committed after the entry into force of this Statute.<sup>2</sup> If a State becomes a party to this Statute after it enters into force, the Court may exercise its jurisdiction only in respect of offenses committed after the entry into force of this Statute Of that State, unless the State has made a declaration under article 12, paragraph 3, of the Statute of the Court. Based on this article, the Court will not be able to consider crimes committed before the entry into force of its Statute.

Article 24 of the Statute of the Court also stipulates that: (33 )

Non-retroactive effect on persons:

The person shall be criminally liable under this Statute for the conduct of the former to enter into force.

In the case of a change in the law applicable in a particular case before the final judgment, the applicable law of the person under investigation, prosecution or conviction shall apply.

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It is noted that there is a difference between the two texts, which would raise difficulties in the trial of Israeli war criminals as follows:

One of the most persistent and far-reaching Israeli crimes in which criminal behavior may be committed before the coming into force of the regime is settlement crimes, since the criminal result occurs after the entry into force of the regime

B) It is clear from the text of Article (11) above that they used the term "commission of the crime" and article (34 The prevailing aspect of criminal jurisprudence is usually the date of the outcome of determining the commission of the crime regardless of conduct. Based on this interpretation, according to some researchers, 34 many of the Israeli war crimes are persistent and lax, And its consequences and effects until this moment, after the entry into force of the Statute, and therefore the jurisdiction of the ICC may extend to many Israeli war crimes).

There is another view, however, that the temporal jurisdiction of the ICC may raise the question of its compatibility with the principle of non-applicability of international crimes, as provided for in Article 29 of the Statute of the Court, but this temporal jurisdiction shall not affect the principle of non-applicability International crimes, concerning universal jurisdiction, while the principle of non-limitation of the Court would apply to all crimes committed after the entry into force of its Statute( 35 ).

Returning to the preamble to the Rome Statute of the International Criminal Court, we find an explicit statement: "Compel States to exercise their criminal jurisdiction over those responsible for international crimes, and underline that the most serious crimes of concern to the international community as a whole must not go unpunished, Effectively through measures taken at the national level as well as through the promotion of international cooperation. (36)

It is clear from the above preamble that the International Criminal Court has jurisdiction over the prosecution of war crimes actors regardless of their nationality or where their crimes are committed. All States have the right to arrest and prosecute them before their courts or extradite them to the States requesting extradition, whether the States to which they belong or Those who committed crimes on their territory, if cooperated by States, would facilitate the prosecution of Israeli war criminals before the International Criminal Court.

The question may be asked: How much is the ICC's jurisdiction over Israeli war crimes as a non-state party

First: The jurisdiction of the International Criminal Court for Israeli war crimes committed after the entry into force of the Rome Statute is in force and does not depend on the consent and consent of the State of Israel or on its becoming a party that is ratified and committed to the International Criminal Court (37)

Second, the International Criminal Court jurisdiction may extend to non-parties in case of violation of the rules of international humanitarian law. This authority derives its authority from the obligation of the States parties to the Geneva Conventions of 1949 and other international conventions on the protection of human rights.

Third: Article 12 (P/3) of the Statute of the International Criminal Court referred specifically to the compliance of the non-State Party with the jurisdiction of the Court by means of a special agreement between the Court and that State or the acceptance by the State other than the party in accordance with article 38 above ( 38 ),

Fourth: The jurisdiction of the International Criminal Court may extend to the non-state party, forcibly, without the consent of that State, in two cases:

A) By a decision of the Security Council transmitting a case to the Court acting under Chapter VII of the Charter of the United Nations

B) By way of subordination when a crime is committed by a national of a State which is not a party to the territory of a State Party or a State which has accepted the jurisdiction of the Court as well as war crimes in fulfillment of the obligation of States to respect and ensure respect for international humanitarian law as undertaken by those States not parties to the Geneva Conventions of 1949.

Fifthly, the Palestinian Authority issued a statement to the International Criminal Court (ICC) on 22 January 2009, recognizing the jurisdiction of the Court to identify, prosecute and prosecute perpetrators of crimes committed in Palestine. The significance of this statement is that if its effects are produced,

Investigate Israeli crimes and violations against Palestinian.

B. It would allow overcoming the obstacle that Israel refuses to be a party to the Treaty of Rome to establish impunity for its civilian and military leaders involved in crimes within the jurisdiction of the International Criminal Court.

The UN Security Council can refer crimes against humanity and crimes of genocide directly to the ICC without the consent of the State concerned. However, this reality is subject to political considerations determined by the interests of the permanent members of the Council. This has occurred there to the International Criminal Court, is a practical guide to the policy of double standards and the impact of political considerations in the mechanism of the International Criminal Court. The repeated experience of not referring Israel to the ICC may be a practical guide to this Wage ( 39 )

#### **4.0 CONCLUSION, CONCLUSIONS AND RECOMMENDATIONS**

##### **First: Conclusion**

Based on the general principles of human rights and fundamental freedoms contained in the Universal Declaration of Human Rights of 1948 and all international covenants and conventions related to the protection of human rights and to find universal legal formulas that protect human rights and fundamental freedoms and punish those who commit crimes against humanity, In 1998 to discuss the creation of a legal formula to ensure that humanity is punished by war criminals, perpetrators of genocide and ethnic cleansing without regard to the principles of sovereignty and non-interference in the internal affairs of States, In violation of which an international formula has been reached for the establishment of the International

Criminal Court. It has been ratified and signed by 60 countries, while the United States and Israel have expressed their reservations to this agreement on the basis that the State concerned To extradite a person accused of such crimes with prior consent to be tried by the International Criminal Court.

The jurisdiction of the International Criminal Court is based on the idea that it does not replace Member States in the investigation or prosecution of the perpetrators of the crimes, but rather its competence to supplement the jurisdiction of those States, which is designed to overcome the opposition of the participating States that are within the jurisdiction of the International Criminal Court, In the internal affairs of States, and an attack on the jurisdiction of its judiciary.

## **Second: Results**

The criminal legal rules are one of the most important and useful in the maintenance of human values and interests. Individual criminal responsibility was officially shown only by the emergence of the International Criminal Court under the London Agreement of 1945, and the Nuremberg and Tokyo trials of the war criminals.

Since the Rome Conference in 1998 and the United States of America, along with the permanent members of the Security Council, the Security Council has sought to enable the UN Security Council, without exception, to initiate the international prosecution, even in the face of crimes.

Moreover, when the International Criminal Court approached its entry into force in 2002, the United States of America and the Ase Islands initiated a request to withdraw their signature on the Rome Statute in May 2002. More surprisingly, the United States is trying to impose on its client states, The conclusion of bilateral agreements to protect elements (marines) of the US military, responsible for hundreds of crimes in the world.

Israel has refused to set up the International Criminal Court since the Rome conference in 1998, and the Rome Treaty makes the Israeli prime minister and any member of his government vulnerable to arrest, as Israel fears, to take legal action against its soldiers for human rights violations in Lebanon and Palestine.

Israel was one of the seven countries that voted against the adoption of the Rome Statute.

Israel and the United States of America, during the deliberations of the Rome Diplomatic Conference, tried to prevent the settlement of the occupied territories from being considered war crimes but failed to do so. Their position on the ICC Statute. However, this Israeli objection entails a legal obligation by the Court. The ICC's jurisdiction over Israeli war crimes committed after the entry into force of the Rome Statute is cut short and does not depend on the consent of the Court. Israel and satisfaction, or even a party certified and is increasingly becoming committed to the International Criminal Court system.

The US-led international coalition forces (in all its military interventions in the East, Congo, Iraq, Libya, etc.) have been immune to all international conventions that establish sovereignty and non-interference in the internal affairs of States. The United Nations and the International

Criminal Court are often subject to the fait accompli of the powerful state of the United States and its allies.

If the United States of America has established itself without legal, moral or moral prerogative on human rights, why voted against the establishment of the International Criminal Court in 1998 against 120 countries that signed the Convention in Rome (which separate crimes committed against The real answer to this American behavior lies in the fear of its soldiers of the justice of the International Criminal Court, which made the Security Council subject to the American desire to double standards on the issue of bringing war criminals to the ICC and especially Israeli war criminals

### **Third: Recommendations**

The fact that the death penalty is not included in the ICC sanctions regime will inevitably weaken the effectiveness of the court and its coercive or repressive nature. It is not fair for a person to commit genocide or war crimes and to prove his guilt and death penalty. A 30 year sentence or life imprisonment will encourage criminals to commit the most heinous crimes against humanity and ethnic cleansing and will not reduce or leave these crimes.

The referral of the International Criminal Court through the Security Council to the considerations of the Israeli aggression threatens international peace and security. The Palestinian people can benefit from the Security Council as a means of referral to the criminal court if it was neutral and independent from American pressure even without the Palestinian state inviting the Prosecutor to investigate the crime or more. Has been committed against the Palestinian people by Israelis, but this means, despite its importance, remains limited within the framework of hegemony within the corridors of the Security Council.

The assignment of the implementation of international sanctions, in particular the prison sentence to States, raises some problems, such as the non-compliance of the State with the implementation of the sanctions, and whether such sanctions will be implemented in particular. States consider political considerations more than their consideration of legal and judicial considerations and the realization of the principles of justice

We therefore deem it necessary if the International Criminal Court (ICC) implements international sanctions, including prison sentences, and that the court alone should supervise the execution of the prison sentence and that there is a prison in the Netherlands, for example, The President of the Criminal Court to establish such a prison, subject to the provisions governing the treatment of prisoners and the relevant international conventions.

In order to impose the independence of the Court's work in the exercise of all its competence, the Member States that have signed the Statute of the International Criminal Court must work to disengage the Court's jurisdiction from the Security Council so that the permanent members of the Security Council have no control over the work of the Court.

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