



The emergence of the International Criminal Court and its connection to the United Nations

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Abstract:

Since its inception, the United Nations has sought to create a permanent International Criminal judiciary, and thanks to its efforts, it was able in 1998 to establish the International Criminal court, whose statute entered into force on 01 July 2002, and to establish its relationship with it on the basis of cooperation between them in each of the following cases the legislative, procedural and judicial field, however the powers granted to the Security council before it have affected its independent nature, which has led to the submission of this International judicial body to a political body whose decisions are controlled by its five permanent members through the right of veto.

Keywords:

Rome Statute, International, Criminal Court, International Law commission, United Nations, cooperation agreement, Security council.

Introduction:

The 20th century witnessed many attempts to establish International Criminal Courts, but they were characterized by circumstantiality, as they were specialized in looking into specific crimes at a specific time and in a specific area, and regarding a specific armed conflict in itself, their function ended with the end of the trial of those accused of committing crimes related to them, which resulted in the repetition of the commission of International crimes, in addition to the fact that many criminals remain immune from accountability and punishment.

In general these developments have greatly contributed to codifying all the ideas that revolved around the idea of International crime, determining Criminal responsibility for it, and gradually moving towards the establishment of a permanent International Criminal judiciary.

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Examining the african perspective on the immunities of state officials from the jurisdiction of the international criminal court

In order to achieve this the United Nations and International legal organizations moved united visions and combined efforts which, this led to the establishment of the International Criminal Court in 1998. and for its statute to enter into force in 2002.

Accordingly, this research aims to:

- Clarify the efforts made by the United Nations regarding of a Permanent International Criminal Court.
- Exploring Avenues of Cooperation between the International Criminal Court and the United Nations.

Therefore, I ask the following question:

What are the efforts of the United Nations in establishing a permanent international criminal court? and is there cooperation between them?.

In answering the problem, I relied on the analytical approach in order to analyze the legal materials and The basic systems, and I also used using the historical approach, to identify the efforts made by the United Nations to establish this court.

In light of the above the research plan includes two axes, the first touched on the establishment of the International Criminal Court, while the second the second axis areas of Cooperation between the International Criminal Court and the United Nations.

The first axis: The Establishment of the International Criminal Court

Has begun its efforts to establish a permanent International Criminal judiciary¹, At its first session on 11 December 1946, it approved resolution No 95/1946, in which it adopted the principles of International law stipulated in the statute of the Nuremberg tribunal².

The Preparatory Committee also called for the codification of International law to adhere to the principles resulting from the proceedings before the Nuremberg Court³, and the preparation of a law for violations directed against the peace and security of humanity.

However, the preparatory committee was unable to accomplish its mission, which called for the United Nations general assembly at its second session on 21 November 1947, in accordance with its resolution No 177, it established a permanent legal committee, which it called the " International law committee ", and assigned that task to it⁴.

In addition to the International law committee, there are other committees that contributed to researching the possibility of establishing an International judicial body specialized in examining International crimes.

1- The International Law commission

The International Law Commission began its work by forming a two-member committee that included professor Ricardo Alfaro, the representative of panama, and professor Sand Strom, the representative of Sweden in order to undertake the task of preparing a report on the establishment of an International Criminal Court, which presented the results of its study on 30March, 1950, which were in conflict⁵.

For its part, the International law commission met to discuss the previous two reports and was also divided into two parts, one that opposes the establishment of the court and represents the minority, and the other it supports its establishment and includes the majority, which preferred that it be independent International agreement concluding its establishment, establishing its legal system and clarifying its jurisdiction.



After submitting the report of the International Law commission to the legal committee, and after many and extensive discussions on 16 November 1950, its members also divided into a group opposing the establishment of the court, while the majority saw the necessity of establishing this court and bypassed this theoretical research by rushing to establish its statute⁶.

On December 12, 1950, the General Assembly issued Resolution No. 489/D 50, which included to form a committee comprising 17 member states, to meet on 01 august 1951 and it was known as the " Geneva committee " ⁷.

2- Geneva Committee

It held its meeting On 01 august 1951 held a meeting and two reports were presented to it on the establishment of the court, one of which was submitted by the secretary General of the United Nations, and the second was presented by the Roman jurist " Pella " president of the International society of International Criminal Law at that time.

After the committee discussed the two reports over the course of the entire month of august of the same year, it developed an integrated draft consisting of 55 articles She called for the establishment of a court through an international agreement concluded between countries that wish toin that⁸.

The Geneva committee submitted its project to the legal committee, which began studying and discussing it on 07 October 1952 At that time, opinions were divided again over the idea of establishing the court.

In the face of this situation, the legal Committee referred the matter to the United Nations general assembly, which issued a resolution regarding it on 05 December 1952 resolution No 687/D 70, through which it decided to re-present the establishment of the court again to a committee consisting of representatives of 17 member states⁹, the jurisdiction of this committee was determined to, provided that this committee meets in New York in 1953 in order to reconsider the Geneva draft¹⁰.

3- The New York committee

The committee began its work in the period from 27 July to 20 august 1953 it discussed the method of establishing the court, and there were many opinions on that until it concluded after the discussion that the best method to be followed to establish an International Criminal court would be through a multilateral agreement, and this court is not established until its statute defines and ratifies its jurisdiction¹¹, knowing that opinions of the majority of the members of the New York committee was directed towards the necessity of cooperation between them¹².

After reviewing the report of the New York commission, the draft court, and the recommendation of the legal committee the United Nations general assembly decided in its resolution No 897 issued on 11 December 1954 assembly has recognized to a special committee tasked with preparing a report on the draft definition of aggression, and decided to postpone examining the issue of International Criminal justice until the report of this committee.

Once again, the General Assembly, in Resolution No 45/41 of 28 November, 1990, and resolution No 46/53 of 09 December, 1991, called upon the International Law Commission to continue studying and analyzing issues related to the issue of establishing a Criminal justice system international¹³.

Following the outbreak of bloody events in the former Yugoslavia in 1991 the general assembly issued on 05 December 1992 resolution No 47/33, and subsequently resolution No 48/31 on 09 December 1993, in which it requested the International Law Commission to prepare a draft for the establishment of a permanent international criminal judicial body.¹⁴.



In implementation of the aforementioned general assembly resolutions the International Law commission completed what was requested of it and presented it to the General assembly at its 46th session of 1994, on 09 December 1994 it called for the establishment of a specialized committee a specialized committee to review the technical and administrative issues arising from the draft statute prepared by the International law commission¹⁵, and to consider in addition to preparing the necessary arrangements for holding an International conference of plenipotentiaries to prepare an International convention for the court¹⁶.

4- The specialized committee on technical and administrative issues

The specialized committee met in the period from 03 June to 13 April, and from 14 to 25 August 1995, and based on the results it reached, it issued on 11 December 1995 its resolution No 50/46, which included the establishment of preparatory committee In order to study the substantive and administrative issues of the draft statute¹⁷.

5- The preparatory committee

The preparatory committee met in the period from 25 March to 12 April 1996 and from 12 August to 30 1996, and discussed issues related to the draft statute of the court, and then proceeded to prepare a unified and widely accepted text for the period from 16 March to 03 April 1998¹⁸, it completed the preparation of a draft agreement to establish an International Criminal Court, which was referred to the United Nations diplomatic conference of the commission for discussion and adoption at the Rome conference¹⁹.

Which was held in Rome during the period from 15 June to 17 July 1998 With the participation of international organizations and representatives from the former Yugoslav tribunal and the Rwanda tribunal²⁰.

The conference finalized a draft agreement on establishing the court and it was adopted on 17 July 1998 by a majority of votes under the name (Rome Statute of the International Criminal Court), where 120 countries voted to adopt it²¹.

For its part the United Nations General assembly at its 53 rd session on 08 December 1998 in accordance with its resolution No 05/531 approved the Rome Statute and established the preparatory committee.

In accordance with Article 125 of the Statute of the International Criminal Court on 17 July 1998 it was opened for signature by all states in Rome, which continued until 17 October 1998 then it remains open for signature at the United Nations headquarters in New York, bringing the number of states ratifying it to 66 states, making it possible the court, starting 01 July 2002 can exercise its jurisdiction.

What is worth noting is that on 31 December 2000, the United states of America signed the Rome convention, just hours before the deadline for closing the door for signatures after it had previously refused to sign, the reason for this is that signing the agreement before 31 December 2000 will allow countries to sign the Rome convention the signatory has the privilege of membership in meetings of states parties, and therefore has the right to discuss various texts and propose amendments to them in line with their interests and objectives²², what proves her intention regarding the matter is her withdrawal of her signature on 06 June 2002, and the same, the trend was taken by Israel²³.

As for Russia it signed the Rome statute on 13 September 2000 but did not ratify it for fear of prosecuting its officials and soldiers following its annexation to the island of Crimea in March 2000, and its participation in the war against both Georgia in 2008 and against Ukraine... until it withdrew its signature on 16 October 2016²⁴, and China also refused to sign the Rome



statute, which constitutes an obstacle to cooperation the court is with it and negatively affects its effectiveness²⁵.

Referring to the foundational Rome Statute, it guarantees in its preamble that this court is a permanent and independent body exercising its jurisdiction over natural persons regarding the most serious crimes, and that it is considered an extension of and complementary to the jurisdiction of the national judiciary²⁶, he also indicated in article 02 that the relationship between the court the United Nations is organized according to an agreement between them, and it is permitted in article 87 to conclude cooperation agreements in order to carry out the tasks well as with any intergovernmental organization And also with non-member countries.

Indeed the negotiating agreement at its 59th session on 13 September 2004²⁷.

The second axis: Areas of Cooperation between the International Criminal Court and the United Nations

1- Cooperation between the Court and the United Nations in terms of legislation

The Secretary-General of the United Nations may, after seven years from the entry into force of the Statute of the Court, convene a conference of States Parties to discuss any amendments to the Statute, provided that this does not include the subject matter of the Court's jurisdiction, namely the four crimes over which it has²⁸, The Security Council may also, at any subsequent time, convene a review conference with the consent of a majority of the States Parties²⁹

2- Cooperation between the Court and the United Nations in the procedural field

Articles: 05, 15, 19, 20, 87 of the agreement related to cooperation between the Court and the United Nations body included aspects of procedural cooperation between the Court and the United Nations body, which consists of providing information to the court in order to complete the investigation procedures and collect evidence, and also providing the public prosecutor with everything he requests from information or documents, as well as lifting immunity and privileges from its employees involved in committing crimes.

The Court has the power to take appropriate measures for the protection of the safety and security of current and former United Nations personnel, as well as for the security of any of its operations or activities³⁰.

It should be noted that the United Nations undertakes to cooperate fully with the Court and to take the necessary measures to allow the Court to exercise its jurisdiction to prosecute and try the accused, particularly the issue of lifting privileges and immunities,

3- Cooperation between the Court and the United Nations in the judicial field

The Security Council has the right to initiate criminal proceedings against those accused of crimes falling within its jurisdiction and also to postpone the investigation or trial³¹ in addition to its role in international cooperation with it, which is explained as follows:

A- The right to file a criminal case against those accused of crimes within the jurisdiction of the court

The Security Council, under Article 13, may refer to the Court any situation in which it appears that one or more crimes within the jurisdiction of the Court have been committed³².



However this authority granted to the security council affects the independent nature of the court, and grants the five permanent member states especially America to determine cases that threaten International peace and security in accordance with its interests³³, which leads to making the nationals of these countries immune from prosecution.

B- Postponing the investigation or trial

The Security Council may, at any time and at any stage of the proceedings, whether at the start or during the trial, request the Court to postpone or stop the investigation or prosecution for a period of 12 months, renewable several times, which is in accordance with a decision issued under chapter seven of the United Nations charter³⁴.

This power constitutes a restriction on the jurisdiction of the Court³⁵, as it does not leave it with the authority to continue exercising its jurisdiction at any stage indefinitely. therefore, the article in question, unfortunately, completely blocks the way for the court, Granting permanent members absolute powers to use the veto to prevent the prosecution of criminals³⁶.

C - cooperation with the Court

States cooperate with the Court in order to exercise its jurisdiction³⁷, and in it article 86 stipulated that states parties must cooperate with it effectively in the investigations it conducts into crimes within its jurisdiction and in the requests it requests to arrest extradite and punish a person³⁸.

The court has the authority in accordance with article 87 to submit requests for cooperation to states parties.

The court uses the security council with its broad powers to ensure that states respond to its requests, whether they are state parties or non-parties that have concluded a special arrangement or agreement with it³⁹, it may resort to the security council in order to force states to cooperate with it even if they do not have a special arrangement or agreement with the court, this is due to the powers granted to it⁴⁰,

Conclusion:

Through this research I have reached many results, which I have attached with proposals.

First: The results

- The refusal of the major powers to the establishment of the court and their subsequent efforts to obstruct its work in a manner consistent with their interests.
- The authority granted to the security council namely: referring cases and postponing or stopping investigation or prosecution, constitutes the subordination of an international judicial body to the interest of a political body whose decisions are controlled by the five permanent member states.

Second: suggestions

- The major powers must stop obstructing the work of the International Criminal Court, by acceding to its statute and cooperating with it in exercising its duties.
- The need to intensify the efforts of the International community as a whole in order to combat extremely serious crimes, which is in accordance with the United Nations and regional International bodies.
- There is an urgent need to reconsider the gaps and shortcomings contained in the statute of the International Criminal Court, especially the serious ones that affect the independent character of the court.
- The necessity of making changes and reforms at the level of the security council (which is paralyzed by the veto) or creating another executive body within the United or forming an



executive body within the International Criminal Court that is responsible for implementing its rulings and decisions.

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