



**Evaluating the performance of the International Criminal Court over the past few years**

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**Abstract:**

The International Criminal Court (ICC) is a highly significant judicial entity worldwide, created to ensure the accountability of individuals responsible for the gravest international crimes ever committed. The establishment of this court serves the objective of addressing a significant void in situations where states are incapable or unwilling to prosecute the accused within their own national judicial systems. Truly, this global tribunal was founded pursuant to the Rome Statute in 1998, which became effective in 2002. Given its implementation of retributive labor and advocacy for global accountability, numerous inquiries have emerged regarding its efficacy and efficiency. To accomplish this, it is necessary to assess the court's performance in recent years, analyze various elements of its work, and demonstrate the efficacy of its legal procedures and the efficiency of its response to challenges posed by member states and international groups. The study concentrates on comprehending the establishment of the ICC and delineating its constituent organizations and jurisdictions. Next, the researcher analyzes the system's performance by considering its handled cases and assessing how much it has contributed to improving worldwide trust in the international justice system.

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**DOI**

10.37651/aujpls.2024.151992.131  
6

**Submitted:** 11/8/2024

**Accepted:** 19/8/2024

**Published:** 2/9/2024

**Keywords:**

International Criminal Court  
Rome Statute  
International Cases  
International Crimes  
International judiciary.

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## تقييم اداء المحكمة الجنائية الدولية في السنوات السابقة

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المستخلص

تعد المحكمة الجنائية الدولية إحدى أهم المؤسسات القضائية على المستوى العالمي، إذ تأسست بهدف محاسبة مرتكبي اخطر الجرائم الدولية التي عرفها التاريخ. وكانت الغاية من انشاء هذه المحكمة لسد فراغ هام مداره عندما تكون الدول غير قادرة أو غير راغبة في محاكمة المتهمين أمام محاكمها الوطنية. وبالفعل تم إنشاء هذه المحكمة الدولية بموجب معاهدة روما عام ١٩٩٨ التي دخلت حيز النفاذ في ٢٠٠٢. وفي ضوء ممارستها العمل العقابي وتعزيز العدالة الدولية، أثارت تساؤلات عدة حول أدائها وفعاليتها. الامر الذي يتطلب تقييم أداء المحكمة طيلة السنوات السابقة وفحص جوانب عملها وبيان مدى فعالية إجراءاتها القانونية وكفاءة استجابتها للتحديات التي تواجهها من الدول الأعضاء والجماعات الدولية. واتساقا مع ذلك سوف يتمحور هذا التقييم حول فهم كيفية نشأة المحكمة الجنائية الدولية وتعريف بأجهزتها واختصاصاتها، ثم نتطرق الى تقييم ادائها في ضوء القضايا المعروضة امامها لمعرفة مدى مساهمتها في تعزيز الثقة العالمية في نظام العدالة الدولية.

الكلمات المفتاحية: المحكمة الجنائية الدولية، نظام روما، قضايا دولية، الجرائم الدولية، القضاء الدولي.

## المقدمة

**Introduction:**

Over centuries, human societies have witnessed the most savage crimes committed against humanity in various parts of the world, both international policy and military force stood unable to stop such crimes or to prosecute their perpetrators, particularly crimes of genocide, crimes against humanity, war crimes and the crime of aggression, as these crimes constitute a flagrant violation of human rights. Consequently, this matter led the international community to cooperate in order to fight against International Crime to catch the criminals to prosecute them and the signing of the deterrent penalties as appropriate for the gravity of these crimes. The most successful way appeared on

the international level to prosecute those criminals is the establishment of the ICC which has the competent in this regard.

Indeed, some international applications such as the ICC for both Yugoslavia and Rwanda, but these previous courts were temporary and established for specific cases, therefore, it was required to establish "**An International Criminal Court**" to exercise its work permanently and continuously. Accordingly, on 17<sup>th</sup> July 1998 countries have witnessed the first achievement in the field of International Justice represented by the formation a permanent judicial body. Hence, it is not free from the presence of some of the current challenges that may impede the course of court work. Consequently, some questions in this regard are to be raised. For instance, to what extent are the effectiveness and success of this court in the pursuit of International Criminal Justice? has the court proved the ability to prosecute the criminals of International Crimes without impunity? As well as, what extent the court influenced by political considerations?

To answer these questions, the researcher aims at studying this issue by giving initial concepts of the court establishment, identifying its bodies and its jurisdiction. In addition to this, the study sheds light on the practice by the Court in the context of the issues had shown for the previous years. Finally, the study concludes with the most important findings and suggestions the researcher has got them.

## **I. Basic Concepts of the International Criminal Court**

In the beginning, it is required to address some basic concepts for the ICC by displaying the most important features of this Court in terms of the concept of the court and its characteristics, bodies, and jurisdictions, as follows:

### **I.A. The Rise of the International Criminal Court:**

On 17<sup>th</sup> July 1998, the court was established in Rome according to its statute , by the auspices of the United Nations Organization (UN), moreover, the statute of the court has been voted secretly, so that it has adopted the a majority (120), whereas, (21) of States refrain from voting, and (12) of States were absent to vote.

On the other hand, (7) States voted against the court Statute, where, both of the United States of America (USA) and Israel were the first of these States<sup>(1)</sup>. Moreover, the statute of Rome has included a preamble and 128 Article spread over 13 sections. With regard to this, the statute has been put into effect on 1<sup>st</sup> July 2002 when Article 126 obtained the required sixty ratifications as that ratifications were a band to start implementation<sup>(2)</sup>. However, the current number of States Parties of the court has reached 12<sup>٣</sup> States.

The main goal of establishing the ICC is to maintain the international peace and justice<sup>(3)</sup>. In addition, to punish the criminals of serious International Crimes including crimes against humanity, war crimes and genocide, as well as, the crime of aggression. In light of this, we can defined the court briefly as: (A permanent independent judicial body, established by the International Community in order to prosecute and punish those who commit the most serious crimes, the International Community, namely genocide, crimes against humanity, war crimes and the crime of aggression).

### **I.B. The Characteristics of the International Criminal Court:**

The ICC is distinct from other international courts set of features including:

1. The ICC is a permanent body, does not end with the purpose for which it was established for, and it is therefore different from the temporary ICCs that have arisen throughout history, such as the Court of (Nuremberg, Tokyo, Yugoslavia, and Rwanda)<sup>(4)</sup>.

(1) Rome Statute of the International Criminal Court, UN. Doc: A/CONF.183/9. (1989).

(٢) أمل اليازجي ، "المدخل الى المحكمة الجنائية الدولية"، ورقة عمل مقدمة الى الورشة التدريبية حول انشاء المحكمة الجنائية الدولية ، كلية الحقوق، جامعة دمشق، ص ٤ .

(3) Selcen ERDAL, Uluslararası Ceza Mahkemesinin Devlet Egemenliğine Etkisi, Ankara 2010, P: 85.

(٤) د.ابراهيم محمد العناني، المحكمة الجنائية الدولية، (القاهرة: المجلس الأعلى للثقافة، ط١، ٢٠٠٦)، ص ٢٤ .

2. The ICC jurisdiction completes National Criminal Justice<sup>(1)</sup>, and this is confirmed by the preamble of Rome Statute as it is stated in paragraph (10): (The ICC established under this Statute shall be complementary to national criminal jurisdictions). It is worth mention that the national court has a priority over the ICC<sup>(2)</sup>, and this is a natural consequence of the principle of State Sovereignty in International Law<sup>(3)</sup>.
3. The ICC created according to an International Agreement between a group of countries, in order to fight against the most serious international crimes on the international community, which is different from other courts established according a decision by Security Council and based on political considerations<sup>(4)</sup>.
4. The ICC is specialized in prosecuting normal persons who commit one of the crimes that are included in the statute of Rome, namely: (The crime of genocide, Crimes against humanity, War crimes, and The crime of aggression)<sup>(5)</sup>.

### I.C. The Court Bodies:

Particularly, the court consists of the following: Presidency, chambers, Office of the Prosecutor, and the Registry.

1. **Presidency:** ICC has a body holds the court presidency, Article (38) of the Statute tackled the election of this body and its functions, as this body consists of a President and two Vice-Presidents who are chosen by the absolute majority of the judges, as well as, the duration of the state lasts for (3) years, or until the end of service for each of the judges, and may be re-elected the outgoing judge for

(1) ASLAN, Muzaffer Yasin, Teoride ve Uygulamada Savaş Suçları, Bilge Yayınları, Ankara, 2006, P: 240.

(2) Pazarıcı, H., Uluslararası Hukuk Dersleri, Ankara, Turhan Kitapevi, 2000, P: 357.

(3) Yusuf AKSAR, Uluslararası Ceza Mahkemesi ve Uygulamalarına Genel Bir Bakış, Uluslararası Hukuk ve Politika, 2005, P:8.

(٤) لندة يشوي، المحكمة الجنائية الدائمة واختصاصاتها، (عمان: دار الثقافة للنشر والتوزيع، ط١، ٢٠٠٨)، ص٩٣.

(5) Rome Statute, art. 5(1).

- only one-time. However, the Presidency is responsible for the administrative and judicial affairs and legal matters as well as foreign affairs<sup>(1)</sup>.
2. **Chambers:** to make the court exercises its major in considering cases, it is necessary to create a certain divisions which controls and ensures manner regulation. For this reason, Court is divided into divisions reflect the stages of following up the movement of penal cases starting with investigation and reaching to the verdict of the case or to the challenge of the verdict. As for this, those divisions are run by qualified judges and professionals in the field of International Criminal Law. For instance, the Appeals Division consists of a Head and four judges, while Pre-Trial Division consists of at least six judges. Similarly, the Trial Division is also composed of a maximum of six judges.
  3. **Office of the prosecutor:** This office is one of the of the organs that make up the court, where it enjoys independence of the office, it is run or managed by the prosecutor of the court, which has the authority of investigators and other staff members assignment .In addition to this, the main task of this office is to receive Complaints and Referrals, then to analyze and study the case manner to decide whether there is a reasonable basis to proceed an investigation. What is more, is that, the office task is also to carry out investigations and to documentation them as crimes of genocide, war crimes, or crimes against humanity and aggression. With regarding to this, this office consists of Investigations, litigation, jurisdiction, and cooperation division. Indeed, according to the statute, the office of the prosecutor has the independency and it is not allowed to any member to seek instructions from any external sources. All these matters are made to ensure conducting properly the procedures<sup>(2)</sup>.
  4. **Registry:** According to Article (43), Registry consists of the Registrar staff and deputy, as well as, the staff of the Victims and witnesses division which is established to protect individuals and to

(1) <http://www.icc-cpi.int/iccdocs/PIDS/publications/PresidencyandChambersAra.pdf>, last accessed on 19/2/2024.

(2) Rome Statute, art. 42(1).

provide both advice and assistance to them. To illustrate, the Registrar and the deputy work their job for five years. Here, the Registrar heads the Registry, and he is the administrative officer who is responsible of ensuring safely the functions of the Court.

### **I.D. The jurisdiction of the International Criminal Court:**

The statute of the court obligates States that become a part of Statute to grant automatically jurisdiction specified of certain crimes<sup>(1)</sup>. On the other hand, non-States Parties of the Statute are excluded from the compulsory jurisdiction of the Court, however, they have the choice to accept jurisdiction in a certain process of crime cases, as whenever the availability of one of the two following conditions; either the crime happens on their territory or the accuser is one of their nationals<sup>(2)</sup>.

With attention to the above, the jurisdiction is to limit the custody of the court in considering cases in terms of the type of crime, the criminals' identity or the perpetration's time and place of crime<sup>(3)</sup>. And The ICC has no jurisdiction in spite of being have the custody over a case. The fact is that, for instance, the case within the jurisdiction of other ICCs as the court of the former Yugoslavia, Rwanda, or other mixed criminal courts<sup>(4)</sup>. Overall, the Court has the following jurisdictions:

**1. Objective jurisdiction:** Article (5) of the court statute identified this jurisdiction, and states that: "The jurisdiction of the Court shall be limited to the most serious crimes of concern to the international community as a whole. The Court has jurisdiction in accordance with this Statute with respect to the following crimes:

(1) Rome Statute, art. 12(1).

(2) Rome Statute, art. 12(2)(a) and (b).

(٣) د.صباح مصباح محمود السليمان، قانون الاختصاص في أصول المحاكمات الجزائية، ط١، (عمان: دار الحامد، ٢٠٠٤)، ص ٢٢.

(4) The Mixed International Criminal Courts are defined as: (Courts, which are composed of International and National judges, and they are established either by an agreement between the country and the UN or by a decision of the Security Council).

للمزيد ينظر: د.محمد علي مخادمة، "المحاكم الجنائية المختلطة"، مجلة الحقوق، جامعة الكويت، العدد ٣، (٢٠٠٨): ص ٣٧٩.



- (a) The crime of genocide;
- (b) Crimes against humanity;
- (c) War crimes;
- (d) The crime of aggression.”.

**2. Personal jurisdiction:** As it is shown in Article (25) of the Court Statute, the jurisdiction of the court proves on normal persons only, while the moral person, who commits a crime within the jurisdiction of the Court, is responsible of his crime as an individual. On the other hand, whenever the State becomes a part of the agreement of the court establishment, then, it accepts the court's jurisdiction over the crimes are mentioned in Article (5) of the statute, furthermore, the State would be limited by a full cooperation with the Court and served from asking the court were present in the territory of that country people, whether nationals or nationals of other countries.

**3. Spatial Jurisdiction:** The statute determined the regional jurisdiction as it is stated in Article (12) paragraph (1): "A State which becomes a Party to this Statute thereby accepts the jurisdiction of the Court with respect to the crimes referred to in article 5.", and thus, all the provinces of the acceding countries to the Assembly of States parties have become like one province, and each person subjects to the judicial authority of the ICC. It is also stipulated in Paragraph (2a) of the same article that: "The State on the territory of which the conduct in question occurred or, if the crime was committed on board a vessel or aircraft, the State of registration of that vessel or aircraft", the fact is that text confirms the previous text which determines specific regional jurisdiction of any State joins the statute, as well as, the Statute also considers the concept of territory to include crimes committed on board vessels or aircraft registered in the State party<sup>(1)</sup>.

**4. Temporal jurisdiction:** The Statute of the ICC adopted a general principle which is applicable in all criminal legal systems in the world whereby (It is not permitted to apply the criminal law retroactively), i.e the articles of statute apply immediately or directly, and they are not

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(1) William A. Schabas, An Introduction to the International Criminal Court, Cambridge University Press, New York, 2004, P:78.



applied on incidents that happen before that date<sup>(1)</sup>. Accordingly, the temporal jurisdiction of the court may expand in two cases. The first case represented by declaring the state of none part an acceptance the court custody, and this matter is required by Article (12): paragraph (3) of the statute, where the jurisdiction court spreads out to include the period that precedes this acceptance and then extend to involve crimes committed after the Statute validity , that is to say, since 1<sup>st</sup> July 2002, but not from the date of declaration of acceptance of the court jurisdiction of the court as stated in Article (11) paragraph (2) of the statute. Whereas, the second case is represented in referrals by the Security Council in accordance with Article (13) of paragraph (b) of the court system, as when the Security Council transfers a case to the court then the scope expands the jurisdiction of the temporal court to bring it back to the date of validity of the court system and not to the date of referral.

## **II. The practice of the International Criminal Court Jurisdictions**

Ordinarily, Court jurisdiction exercises by either (Referral) by the Security Council or States Parties of Rome Statute, or by the prosecutor.

### **I.A. The Concept of Referral:**

For a start, we should shed a light on the referral definition which means; to transfer an attitude or situation because of being suspicious where crimes were committed, or are being committed, particularly, these crimes are included in jurisdiction of the International Court. By this context, the situation does not mean ordinary crime prescribed in the law of the local state, committed by a person or group of persons, but it shows the serious crime is being committed<sup>(2)</sup>. So, the Prosecutor analyzes these crimes and then makes an appropriate decision whether an investigation should be hold or not. Actually, the decision made by the prosecutor, is to be subject to appeal

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(1) Rome Statute, art. 11(1).

(2) Herman Von Hebel, Crimes under the ICC statute and the Elements of the Crimes, The New International Criminal Law, Sakkoulas, Pub Athens, 2003, P: 748.

by which organs are authorized by the Statute to have this right, but it is activated or it is in the preliminary stage. Anyhow, it is possible to determine the referral according to the criminal court as (It is to draw the prosecutor's attention to an alleged attitude or condition which is included in the ICC jurisdiction by the Security Council or the States Parties)<sup>(1)</sup>. And so, the referral is hold, in nature, either by the States Parties of the Statute, or by the UN Security Council. Where the referral is to be focused on an attitude or on a condition; the sense that, this attitude or condition still suspicious as it is included within the Court jurisdiction and then this attitude is transferred to the court by the Security Council or a States Parties. Beside this, the attitude or the condition is not only an ordinary crime stipulated in the national law of the state, but it is appeared as a serious crime which is referred by the statute, for that, scholars demonstrate that the word (Referral) should not be interpreted to include a dispute between a group, an individual, or a military unit, instead, it should be the subject of a referral is a special one to those crimes which included in the jurisdiction of the Court<sup>(2)</sup>.

### **I.B. The Practice of the Court Jurisdiction Referral by the Security Council:**

It is included in paragraph (b) of Article (13) of the Statute of the Court, the authority of the Security Council of referral to the Prosecutor , if the Council believes that it represents a threat to both International peace and security, and that, it is represented the crimes which are included in the jurisdiction of the Court<sup>(3)</sup>. However, this paragraph doesn't give conditions to authority of Security Council whenever there is a referral, which means that, the Council has a wide discretion to assess the extent to which a particular case represents a threat to the International peace and security, nevertheless, the council is limited only in case of being the crime represents a threat of international peace and security, or a in case of aggression according to Article (39).

(١) د.منتصر سعيد حمودة ، المحكمة الجنائية الدولية، النظرية العامة للجريمة الدولية، أحكام القانون الدولي الجنائي، دراسة تحليلية، (الإسكندرية: دار الفكر الجامعي ، ط١، ٢٠٠٩)، ص ٢٣٩ .

(٢) د. محمود شريف بسيوني ، المحكمة الجنائية الدولية ، (بدون دار نشر: ط ٣ ، ٢٠٠٢)، ص ٦٦١ .

(٣) د. طلعت جواد لحي الحديدي، "العلاقة بين مجلس الأمن والمحكمة الجنائية الدولية"، مجلة جامعة تكريت للعلوم القانونية والسياسية ، ١٤، ١، (٢٠٠٩): ص ٢٤٥.

What is more, the Security Council has been given an extensive powers by the Statute, represented by the possibility of postponing the investigation or the trial for (12) months, which means, an additional interference in the court job and an obstructing of the justice course<sup>(1)</sup>. Accordingly, the Security Council could force the ICC to postpone cases for political reasons<sup>(2)</sup>.

There are, also, no standards the Council depends on to adapt the case, and since they threaten international peace and security, then they are subject to the discretion of the Council to refer the case to the Court. However, The Council failed to refer several cases of States Parties and non-Parties of the Statute, due to the existence of the right of **Veto** for the Council members, as the crime cases that have occurred in each of Chechnya, the Gaza Strip, Burma, Sri Lanka, Syria. For more illustration, the failure of the Security Council to refer the serious violations of the crimes committed in Syria as a result of the use of the right of **Veto** by both Russia and China on 4<sup>th</sup> February 2012, which led to disability of the case referral to the ICC<sup>(3)</sup>. And If the Security Council referred the case one of the States Parties to the court then this referral would not be necessary to proceed an investigation by the Prosecutor, but this referral would be as the Prosecutor's discretions to estimate the case. The following two cases represent models of issues:

### 1. The Issue of Darfur:

Darfur lies into the western of Sudan, although most of the inhabitants of this region consist of tribes, as it is the place of the first tribal conflict roots which occurred in 1968<sup>(4)</sup>, then, they were followed by several conflicts which involved (22) tribe, and about (39)

(1) Rome Statute, art. 16.

(2) Machteld Boot, Nullum Crimen Sine Lege and the Subject matter jurisdiction of the ICC, The Netherlands, 2005, P: 43.

(3) Lawrence Moss, the UN SC and the ICC, fried rick Ebert stifung, March, 2012, P: 11-12.

(٤) د. براء منذر كمال، "الجوانب القانونية لقرار المحكمة الجنائية الدولية بإصدار مذكرة إعتقال بحق الرئيس عمر البشير"، مجلة جامعة تكريت للعلوم القانونية والسياسية، جامعة تكريت، عدد خاص، (٢٠٠٩): ص٣.

reconciliation conference between (1924- 2003)<sup>(1)</sup>, were hold to solve those conflicts, but after that, the events escalated to result an attack on (El Fasher), the largest city in the province and the capital of North Darfur state, and prompted the government to use the (Janjaweed) to defeat the insurgency. Accordingly, since that time, the crisis in Darfur began which motivated the international intervention to put an end of the crimes in Darfur<sup>(2)</sup>, where, the Security Council called for a Committee to be established on 31<sup>st</sup> January 2005 in order to raise a report to the President of the Security Council in order to adopt the appropriate action<sup>(3)</sup>.

Besides this, The Commission had found a reliable evidence that the rebel forces were responsible of serious violations may be set as war crimes, including the killing of civilians and looting their property, displacement and destruction of villages<sup>(4)</sup>, the Commission decided the possibility of transferring those crimes to the ICC instead of creating a special ICC, indeed, the Security Council used its validity for the first time and referred the case of Darfur to the ICC<sup>(5)</sup>, according to decision No. (1593) of session No.(5158) on 31<sup>st</sup> March 2005<sup>(6)</sup>. Then, after investigating, the Prosecutor office presented evidences, to the court about crimes in Darfur, which are collected by organizations that worked in Darfur, witnesses, and a number of victims. Accordingly, the office decided to inform Pre-Trial Chamber for approval to issue an arrest warrant against the criminals. Then, a Court memorandum issued on 27<sup>th</sup> February 2007 to catch both (Ahmad Harun) and (Ali Kushayb)

(١) رعد قاسم صالح، "إشكالية الدولة والقبيلة في أزمة دارفور (٢٠٠٣-٢٠١٠)", مجلة السياسة والدولية؛ مجلة يصدرها مركز المستنصرية للدراسات العربية والدولية ، العدد ٢٠ ، (٢٠١٢): ص ٢ .  
(٢) د. عمر محمود المخزومي، القانون الدولي الإنساني في ضوء المحكمة الجنائية الدولية، (عمان: دار الثقافة، ٢٠٠٨)، ص ٣٨١.  
(٣) حمزة طالب المواهرة، "دور مجلس الأمن في إحالة الجرائم الدولية الى المحكمة الجنائية الدولية"، (رسالة ماجستير في القانون العام ، كلية الحقوق، جامعة الشرق الأوسط، عمان، الأردن، ٢٠١٢)، ص ٨٦ وما بعدها.

(4) See: [www.un.org/arabic/news/sg/searchstr.asp?newsid=441](http://www.un.org/arabic/news/sg/searchstr.asp?newsid=441), last accessed on 14/3/2024.

(5) Orçun ULUSOY, Uluslararası Ceza Mahkemesi, İzmir, Haziran 2008, P: 32.

(6) <http://www.icc-cpi.int/NR/rdonlyres/A06E1FCF-5C5E-4684-B5EA-D3F35F41F49/0/FifteenthReportToTheUNSConDarfurArb.pdf>, last accessed on 25/3/2024.

for committing several crimes against humanity. The court also issued an arrest warrant against Sudanese President (Omar Al-Bashir) on 4<sup>th</sup> March 2009, followed by a second memorandum on 12<sup>th</sup> July 2010 on charges crimes against humanity and genocide<sup>(1)</sup>.

Indeed, the arrest warrants still disabled until this moment, although the first Pre-Trial Chamber has ordered the Registrar of the Court on 25<sup>th</sup> May 2010 to transmit a decision to the Security Council informing of Sudan's non-cooperation to take appropriate action. However, the Security Council has not adopted any decision. In this case, many questions are raised about the seriousness of the Security Council decisions and the influences of political considerations upon these decisions. Furthermore, the court has also issued an arrest warrant against (Abdel Rahim Hussein)<sup>(2)</sup>, and on 15<sup>th</sup> March 2012 the court jurisdiction of this issue has moved from the Pre-Trial Chamber to Trial Chamber II, while still the mentioned suspect at his position and the arrest warrant is disabled. Again, the question, about the extent of the ICC's ability to implement the arrest and detention orders, are raised at a time when the court lacks a police force to implementation, as well as, the court depends heavily on the cooperation of States which close with it.

Anyhow, since the beginning, the authority of the Security Council referred the situation of Darfur to the court, and the Council has not presented any cooperation and interest to accomplish what was started by the court which left in the midway, has the reference based on the political motives?

## 2. The Issue of Libya:

The latest political change in Libya leads to increase public protests and opens the door of Internal Armed conflicts in most Libyan cities<sup>(3)</sup>. This matter leads UN to intervene, as a result of crimes and violations in this country that witnessed especially after the revolution

(1) <http://www.iccarabic.org/index.php/news/sudan/6287.html>, last accessed on 25/3/2024.

(2) **Hussein** works as Defense Minister in the government of Sudan, See: The judicial case: ICC-02/05-01/12.

(3) [www.ar.wikipedia.org/wiki/ثورة-١٧-فبراير](http://www.ar.wikipedia.org/wiki/ثورة-١٧-فبراير), last accessed on 22/3/2024.

of 17<sup>th</sup> of February 2011, then, An International Commission was formed to investigate the facts about that matter<sup>(1)</sup>. The Commission has concluded that the Gaddafi forces committed several International Crimes. Such as, crimes against humanity and war crimes, as well as, the acts of murder, enforced disappearance, Civilians torture<sup>(2)</sup>.

Furthermore, the decision also mentioned that the Security Council made the decision according to Article (41) of the UN Charter and decided to refer the situation in Libya to the ICC on 15<sup>th</sup> February 2011, besides this, the decision involved a request to the Libyan authorities for a full cooperation with the Court and the Prosecutor General, and to provide the assistance whenever it is necessary. At the same time, it should be taken in the account that States which are not part of the court, including Libya, have no obligations according to that statute. The decision also urges all States and International Organizations to cooperate fully with the Court<sup>(3)</sup>. Under those circumstances, on 27<sup>th</sup> June 2011 the court issued an arrest warrant against (Muammar Gaddafi), Libyan former president, but the criminal case ended on 22<sup>nd</sup> November 2011 because of his death and according to the provisions of Article (58), paragraph (4) of the Statute. Whereas, on 27<sup>th</sup> June 2011, an arrested warrant has been issued against (Saif al-Islam Gaddafi) the president's son<sup>(4)</sup>.

Furthermore, when he was arrested Libyan authorities has announced the existence of criminal proceedings against him in the Libyan courts, and these proceedings have reached the stage of the trial. Hence, non-admissibility of the criminal case has evoked by the Prosecutor against him before the ICC according to the principle of Complementarity.

Actually, the Libyan courts have jurisdiction on this case<sup>(5)</sup>. On the other hand, the position of the ICC, the court requests of Libyan authorities to handover (Saif al-Islam), and to comply with UN Security Council decision No.1970 which requires them to cooperate

(1) UN Doc: A/HRC/19/68.

(2) UN Doc: A/HRC/19/68.

(3) Security Council Resolution No. 6491 which held on 26.02.2011, P: 2.

(4) The judicial case: ICC-01/11-01/11.

(5) Rome Statute, art. 17(1)(a).

with the Court, as well as, the admissibility procedures are to be decided by the judges of the Pre-Trial Chamber<sup>(1)</sup>.

In 2015, he was reported to have been released from detention in Libya, and as of 2021, he was reportedly seeking to return to public life in Libya. It is worth noting that (Abdullah Al-Senussi), who was the former head of Libyan, The ICC issued an arrest warrant in September 2011 for Al-Senussi on charges of crimes against humanity, including murder and persecution. Al-Senussi was arrested in Mauritania in 2012 and later extradited to Libya in 2013. He has faced trial in Libya, and the ICC has requested his transfer to The Hague for prosecution, but his legal situation remains complex. The ongoing conflict and political instability in Libya have complicated the ICC's ability to conduct investigations and secure arrests. The situation in Libya has made it difficult for the ICC to operate effectively.

### **I.C. The Practice of The Court Jurisdiction Referral by The States Parties:**

The States parties refer to those states that have ratified or acceded to the Statute of the Court<sup>(2)</sup>. Whereas, other countries that did not join the court have no right to make a complaint to the Court, but they could provide information to the Prosecutor who in turn raised them to the court. Actually, the statute has mentioned the necessity of cooperation of non-member States with the Court<sup>(3)</sup>, according to Article (35) of Vienna Convention of the Law Treaties 1969; and imposed an obligation the responsibility of states as a result of non-part of the treaty, and accepted non-parties expressly and In written form. When the State party intends to exercise the right of referral, the Prosecutor is not obliged to start an investigation unless it is satisfied and then should get the approval of the Pre-Trial Chamber. The state could refer Cases or Referrals to the Court, it should be a part of the Statute, or to accept Court's jurisdiction by a declaration made by the State as stated in Articles (13) (a) and (14) of the Rome Statute, taking

(1) [www.hrw.org/ar/news/2012/01/30](http://www.hrw.org/ar/news/2012/01/30) , last accessed on 21/3/2024.

(2) Until this day, 123 countries have ratified on the Statute of Rome.

(3) Rome Statute, art. 86 and 87.



into account the principle of Complementarity and the extent of the national courts ability in investigation and prosecution<sup>(1)</sup>.

As well as, the prosecutor, after the referral, should inform all States parties and relevant, moreover, the information could be done secretly to protect both of the investigation and the evidence, and to prevent the escape of suspects<sup>(2)</sup>. Hence, some States parties have referred the cases to the Court, including the following:

### 1. The Issue of Uganda<sup>(3)</sup>:

Uganda is an African country which suffers from the ongoing conflicts in it. Since 1986 this country has witnessed violations of international humanitarian law and several crimes of war, as after (Museveni) controlled on the power. The war broke out between him and former President (Tito Okello), this leads (Okello) to form an army Ugandan People's Democratic (UPDA), and in 1987 (Joseph Kony) has appeared, taking advantage of the conflict between the north and west conditions, and he established to Lord's Resistance Army (LRA) which succeed to get a large number of militants to his army, taking advantage of the religious and spiritual beliefs which was happening<sup>(4)</sup>. The fact that, 2009-2012 this army has kidnapped approximately 591 children, then those children were recruited to fight. However, on 29<sup>th</sup> August 2004 the Court received a request from the President of Uganda (Museveni) to refer the situation in his country to the ICC, after that, an arrest warrant was directed to (Joseph Kony) and several of his assistants who have committed crimes against humanity<sup>(5)</sup>. But, all the accused are still runaway and even Trial Chamber II had not issued a decision, at least, to seize their money in order to force them to surrender.

(1) Nidal Nabil Jurdi, the ICC and National Courts: A Contentious Relationship, Ashgate pub, 2011, P:164.

(2) Rome Statute, art. 18.

(3) **Uganda** signed on 17 March 1999, and it deposited its instrument of ratification of the Rome Statute on 14 June 2002.

(4) <http://www.aljazeera.net/news/international/2008/4/10/> جيش-الرب, last accessed on 24/4/2024.

(5) The judicial case: ICC-02/04-01/05.

While (Dominic Ongwen), who is one of the leaders of the Lord's Resistance Army, was accused of war crimes and crimes against humanity, he was handed over to the ICC in January 2015, and was tried for 25 years<sup>(1)</sup>.

On the other hand, the arrest warrants remained disabled until this moment. Hence, these matters among several obstacles that the court work has faced , which in our view requires States parties to find practical solutions to treating this legal problem.

## 2. The Issue of Democratic Republic of Congo<sup>(2)</sup>:

Since 1990's of the last century, the Congo has witnessed events of violence, killing, and displacement due to the conflict between the government and rebels. Then, particularly in 2000, (Thomas Lubanga Dyilo) created the Union of Congolese Patriots (UPC), which has hired a lot of kids under the age of 15 years for fighting<sup>(3)</sup>. However, after signing of the peace agreement between the government and rebels in 2003, the President of Congo requested from the International Court to refer of the crimes committed in that period, and asked the prosecutor to precede an investigation of these crimes<sup>(4)</sup>. Anyhow, in 2004, The State of the Congo has signed the cooperation treaty with the court, by which the court started investigation of the war crimes and the crimes against humanity committed in the country. Accordingly, on 10<sup>th</sup> February 2006, the court issued an arrest warrant against (Lubanga) who was arrested on 17<sup>th</sup> March 2006 and transferred to The Hague for trial<sup>(5)</sup>; and this procedure is considered as a brave step towards ending Immunities for criminals who commit crimes against humanity and war crimes in Congo<sup>(6)</sup>. Therefore, on 14<sup>th</sup> March 2012, the Trial Chamber

(1) <https://linksshortcut.com/dYoQv>

(2) **Congo** signed the Rome Statute on 17 July 1998, and it deposited its instrument of ratification of the Rome Statute on 3 May 2004.

(3) <http://www.hrw.org/ar/news/dr/09/14>, last accessed on 21/11/2014.

(4) Günel KURŞUN; 101 Soruda Uluslararası Ceza Mahkemesi, Ankara 2011, S: 40.

(5) The judicial case: ICC-01/04-01/06.

(٦) ينظر: مجلة المحكمة التي تصدرها تحالف المحكمة الجنائية الدولية ، جمهورية الكونغو الديمقراطية ، إصدار المحكمة الجنائية الدولية مذكرة القبض الأولى ، ع ٣ ، أيار ، (٢٠٠٦): ص ٦.

condemned (Lubanga) and sentenced him to imprisonment for 14 years, as this matter is set as the first decision issued by the ICC<sup>(1)</sup>.

In addition to this, for the same case, the court issued a sentence upon (Germain Katanga) for 12 years. The fact is that (Katanga) is one of the National Movement for Congo Liberation leaders, and he was sentenced for committing crimes against humanity<sup>(2)</sup>. The court also released each of the accused (Mathieu Chui) and (Callixte Mbarushimana)<sup>(3)</sup>, for the lack of evidence and witnesses against them.

In July 2019, the court convicted the accused (Bosco Ntaganda) of committing war crimes and crimes against humanity, including murder, rape, sexual slavery, and recruitment of child soldiers, and sentenced him to 30 years in prison in November 2019. The court has not yet issued any decision for some other accused, such as (Sylvestre Mudacumura), who was a commander in the Democratic Forces for the Liberation of Rwanda (FDLR) and was accused of committing war crimes and crimes against humanity, including murder, rape, and attacks on civilians.

### 3. The Issue of Central African Republic<sup>(4)</sup>:

Violence and internal trouble in this country led to escape the president (François Bozizé) to the Congo, especially, after the rebels controlled the power of this country<sup>(5)</sup>. After it has become submitting to the court jurisdiction since 1<sup>st</sup> July 2002, it presented a request on 22<sup>nd</sup> May 2007 to proceed investigation of serious crimes committed between (2002-2003), particularly the crimes of the rape and other acts of violence committed against thousands of victims, then, after the investigation an arrest warrant was issued against the accused (Jean-

(1) [www.Amnesty.org/en/news/landmark-icc-verdict-over-use-child-soldiers-2012-03-14](http://www.Amnesty.org/en/news/landmark-icc-verdict-over-use-child-soldiers-2012-03-14), last accessed on 20/4/2024.

(2) The judicial case: ICC-01-04-01/07.

(3) The judicial case: ICC-01/04-01/10.

(4) **Central African Republic** signed the Rome Statute on 7 December 1999, and it deposited its instrument of ratification of the Rome Statute on 3 October 2001.

(5) [http://www.bbc.co.uk/arabic/worldnews/2013/03/130324\\_cafrica\\_rebels.shtml](http://www.bbc.co.uk/arabic/worldnews/2013/03/130324_cafrica_rebels.shtml), last accessed on 23/3/2024.

Pierre Bemba) and others, as they were accused of committing crimes against humanity, including rape, murder, and war crimes<sup>(1)</sup>.

In March 2016, Bemba was sentenced to 18 years in prison in June 2016, but the ICC appeals court overturned the conviction in June 2018 due to procedural errors. The court is still ongoing to consider this case and has not been resolved yet. There are some defendants against whom the court has not taken any action. For example, the accused, Joseph Kony, is the leader of the Lord's Resistance Army (LRA), who committed war crimes and crimes against humanity in the Central African Republic and other countries in the region. Charges include murder, rape, kidnapping, and child recruitment. He remains at large and is wanted by the ICC. There are other field commanders from the Anti-Balaka and Seleka groups who have yet to be arrested and are still wanted by the ICC for war crimes and crimes against humanity. The ICC continues to investigate and pursue these individuals despite the security and political challenges in the region.

### **I.D. The practice of the Court's jurisdiction by the Prosecutor:**

As it is Clear from above, after the Security Council and the States Parties refer cases to the court, the main role to start the investigation will be done by the Prosecutor, in addition to that, the actual practice shows us that he has contributed in the action of some issues, according to the discretion granted to him and by his own initiative (Proprio Motu), because he is considered the representative of the International Community to prosecute the criminals of serious international crimes, For example The Issue of Kenya and Cote d'Ivoire (Ivory Coast).

#### **1. The Issue of Kenya<sup>(2)</sup>:**

After the announcement of the victory of the President (Mwai Kibaki) over his rival (Raila Odinga) in the Kenyan election (2007-2008), where (Odinga) the leader of (Orange) movement, has claimed

(1) The judicial case: ICC-01/05-01/08.

(2) **Kenya** signed the Rome Statute on 11 August 1999, and it deposited its instrument of ratification to the Rome Statute on 15 March 2005.

that the democracy elections was incorrect, and has announced the existence of fraud in the election results, as a result to this, the parties were promoted to mobilize their supporters, then the outbreak of battles between these two parties led to commit several crimes of killing, rape and displacement. The crisis continued until the mediation of the international community by the UN Mediator former Secretary General (Kofi Annan) as a result to this, both parties reached to share power according an agreement, besides this, according to this agreement (Kibaki) has been assigned as the President of state, while (Odinga) has been assigned as prime minister<sup>(1)</sup>.

As a result of those battles, the Prosecutor found that the crimes which have been committed constitute a reasonable basis to proceed an investigation based on a subjective Initiative, that is considered as the first investigation carried out by the Persecutor, according to Article (15) of the court Statute, as the State of Kenya is one of the countries that have ratified the Statute on 15<sup>th</sup> March 2005. Moreover, the Court has considered that case and issued a warrant of arrest against each of the accused: (William Samoei Ruto), (Joshua Arap Sang), and (Henry Kiprono Kosgey)<sup>(2)</sup>. Then, the prosecutor charged both (Ruto) and (Sang) three crimes against humanity, where these crimes have been proved upon them, while the Pre-Trial Chamber declined the charges confirmation against (Kosgey). However, the evidence presented by the prosecutor against (Kosgey) did not convince the chamber about the charges assigned against the suspect<sup>(3)</sup>. Further, the prosecutor, for the same case, charged each of: (Francis Kirimi Muthaura), (Mohammed Hussein Ali), (Uhuru Muigai Kenyatta), and (Walter Osapiri Barasa). Hence, the most important crimes, they were accused of, are: killing and forced displacement, rape, and other Inhumane acts. However, the court decided to release each of (Muthaura), (Ali), (Kenyatta) and

(1) <http://www.coalitionfortheicc.org/?mod=kenya>, last accessed on 22/4/2024.

(2) The judicial case: ICC-01/09-01/11.

(3) [http://www.icc-cpi.int/en\\_menus/icc/situations%20and%20cases/situations/Situation%20icc%200109/background%20information/Pages/Background%20information.aspx](http://www.icc-cpi.int/en_menus/icc/situations%20and%20cases/situations/Situation%20icc%200109/background%20information/Pages/Background%20information.aspx), last accessed on 24/4/2024.

(Sang) for the lack of evidences against them<sup>(1)</sup>, while the latter two the proceedings against them are still ongoing.

The investigations and trials led to the dismissal of charges against all the accused due to insufficient evidence and the Kenyan government's failure to cooperate in providing witnesses and evidence. However, the Court stressed that its investigations were necessary to demonstrate seriousness in holding those responsible for international crimes accountable. Surprisingly, after the dismissal of charges against all these individuals, there are currently no accused in the Kenya case at the ICC. No new charges have been brought against other individuals in this case.

## 2. The Issue of Ivory Coast<sup>(2)</sup>:

On 18<sup>th</sup> April 2003, Ivory Coast announced its agreement to accept the jurisdiction of the ICC, and reaffirmed the acceptance of jurisdiction on 14<sup>th</sup> January 2010. Indeed, the presidential election in the country led to fighting between the political parties, especially after the victory of the candidate (Alassane Ouattara) over his opponent (Gbagbo), the former president of the country who refused to accept the result and the peaceful transition of power, and committed crimes against humanity<sup>(3)</sup>. What is more, the Prosecutor concluded that there is a reasonable basis to proceed the investigation and the belief that the (Gbagbo) forces have committed crimes against humanity during the previous elections, while the prosecutor did not mention the crimes against humanity committed by (Ouattara) forces, so that the case was only against (Gbagbo) and its partners<sup>(4)</sup>. The prosecutor charged them of crimes against humanity and considered them indirectly responsible for the murder, rape, sexual violence, persecution, and inhumane acts committed during those elections for the period from 16<sup>th</sup> January 2010

(1) The judicial cases: ICC-01/09-02/11 & ICC-01/09-01/13.

(2) **Ivory Coast** signed the Rome Statute on 30 November 1998, and it deposited its instrument of ratification of the Rome Statute on 15 February 2013.

(3) <http://arabic.euronews.com/2012/08/16/judges-rule-icc-can-try-former-ivor-y-coast-leader>, last accessed on 17/4/2024.

(4) The judicial case: ICC-02/11-01/11.

until 12<sup>th</sup> April 2011<sup>(1)</sup>. Moreover, the Prosecutor also charged (Simone Gbagbo), Gbagbo's wife, as for her participation in the crimes and her support for armed militia<sup>(2)</sup>. Consequently, the Pre-Trial Chamber III has issued an arrest warrant against her, according to the request of the Prosecutor, and she was considered as the first woman the ICC has taken proceedings of international prosecution against her, as for committing crimes against humanity<sup>(3)</sup>. In June 2015, Simone Gbagbo was convicted by a court in Ivory Coast on charges of rebellion and assault. She was sentenced to 20 years in prison. In 2018, the sentence was increased to life imprisonment after her arrest. In 2020, Simone Gbagbo was released from prison by a government decision as part of political reconciliation efforts in the country. Gbagbo was convicted of crimes against humanity in January 2021 and sentenced to 20 years in prison. He was released on appeal. In March 2014, Charles Blé Goudé, a former Minister of Youth and Sports and leader of pro-Gbagbo youth groups, went on trial. He was charged with crimes against humanity, including murder, torture and rape. He was sentenced to 20 years in prison. But he was released following an appeal. Ongoing investigations and trials continue to address the crimes committed during the crisis. The ICC's involvement aims to provide accountability and justice for the victims.

While investigations have considered crimes committed by all sides, no formal charges have been brought against certain individuals associated with Ouattara's forces, who were also involved in the conflict. Maybe the reason for that the political and security conditions in Ivory Coast influenced the progress of cases and the collection of evidence necessary for bringing charges.

(1)

[http://www.icccpi.int/en\\_menus/icc/situations%0and%20cases/situations/icc0211/r%20related%20cases/icc02110111/Pages/icc02110111.aspx](http://www.icccpi.int/en_menus/icc/situations%0and%20cases/situations/icc0211/r%20related%20cases/icc02110111/Pages/icc02110111.aspx), last accessed on 24/5/2024.

(2) The judicial case: ICC-02/11-01/12.

(3) <http://www.justiceinconflict.org/2012/11/23/if-simone-gbagbo-ends-up-in-the-hague-she-wont-be-the-first/>, last accessed on 26/5/2024.



## CONCLUSION

The establishment of the ICC is a significant milestone in achieving international criminal justice. For over a decade, the Court has been addressing the gaps in international criminal law. In addition, the court's responsibility to combat crime cannot be solely accomplished through the mechanisms or institutions established by the court's statute. The prosecutor, being the most crucial of these institutions, is responsible for overseeing and investigating serious crimes, and subsequently presenting them to the court based on information gathered from states, international organizations, or other sources. Nevertheless, the prosecutor does not possess absolute authority, as they are required to formally obtain approval from the Pre-Trial Chamber. This chamber serves as the final authority responsible for issuing the decision to indict before the investigation proceedings commence .

Over the past ten years, the Court has demonstrated its crucial role in seeking international justice for individuals who have committed war crimes and crimes against humanity. Although the ICC has accomplished notable feats, it has substantial obstacles that hinder its efficacy and tarnish its standing. In order to achieve its goals efficiently, the court must strengthen international collaboration, increase tactics for gathering evidence, and guarantee its autonomy and neutrality in conducting investigations .

The court's method in certain cases has been criticized for being inequitable and lacking objectivity. This study highlights how the court has shown bias towards certain countries while neglecting to exercise its jurisdiction over serious crimes committed in Palestine, Iraq, and other countries. Undoubtedly, this replication of international standards contradicts the principles of criminal justice .

However, the researcher claims that the ICC's role will remain at risk, particularly due to the prevailing unipolar international system where the USA holds dominance. Furthermore, it is noteworthy that the USA has previously opposed the establishment of this court and has not yet become a member. Additionally, the ICC's function is impeded by

additional issues, including the insufficient cooperation of governments and the failure to implement court decisions.

Based on this limited investigation, the researcher recommends the following :

1. States should engage in collaboration with the ICC and offer more assistance, including the provision of information and the extradition of those who are accused .
2. The Assembly of States Parties should enact a provision that mandates the removal and dismissal of individuals who have been found guilty of any crime under the Rome Statute. This measure aims to avoid future occurrences and establish a baseline punishment for their offenses .
3. The proposal involves revisiting the offenses currently addressed by the court's jurisdiction and expanding it to encompass equally grave offenses mentioned in Article (5) of the Statute, such as terrorism, drug trafficking, the slave trade, and other crimes. States Parties have the authority to make changes to this topic as stated in Article (121) of the Statute, which permits amendment .
4. The Security Council's ability to recommend cases to the court is hindered by its political nature, as certain countries with veto power can exert influence .
5. Enforce punitive measures against nations who decline to collaborate with the ICC or impede its operations.

## REFERENCES

### I. Arabic References

١. د. ابراهيم محمد العناني، المحكمة الجنائية الدولية ، القاهرة: المجلس الأعلى للثقافة ، ط١، ٢٠٠٦.
٢. د. أمل اليازجي، المدخل الى المحكمة الجنائية الدولية ، ورقة عمل مقدمة الى الورشة التدريبية حول انشاء المحكمة الجنائية الدولية ،كلية الحقوق ، جامعة دمشق ، بدون سنة.

٣. د. براء منذر كمال عبد اللطيف، "الجوانب القانونية لقرار المحكمة الجنائية الدولية بإصدار مذكرة اعتقال بحق الرئيس السوداني عمر البشير"، مجلة جامعة تكريت للعلوم القانونية والسياسية، جامعة تكريت ، عدد خاص ، (٢٠٠٩) .
٤. حمزة طالب المواهرة، "دور مجلس الأمن في إحالة الجرائم الدولية الى المحكمة الجنائية الدولية"، (رسالة ماجستير في القانون العام، كلية الحقوق، جامعة الشرق الأوسط، عمان، الأردن، ٢٠١٢).
٥. رعد قاسم صالح، "إشكالية الدولة والقبيلة في أزمة دارفور (٢٠٠٣-٢٠١٠)"، مجلة السياسة والدولية؛ مجلة يصدرها مركز المستنصرية للدراسات العربية والدولية، كلية العلوم السياسية ، الجامعة المستنصرية، العدد ٢٠ ، (٢٠١٢) .
٦. د. صباح مصباح محمود السليمان، قانون الاختصاص في أصول المحاكمات الجزائية، عمان: دار الحامد، ط١، ٢٠٠٤ .
٧. د. طلعت جواد لحي الحديدي، "العلاقة بين مجلس الأمن والمحكمة الجنائية الدولية"، مجلة جامعة تكريت للعلوم القانونية والسياسية ، العدد ١ ، (٢٠٠٩).
٨. د. عمر محمود المخزومي، القانون الدولي الإنساني في ضوء المحكمة الجنائية الدولية، عمان: دار الثقافة ، ٢٠٠٨ .
٩. لندة معمري يشوي ، المحكمة الجنائية الدائمة واختصاصاتها ، عمان: دار الثقافة للنشر والتوزيع، ط١، ٢٠٠٨ .
١٠. مجلة المحكمة التي تصدرها تحالف المحكمة الجنائية الدولية ، جمهورية الكونغو الديمقراطية ، إصدار المحكمة الجنائية الدولية مذكرة القبض الأولى ، العدد ٣ ، (٢٠٠٦).
١١. د. محمد علي مخادمة، "المحاكم الجنائية المختلطة"، مجلة الحقوق ، جامعة الكويت، العدد ٣، (٢٠٠٨).
١٢. د. محمود شريف بسيوني ، المحكمة الجنائية الدولية ، بدون دار نشر، ط ٣ ، ٢٠٠٢.
١٣. د. منتصر سعيد حمودة، المحكمة الجنائية الدولية، النظرية العامة للجريمة الدولية، أحكام القانون الدولي الجنائي، دراسة تحليلية، الإسكندرية : دار الفكر الجامعي، ط١، ٢٠٠٩ .

## II. Foreign References:

1. ASLAN, Muzaffer Yasin, Teoride ve Uygulamada Savaş Suçları, Bilge Yayınları, Ankara, 2006.

2. Günal KURŞUN; 101 Soruda Uluslararası Ceza Mahkemesi, Ankara 2011.
3. Herman Von Hebel, Crimes under the ICC statute and the elements of the crimes, The New International Criminal Law, Sakkoulas, Pub Athens, 2003.
4. Lawrence Moss, The UN SC and the ICC, fried rick Ebert stifung, March, 2012.
5. Machteld Boot, Nullum Crimen Sine Lege and the Subject matter jurisdiction of the ICC, The Netherlands, 2005.
6. Nidal Nabil Jurdi, The ICC and national courts: a contentious relationship, Ashgate pub.2011.
7. Orçun ULUSOY, Uluslararası Ceza Mahkemesi, İzmir, Haziran 2008.
8. Pazarcı, H., Uluslararası Hukuk Dersleri, Ankara, Turhan Kitapevi, 2000.
9. Selcen ERDAL, Uluslararası Ceza Mahkemesinin Devlet Egemenliğine Etkisi, Ankara 2010.
10. William A. Schabas, An Introduction to the International Criminal Court, Cambridge University Press, New York, 2004.
11. Yusuf AKSAR, Uluslararası Ceza Mahkemesi ve Uygulamalarına Genel Bir Bakış, Uluslararası Hukuk ve Politika, 2005.

### III. International Documents and Cases:

1. UN Document: A/HRC/19/68.
2. UN Document: A/CONF.183/9.
3. The judicial case: ICC-01-04-01/07.
4. The judicial case: ICC-02/04-01/05.
5. The judicial case: ICC-01/04-01/06.
6. The judicial case: ICC-01/05-01/08.
7. The judicial case: ICC-01/04-01/10.
8. The judicial case: ICC-01/11-01/11.
9. The judicial case: ICC-01/09-01/11.
10. The judicial case: ICC-02/11-01/11.
11. The judicial case: ICC-02/05-01/12.
12. The judicial case: ICC-02/11-01/12.
13. The judicial case: ICC-01/09-01/13.
14. The judicial case: ICC-01/09-02/11.

**IV. The Internet Websites:**

- [http:// www.un.org/arabic/news/sg/searchstr.asp?newsid=441](http://www.un.org/arabic/news/sg/searchstr.asp?newsid=441)
- <http://arabic.euronews.com/2012/08/16/judges-rule-icc-can-try-former-ivory-coast-leader>
- <http://justiceinconflict.org/2012/11/23/if-simone-gbagbo-ends-up-in-the-hague-she-wont-be-the-first/>
- <http://www.amnesty.org/en/news/landmark-icc-verdict-over-use-child-soldiers-2012-03-14>
- [http://ar.wikipedia.org/wiki/ثورة\\_١٧\\_فبراير](http://ar.wikipedia.org/wiki/ثورة_١٧_فبراير)
- [http://www.bbc.co.uk/arabic/worldnews/2013/03/130324\\_cafrica\\_rebels.shtml](http://www.bbc.co.uk/arabic/worldnews/2013/03/130324_cafrica_rebels.shtml)
- <http://www.coalitionfortheicc.org/?mod=kenya>
- <http://www.hrw.org/ar/news/dr/09/14>
- <http://www.hrw.org/ar/news/2012/01/30>
- [http://www.icc-cpi.int/en\\_menus/icc/situations%20and%20cases/situation/s/icc0211related%20cases/icc02110111/Pages/icc02110111.aspx](http://www.icc-cpi.int/en_menus/icc/situations%20and%20cases/situation/s/icc0211related%20cases/icc02110111/Pages/icc02110111.aspx)
- <http://www.icc-cpi.int/iccdocs/PIDS/publications/PresidencyandChambersAra.pdf>
- <http://www.aljazeera.net/news/international/2008/4/10/جيش-الرب>
- [http://www.icc-cpi.int/en\\_menus/icc/situations%20and%20cases/situations/situation%20icc%200109/background%20information/Pages/Background%20information.aspx](http://www.icc-cpi.int/en_menus/icc/situations%20and%20cases/situations/situation%20icc%200109/background%20information/Pages/Background%20information.aspx)
- <http://www.icc-cpi.int/NR/rdonlyres/A06E1FCF-5C5E-4684-B5EA-D3F35F41F49C/0/FifteenthReportToTheUNSConDarfurArb.pdf>
- <http://www.iccarabic.org/index.php/news/sudan/6287.html>