

THE POSITION OF WAR CRIMES IN THE STATUTE OF THE INTERNATIONAL CRIMINAL COURT

Idres Abdl Kaka Abdulla

PhD candidate at Department of Islamic Law and Jurisprudence , Faculty of
Literature and Humanities Urmia university , Iran

k.idres@urmia.ac.ir

Mohammad Hassan Javadi (Author responsible)

Assistan professor , academic staff member Department of Islamic Law and
Jurisprudence , Faculty of Literature and Humanities at Urmia university , Iran

mh.javadi@urmia.ac.ir

Reza Nikkhah Sarnaghi

Assistan professor , Department of Islamic Law and Jurisprudence , Faculty of
Literature and Humanities academic staff member at Urmia university , Iran

r.nikkhah@urmia.ac.ir

موقع جرائم الحرب في النظام الاساسي للمحكمة الجنائية الدولية

إدريس عبدل كاكه عبدالله

طالب دكتوراه في القانون الدولي الجنائي، قسم الفقه والقانون الاسلامي، كلية الاداب والعلوم
الانسانية، جامعة ارومية، إيران

الدكتور محمد حسن جوادي (الكاتب المسؤول)

الأستاذ المساعد عضو هيئة التدريس، قسم الفقه والقانون الاسلامي، كلية الاداب والعلوم الانسانية،
جامعة ارومية، إيران

الدكتور رضا نيكخواه سرنقي

الأستاذ المساعد عضو هيئة التدريس، قسم الفقه والقانون الاسلامي، كلية الاداب والعلوم الانسانية،
جامعة ارومية، إيران

ABSTRACT:-

The international community, after a long period of silence that lasted for nearly half a century, during which no international criminal judicial mechanism to punish and prosecute the perpetrators of international crimes, its efforts to establish a permanent judicial authority to punish international crimes and war criminals led in 2002 to the establishment of the International Criminal Court. The Statute of the Court contains four international crimes, including war crimes.

But this system, which is the product of the consensual treaty between states, is not a complete system without obstacles. The jurisdiction of the court was restricted and limited according to the statute of the court, which has not included all serious international crimes on the one hand, and it has no authority to exercise its jurisdiction independently. For this, the international community and humanity needs to develop and amend the statute of the court in a way to include all forms of war crimes to secure a suitable situation to the ICC to carry out its tasks of achieving international criminal justice.

Key words: War crimes, International criminal court.

المخلص:-

ان المجتمع الدولي، بعد فترة طويلة من الصمت امام الجرائم الخطيرة الدولية تقدر بنصف قرن، لم تخل خلالها من آلية قضائية جنائية دولية لمعاقبة ومحكمة مرتكبي الجرائم الدولية، سعيه لإنشاء سلطة قضائية دائمة لمعاقبة الجرائم الدولية ومجرمي الحرب. أدى في عام ٢٠٠٢ إلى إنشاء المحكمة الجنائية الدولية. يحتوي النظام الأساسي للمحكمة على أربع جرائم دولية، بما في ذلك جرائم الحرب.

لكن هذا النظام، الذي نتج عن اتفاقية توافقية بين الدول، ليس نظاماً كاملاً بدون عقبات. وان اختصاص المحكمة مقيداً ومحدداً وفق النظام الأساسي للمحكمة، الذي لم يشمل جميع الجرائم الدولية الجسيمة من جهة، وعدم وجود سلطة المختصة بممارسة اختصاصها بشكل مستقل. لهذا، يحتاج المجتمع الدولي والإنسانية إلى تطوير وتعديل النظام الأساسي للمحكمة بطريقة تشمل جميع أشكال جرائم الحرب لتأمين وضع مناسب للمحكمة الجنائية الدولية لتقوم بمهامها في تحقيق العدالة الجنائية الدولية.

الكلمات المفتاحية: جرائم الحرب، المحكمة الجنائية الدولية.

INTRODUCTION

The establishment of the International Criminal Court made a major development in international criminal law, after long efforts that exceeded half a century of studies, proposals, research, official projects and informal regarding the formation of such a court, and they prepared a sufficient draft statute for the permanent international criminal court, and then entered into force on 01 July 2002, hence it has become necessary to discuss the limited competencies conferred upon it by the Statute, and the Rome Statute has come with a definition of the most important and serious international crimes to the international community and which are included in its jurisdiction, which was codified for the first time in an international multilateral agreement.

However, the Court jurisdiction has become dependent on preconditions and subsequent conditions that must be met for the exercising of its jurisdiction, and the International Criminal Court is based on the idea that it does not replace national judicial bodies, but their jurisdiction is complementary to these courts, but the idea of complementary jurisdiction witnesses many exceptions due to the seriousness of international crimes as general and war crime as specific so that makes the state unable or unwilling to prosecute and punish the perpetrators, which led to the Court being given a quasi-protective role over national courts.

In addition, the jurisdiction of the Court is also limited by virtue of the reasons for maintaining international peace and security where we find the intervention of the Security Council through the authority granted to it to postpone or suspend the work of the court, despite the exercise of the jurisdiction of the International Criminal Court which was conferred on it by the Statute, but it responds to many restrictions and obstacles that impede its work. To what extent can these restrictions and obstacles limit the jurisdiction of the International Criminal Court?

PURPOSE

The importance of the research revolves around clarifying the subject of the jurisdiction of the International Criminal Court in terms

of diagnosing war crimes and clarifying them in terms of identifying and defining the elements.

The research problem lies in the following questions:

- 1- What are the war crimes?
- 2- What are the problems and shortcomings in defining the War crimes and determination their elements?

Method

The research depends on the inductive approach to the texts of the statute of the International Criminal Court. As well as the analytical approach by analyzing the texts of the statute that determines the substantive jurisdiction of the court

The research is divided into three sections as follows:

Section one: Definition of the war crimes.

Section two: Elements of the war crimes.

War Crimes

In ancient times, war was neither governed nor regulated by any controls or rules the fighters used all methods of cruelty and brutality toward each other and did not distinguished between combatants and non-combatants, so during war everything was permissible, and there were no mechanism to control the war or limit the cruelty of the combatants. Rather, the permissible thing was the practice of war with a huge cruelty and violence⁽¹⁾.

The history of imposing restrictions on the conduct of armed conflict dates back to the Chinese warrior (Sun Tzu) during the sixth century BC, and the ancient Greeks took this principle as they considered it Law Code of Manu, around 200 BC and then made its way into Roman law and European law. In general, the trial of Peter von Hagenbach, who ruled in Austria in 1474 and sentenced him to death for wartime atrocities, which is the first real trial of war crimes⁽²⁾.

The term of war crimes includes a wide range of crimes prohibited over many decades in international convention and customary law. The basic principle was to limit the horrors caused by

wars and the excessive use of force that causes severe damage which pass the purpose for which these wars were launched⁽³⁾.

In the past, war was the main solution in resolving conflicts that occurred between human groups, as it was a legitimate and legitimate means in which all methods and means, even the brutal and barbaric ones that lead in the end to victory over the enemy, and due to the dangerous effects and terrible violations, the call began to reduce this brutality. And trying to follow some customs that make war more humane, including the prohibition of some acts committed during the war⁽⁴⁾.

It is clear that the criminalization of the conduct of combatants in violation of the rules and customs of war began to develop in the second half of the nineteenth century, and then was embodied by a number of treaties such as the Hague Conventions of 1899 and 1907, the list of the Commission on Responsibility for War Crimes in 1919 of the Treaty of Versailles, list The United Nations Commission on War Criminals in 1942, the Nuremberg Tribunal Regulations in 1945 and Tokyo 1946. The Geneva Conventions of 1949 and its two Additional Protocols of 1977, which are considered among the most important sources for the prevention of war crimes, embodied in Article 50 of the First Convention, 51 of the Second Convention, 130 of the Third Convention, and 147 of the Fourth Convention⁽⁵⁾.

For complete coverage of the subject, we will expose to this crime in terms of the concept and the elements necessary for its entry into the jurisdiction of the International Criminal Court in accordance with Article eight of the statute of the court, and this is each in an independent component as follow:

Definition of the war crimes

War crimes are among the oldest and most common crimes known to humanity, and they have been characterized by the international character of their gravity and the fact that they affect human dignity and the higher interests of the international community, so there must be a response to the acts that constitute war crimes, and the prosecution of their perpetrators in order to relieve their ugly effects.

Therefore, we have to expose this crime by defining it through the development of its concept until it is reached the International Criminal Court.

1. Definition of war crimes in jurisprudence

In order to find the sufficient definition to the crimes of war, Considerable international efforts have been made, represented in international agreements, as well as the contributions of international jurisprudence in defining war crimes and clarifying their rules so that they are clearly defined it to make a barrier that perpetrators do not escape accountability International Criminal, and to explain these efforts, we highlight some definitions made by some jurists and specialists in the field of international humanitarian law.

Professor Georges Abi Saab, a former Appeals Judge of the International Criminal Tribunal for the Former Yugoslavia, defined a war crime as: a violation of a rule of law of war and which has the special legal effect on the criminal responsibility of the individual who commits it⁽⁶⁾. And also professor Elihu Lauterpacht describes the war crimes as: (Crimes that are committed in violation of the law of war, criminally penalized in the established criminal rules relating to the conduct of hostilities, as well as the general rules of criminal law, because of the brutality with which they have been committed and the contempt for human life and property rights, which cannot be justified by the principle of military necessity)⁽⁷⁾.

As for Dr. Salahaddin Amer, it is: (Every intentional act committed by a member of the armed forces of a warring party or a civilian in violation of a rule of international humanitarian law that must be respected)⁽⁸⁾.

There are many definitions regarding war crimes, and the common denominator among most of them is the violation of legal and customary rules that regulate war situations, so we can say that it is serious violation of the regulations of war which contains the international treaties and international customary law.

2. Definition of war crimes in treaties and tribunals statutes

As for the definition of crimes by international conventions and treaties, we start from Article 6/b of the Nuremburg tribunal statute, which states that: Violations of the laws or customs of war. Such violations shall include, but not be limited to, murder, ill-treatment or deportation to slave labour or for any other purpose of civilian population of or in occupied territory, murder or ill-treatment of

prisoners of war or persons on the seas, killing of hostages, plunder of public or private property, wanton destruction of cities, towns or villages, or devastation not justified by military necessity⁽⁹⁾.

As for the final and reliable definition within the framework of international justice, it is the definition of the Rome Statute of the International Criminal Court in Article 8/2, which states:

1. Grave Violations of the Geneva Conventions of 1949.
2. Other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law.
3. Serious violations of article 3 common to the four Geneva Conventions, In the event of an armed conflict not of an international character.
4. Other serious violations of the laws and customs applicable in non-international character armed conflicts within the established scope of international law⁽¹⁰⁾.

While there are many advantages which included the text of article eight, there are several notices on it. According to the opinion of researcher Ali Jamil Harb, who says the detailed identification of war crimes that came in the aforementioned article; in such a way that the definition represents an important and decisive step forward in the field of war crimes, which includes translation and realization of the criminal principle which states that: (There is no crime without law- text-)⁽¹¹⁾.

However, some believes that the process of defining and selecting war crimes due to Article 8 of the International Criminal Court statute will constitute legal obstacles in the future, and the most important of which is that there are vague expressions in the text of the article that will constitute a justification for not describing workers as war crimes , and legal obstacles also text Article 124, which gave the state parties the right to suspend or not accept the exercise of the court's jurisdiction over war crimes for a period of seven years and other obstacles.

In addition, Despite the essential importance of including war crimes committed during internal armed conflicts in the Rome

Statute, it has been ignored various possible cases of committing this type of crime,

so Article 8 (2)(c) of the Rome Statute presented two short lists of war crimes without certain serious acts that would constitute war crimes when committed in the context of an armed conflict of a non-international character⁽¹²⁾.

Among the crimes that can be committed in such conflicts and not included in the Rome Statute is the risk of deliberately starving the civilian population, as the Statute devoid of any reference to Prohibition of the use of certain weapons or materials of any kind, and although those weapons constitute war crimes under Article 8 (2) (b) when committed as a result of an international armed conflict, they are not so if they are committed as a result of a non-international armed conflict, and these acts remain committed with such weapons have not been criminalized until the amendment of the Rome Statute at the Review Conference held in Kampala, the capital of Uganda, which was prohibited the use of certain weapons and materials in internal armed conflicts, which were not criminalized For a period of 7 years, which makes its use not constitute a war crime and is outside the jurisdiction of the Court in that period⁽¹³⁾.

Therefore, we prefer that it would be better to define war crimes by specifying the acts that constitute the crime, as example, and not as a limitation, because in this situation it is impossible for criminals to escape from punishments under the pretext of no crime and no punishment except by the text

Elements of the war crimes

It is clear that, war crimes, like other crimes, are based on four basic elements: the material element, the moral element, and the legal element. In addition, the international element is added to it, as it is an international crime. indeed the legal element means that there is a legal text that criminalizes acts and determines the punishment for them, so we will not focus on this element and it will be naturally referred to in the texts within the material element of the crime, so we will suffice here to talk about the material and moral elements of war crimes as follows:

1. Physical element

This element consists of two main conditions: First one is existence of war situation, and the other condition is the commission of an act prohibited by the laws and customs of war.

- 1- existence of war situation; The nature of these crimes, that is, they do not occur except in war situation, during its outbreak, so it means that it does not occur before the start of the war or after its end, since one of its elements occurs in wartime, and war is defined such as: The traditional term for an armed struggle between two or more states, in which each state is eager to achieve victory over the other; With the aim of dictating its conditions on the possibility of achieving peace between them⁽¹⁴⁾.

In other wise, the perpetrator does not have to possess a certain position in order for war crimes to occur, as the perpetrator can be a military or a civilian, and whether he is a civilian; So that he occupies a presidential position in the country or does not occupy any position at all, which is stipulated in Article 228 of the Versailles Agreement of 1919; which states on: The German Government recognizes the right of the Allied and Associated Powers to bring before military tribunals persons accused of having committed acts in violation of the laws and customs of war⁽¹⁵⁾.

Furthermore, it also does not require that the war be a war of aggression only, as war crimes can occur regardless of the cause of the war is illegal as a war of aggression, or if its cause is legitimate, such as using the right of legitimate self-defense⁽¹⁶⁾.

- 2- Committing an internationally prohibited act;

Through discussion Article (8/2), we find that it defines war crimes as grave violations of the four Geneva Conventions, i.e. acts committed against persons or property protected by the relevant Geneva Conventions, as well as other serious violations of the laws and norms applied to international dispute's armed forces within the established framework of international law.

Also among the violations are the occupying power's direct or indirect transfer some of its civilian population to the land it occupies, or the deportation of all residents of the occupied land or their transfer all or some of them inside or outside this land. For instance

we can mention the Iraqi's toppled regime policy against Kurdish people in Kirkuk, when they deported Kurdish there and transferred Arab from south of Iraq to Kirkuk and installed them to change the geography's nature of this territory.

According to Article (8)(2) of the Statute of the Court, the Physical element of war crimes is divided for four parts and we will show each of them separately as follows:

- **Crimes that constitute grave breaches of the Geneva Conventions of 1949:**

The second paragraph of Article (8) of the Statute of the Court enumerated the acts committed against the armed forces in the field and at sea, prisoners of war, and civilians protected by the Geneva Conventions, and considered that the following acts constitute war crimes: Murder, torture, inhuman treatment, biological experiments, deliberately causing huge suffering, intentionally appending serious injury to body or health, enormous destruction and takeover of property, not justified by military necessity, what is meant by property here is those protected by the Geneva Convention and includes (buildings and materials belonging to medical facilities, hospitals and civilian property in occupied territories), Compelling a prisoner of war or other protected person to serve in the forces of a hostile Power and depriving them of the rights of fair and regular trial due to the fourth and fifth Geneva conventions, illegal deportation or transfer or unlawful confinement, and Treat them as hostages⁽¹⁷⁾.

- **Other serious violations of the laws and customs applicable in international armed conflict:**

Article (8)(2)(b) mentioned twenty-six acts in this context. These violations are generally divided into three categories, the first includes the category of prohibited methods of warfare, the second is the category of prohibited factors of warfare, and the third is the category of human rights violations in armed conflicts. These categories will be illustrated as below;

- 1- prohibited methods of warfare; It aims to protect lives and property, which includes: Attacks against aid workers, Violation of the principle of relativity in military actions, Attacking unarmed places and persons and misuse of signs, flag of truce, enemy

flag, insignia or military uniform, United Nations flag or insignia or uniform, red cross emblems and other signs internationally protected by international laws, Attacking protected objects that do not constitute military objectives in themselves (such as archaeological sites, hospitals, educational and charitable institutions, etc.), insidious killing and wounding, looting, starving civilians and destroying enemy property⁽¹⁸⁾.

2- Prohibited factors of warfare; include prohibited weapons, and they include three types mentioned in Article (8) (2) (b), which are poisons or poisoned weapons, long-term bullets, indiscriminate weapons, and weapons that cause unnecessary suffering or superfluous wounds. What we would like to point out is that the statute of the International Criminal Court did not directly and explicitly name weapons of mass destruction and modern advanced technology that could threaten global security as a whole⁽¹⁹⁾.

3- Regarding violations of human rights laws; these include population transfer, forcing enemy citizens to participate in hostilities, depriving these citizens of rights and claims, declaring that no one is left alive, sexual violence, harm to physical integrity and personal dignity, and Conscripting or enlisting of children⁽²⁰⁾.

- **Serious violations of article (3) common to the four Geneva Conventions:**

The Statute of the court adopted in its Article (8) the text of Article (3) of the Geneva Conventions relating to hostilities committed against persons not participating in military operations, including military forces that laid down their arms, because of captivity, sickness, or inability or any other cause. These acts include the following acts⁽²¹⁾: murder, torture, mutilation, outrages upon dignity, taking hostages, passing of sentences and the carrying out of executions without providing judicial guarantees...etc.

- **Serious violations of the laws and customs applicable in armed conflicts not of an international character:**

Article (8)(2)(e), defines these acts that lead to violation of laws and customs in non-international conflicts and they are similar to what is

mentioned in paragraph (2) (b) of Article (8) which previously explained, and we will list some of the intentionally directing attacks against the civilian population as such, or against persons not taking part directly in hostilities, attacking buildings, resources, medical units, transports and personnel using the emblems of the Geneva Conventions, attacking personnel, installations, materials or vehicles used in the context of humanitarian assistance or peacekeeping, attacking buildings designated for religious, educational, art, science, charitable, or archaeological sites and hospitals. And looting, rape, sexual exclusion, child recruitment, displacement of population, perfidious killing, physical mutilation, and destruction of enemy property⁽²²⁾.

2. Mental Element

The moral element of war crimes is represented by the accused's knowledge of the natural or logical consequences that will result from his action, and despite that, he committed the crime. In addition to the accused's knowledge of the factual circumstances of the protected situation, and that this behaviour is in the context of and associated with an international armed conflict. Article 30 of the Statute of the International Criminal Court stipulates this element by saying (Unless otherwise provided, a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court only if the material elements are committed with intent and knowledge. For the purposes of this article, a person has intent where:

A- In relation to conduct, that person means to engage in the conduct.

B- In relation to a consequence, that person means to cause that consequence or is aware that it will occur in the ordinary course of events.

For the purposes of this article, "knowledge" means awareness that a circumstance exists or a consequence will occur in the ordinary course of events. "Know" and "knowingly" shall be construed accordingly⁽²³⁾.

3. International Element

International crimes are distinguished from domestic crimes by their international element, even if their elements are generally

distinguished with the internal crime; the Physical, moral and legal element, with special provisions, but they are not sufficient for them to have their independence, Rather, they need the international element, which gives them a special dimension, as it makes them characterized by danger and enormity of consequences, so they will not be even in the simplest their images are only crimes, as it is completely difficult to define an international crime as a misdemeanor or a simple offence⁽²⁴⁾.

The international character of war crimes is clear and supposed. War is an international relationship which devoid of a peaceful nature and international law has keened on regulating them in order to achieve a basic objective of the international community, which is to reduce its cruelty and brutality. This regulation includes the recognition of the warring states regarding the rights and the imposition of obligations, and these rights and obligations have heavy effectiveness on the whole community, so we can say that they rise to the level of being considered rights to the international community itself, as wasting it exposes members of the human race to destruction, and part of the foundations of human civilization to collapse⁽²⁵⁾.

The international element of war crimes is intended to be carried out, on the basis of planning by one of the warring countries and implementation by one of its citizens or followers in the name of the state or with its approval, against the institutions and belongings of the enemy state or its dependent population during war; That is, it should due to the availability of the international element, both the aggressor and the victim belong to different so there are two conditions required for the international element to be established in a war crime which are: It is committed by state against other state and be in situation of armed conflict⁽²⁶⁾;

A- Committed by state against other state; this requirement, in principle, requires that war crimes be committed by state upon state.

It assumes that the victim, in relation to the offender, is a citizen of the enemy state, as it is not imaginable when acts of violence and aggression are issued by the nationals of a state fighting against its citizens, except in special cases⁽²⁷⁾.

It is clear that, these crimes are mostly committed by members of the armed forces and the explicit order is issued to them to commit the act, so the international character of a war crime is not doubtful if the attack occurred against a right of international importance and from a person holding position officially.

As previously said, it is undoable that these crimes are committed only on the basis of a former plan regulated by the aggressor state against one of the states, and this is as a condition that requires that the international element does not exist in the case of an armed conflict between a state and an individual or group of individuals or a gang or an opposition group or a liberation movement and between warring groups within one state. So acts that violate the laws and customs of war committed during this conflict are not considered war crimes, this is as the principle but the exceptions are three categories of internal or non-international armed conflicts⁽²⁸⁾, which are:

- 1- Civil wars, according to traditional international law, are subject to the law of war if a third country recognizes these rebels as combatants, and therefore if violations of the rules and customs of war occur, they are considered war crimes.
- 2- Armed conflicts not of an international character in accordance with Common Article 3 of the Geneva Conventions of 1949, which states that In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum", and according to this text, it has become every violation the rules and customs of war during a non-international or internal armed conflict is a crime war.
- 3- The armed conflict between the liberation movements and the occupation authorities or the internal war that the first and second protocols were added by the United Nations to the four Geneva Conventions considered it as a rule of armed conflict between states, and the rules and customs of war are applied to it, so that if one of the acts in violation of these rules and customs occurred from one the parties to the conflict over the other, it is considered a war crime despite the failure of the international element, and this exception was approved by the international community to protect civilians and unarmed

fighters because the principles of humanity impose this exception, as if such crimes were committed against an oppressed people, as in the case of colonialism, occupation, or annexation of the territory⁽²⁹⁾.

B- Be in situation of armed conflict; the second condition for the availability of the international element in war crimes is the necessity of committing acts violation of the laws and customs of war during its outbreak. We do not imagine a war crime before the outbreak of war or armed conflict or after its end. The period of war is taken in a broad general sense, as it means the interruption of friendly relations between the warring parties. It begins with the outbreak of fighting and continues with the continuation of the conflict, so the ceasefire does not mean the end of the state of war and the silence of the guns on the fronts does not mean that the war is over⁽³⁰⁾.

In the view of the law, even if military operations stop, as if they ended with the occupation of a part from the territory of the State or by an armistice between the warring parties, the situation of war will continue to exist until it is concluded reconciliation between these two countries, and announcing the end of the war, officially or in fact, so the contrary acts to the rules and customs of war are considered crimes if they occur during the period of occupation or the armistice period⁽³¹⁾.

On the other hand, and with reference to specialists and scholars in human rights law filed, we find that some writers or jurists do not believe that the international element necessary for the commission of a war crime, so they dropped it based on the exception that came in Article 3 common to the Geneva Conventions of 1949 and the Second Protocol to the Geneva Conventions of 1977, which made it possible for one of the parties to the conflict to be a non-state party, such as liberation movements...etc. This means that in this case, the parties to the conflict are no longer considered, but rather the act in itself, whether it is a war crime or not. If the act constitutes it, the crime is committed and the perpetrator is punished internationally, whether the accused is a state, an organization, a gang, or even an individual.

Nevertheless we are contrary to this view, because for all international crimes the existence of the international element is

required in addition to the other elements, and as for the cases contained in the third common article of the Geneva Conventions as an exception, it is not permissible to expand the exception or adopt others on it.

Therefore, a war crime can only be established by the presence of the four elements combined, and it leads when proven to subject the offender to the penalty determined by international criminal law and judiciary.

DISCUSSION AND CONCLUSION

This study presented, through its two sections, the subject jurisdiction of the Permanent International Criminal Court and focuses on the war crimes which includes its definition and elements.

We have seen that the adoption of the Rome Statute of the Permanent International Criminal Court was the culmination of long international and jurisprudential efforts and the implementing of a long-awaited dream. The adoption of this system marked the end of a historical process that began its chapters after the World War I, and the starting line for a new era in the history of international criminal justice.

Moreover, we tried through this study to answer the main problem posed in terms of the challenges facing the work of the court and impeding its achievement of the goals of the court and the international community in embodying the achievement of international criminal justice and ensuring global security by punishing war crimes and criminals in order to reach appropriate solutions to activate the role of the court. The International Criminal Court so that it exercises its activities as an independent international judicial authority.

So it has also been tried, as much as possible, to address all the detailed issues related to these challenges and to find solutions to expand the jurisdiction and effectiveness of the International Criminal Court. From this point of view, we reached several conclusions and suggestions.

1. The International Criminal Court is an international judicial authority, which was established under an international treaty between the states parties and with their consent, because of

that when the statute of the court was established, it had many shortcomings from several aspects.

2. Regarding personal jurisdiction, excluding the responsibility of legal persons and natural persons under the age of (18) is considered a loophole and obstruction in the court system and facilitates the impunity of some criminals, especially in light of modern armed conflicts and crimes of terrorism at the international level.
3. Although there are many details about the definition of the war crimes and their images, there are inaccuracies and shortcomings in the context of the definition, and many serious weapons and deadly means that are used terribly in conflicts have been neglected.
4. The Security Council has a great power towards the Court, especially in the issue of referral or deferral. This matter undoubtedly constitutes a serious challenge to the effectiveness of the Court and makes many countries look with suspicion towards the Court and hesitate to join it, and it threatens the impartiality and integrity of the Court towards states. So by placing the Court under the control of the Security Council constitutes of a conflict between the requirements of justice and the achievement of international peace and security. In addition to the fact that the Security Council is a political organ with absolute authority that is not bound by any restrictions or oversight, and it depends in the performance of its functions on the will and interests of the five permanent members, the matter is tantamount to making justice hostage to international peace.
5. The non-joining of some countries to the Statute of the Court and the withdrawal of some others after their accession, and also some countries such as the United States of America conclude international agreements that contradict the objectives of the Court and claim that they are in agreement with the text of Article (98) of the Statute of the International Criminal Court, but this claim is not true.
6. The existence of political pressures on the work of the court, and this leads to a breach of the achievement of criminal

justice and then it harms international peace and security as well.

RECOMMENDATIONS

1. We suggest that the court's temporal jurisdiction should not be adopted with the principle of non-reactionary, because these crimes are considered heinous crimes against humanity and the entire international community, and the absence of the court's statute does not consider the absence of texts prohibiting these crimes.
2. We propose to expand the personal jurisdiction of the court to include at least natural persons aged between (15-18) years, provided that special measures and procedures are taken against them, such as those taken by national criminal laws, because this category in many cases is used in internal armed conflicts, and terrorist acts.
3. Reconsidering the definition of the war crimes and we suggest that the images and shapes of crimes be mentioned as an example, but not as a limitation.
4. The need to reconsider the provision of Article (16) of the Statute relating to the authority of the Security Council to postpone investigations or to prosecute before the court, as this authority represents a major limitation that limits the effectiveness of the Court in performing its functions, and is considered a clear violation of the independence and professionalism of the judiciary.
5. We suggest that the regional jurisdiction of the International Criminal Court includes all countries of the world without exception, because now it is limited to the states parties to the statute, meaning that other non-member states can commit heinous crimes without the court can be able to apply a lawsuit against them, and this means that the referral authority under Article (13) that The Security Council enjoys the only outlet to punish these acts, but as we mentioned earlier, this authority is restricted to achieving the interests of the permanent member states of the Security Council, and the right of veto will not allow them to be carried out in a fair manner. That is why we

suggest that this authority be transferred to the General Assembly of the United Nations.

6. We propose the conclusion of an international treaty under the supervision of the United Nations to establish an appropriate mechanism for how non-member states can cooperate with the statute of the court and the court in cases that occur in their territories or by their citizens. It is possible by this way that the territorial jurisdiction of the court will expand to cover all countries of the world and this step will lead to the actual and practical presence of the international judicial authority in the world in an equal manner.

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