
THE ROLE OF LEGAL AND POLITICAL REALITY IN THE WORK OF THE PERMANENT INTERNATIONAL CRIMINAL COURT**^{1, *}Ali Abdul Amir Al-Jubouri, ²Mahdi Saleh Abbas Hussein and ³Qahtan Barbar Al-Jubouri**¹College of Food Science, Al-Qasim Green University, Ministry of Higher Education and Scientific Research, Iraq^{2,3}Al-Qasim Green University, Ministry of Higher Education and Scientific Research, Iraq**Received 20th January 2024; Accepted 27th February 2024; Published online 29th March 2024**

Abstract

The determination of international criminal responsibility towards international crimes has become, without a doubt, a necessity for achieving international criminal justice in order to achieve peace and reconciliation between peoples torn apart by factors of conflict and conflict, and thus it has become certain that relying on justice and its expectations in deterring criminals in the future must be so. Reaching justice for the victims and collective peace in that society can be achieved through international claims as one of the aspects that help restore and preserve peace. So, the International Criminal Court (ICC) is now able to perform its judicial work independently and with integrity and impartiality thanks to the fact that its Prosecutor and judges are elected rather than appointed, as was the case with the provisional international criminal courts in the past. This is reflected in the reasons and causes of the criminal court ruling in the fact that this judicial system, whether on the national or international level, is politically independent towards all persons, as well as being committed to the causes of criminal justice towards both the accused and the victim through the effectiveness and transparency of the procedures taken by the judicial bodies. In order to achieve deterrence factors for those who begged him in the future. Thus, the indications of the independence of the PICC in its judicial work are clear through what was stated in the texts of the Rome Statute for it, which were mentioned previously in the search for any political influences from the states parties to this Statute or from other international entities, thus achieving the principle of universality. Punishment and its independence requires that the International Criminal Court be removed from any political pressures or obstacles that may face its work, as well as the legislative response required to achieve international criminal justice by the state parties in an impartial and impartial manner.

Keywords: Permanent International Criminal Court, Legal and Political Reality, Work.

INTRODUCTION**The topic of the research and its importance**

Law, in general, is considered a regulator of the functioning of social relations in society, while monitoring and keeping pace with the various negative phenomena that appear in it, whether at the internal or international level. With the development and speed of human life in general, a group of laws emerged that regulates various fields at the level of the international community, so it appeared at the international level. One of the most significant areas of public international law is the regulation of war and criminal proceedings on a global scale. The purpose of this statute is to provide a system whereby the PICC can administer punishments for egregious breaches of international law. The legal work carried out by this court must not interfere with political implications that may impose It interferes with the reality of its legal work, so our research focuses on the legal work of the ICC, while explaining the political reality affecting its work, specifically within the scope of international criminal law and the provisions of the Rome Statute in this field, due to the circumstances of redrawing the balance of power at the global level, which may create A difficult and sensitive situation is evident in the contradiction in the work of the ICC, with the increase in international criminal legal awareness in formulating the relationship between force and justice in our current era, and the questions this topic raises that the research attempts to discuss and answer.

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The research problem

The basic research problem lies in trying to discuss and solve a set of questions: What is meant by the legal work of the Permanent International Criminal Court in accordance with the provisions and rules of international criminal law? What is the impact of this work within the scope of this law? What is the impact of the international political reality on the work of the ICC, with an explanation of its impact on the reality of the court's judicial work in accordance with the provisions of its statute, and what is the ruling on this impact in light of jurisprudence and international criminal justice in order to achieve ICC? With a presentation of the direction of international criminal jurisprudence and justice with regard to the advanced questions.

METHODOLOGY

Given the importance of the research topic, we will adopt in this study the deductive and analytical approach, which is based on extrapolating and analyzing legal texts that relate to the work of the PICC, whether at the level in which they overlap with the work of national criminal laws or with the rules of international law, while discussing the topic in detail in In light of developments in jurisprudential opinions and rulings in international criminal justice, it is also based on the texts of relevant international agreements, in order to place before the researcher and reader a true, clear picture of the court's judicial work and the impact of political reality on it. In other cases, we resorted to the historical method, which will enable us to trace the different Stages of the reality of the legal and political work of international criminal prosecution, without it being an independent approach.

Scope of research

The research addresses the position of the ICC in light of its statute, under which it was established, and the impact of the legal texts of this system in determining the nature of its legal work. It also covers the stances taken by various national penal statutes, which ultimately lead to the stance taken by the PICC in its Rome Statute, which states the political reality in this domain. To ensure that those responsible for the international crimes that come under this court's purview are tried and punished according to the rules laid down in advance, this procedure is highly structured around pre-prepared materials.

The research plan

Due to the importance of clarifying the legal and political reality in the work of the International Criminal Court and in proving the effects of this reality on the work of the Court, this topic has been studied in this research entitled: (The role of the legal and political reality in the work of the PICC), and we will divide it into two requirements, as the requirement was The first was entitled: (The legal reality in the work of the Permanent ICC), while the second requirement was entitled: (The political reality in the work of the PICC, in addition to the introduction, which contained a brief summary of the research topic, and the conclusion, which includes the most important results and recommendations that were made. Reaching it, to complete our picture of the legal and political reality in the work of the ICC in light of the provisions of international criminal law.

The role of legal reality in the work of the Permanent International Criminal Court

The international organization of the work of the ICC is closely linked to the codification of the rules of international criminal law, in addition to customary rules such as the Geneva Conventions, which preceded the codified rules, as these rules were born from the womb of this law, and revolve with it in existence and non-existence, and the establishment of the PICC according to the system The Rome Statute made it possible to include the criminal legal rules regulating its work in a set of legal texts written under an international agreement. Thus, they are specific and cannot be expanded upon in their interpretation. Therefore, it is considered a positive step towards achieving the goals of the ICC in achieving international criminal justice, and thus it will We address this requirement, which will be divided into two sections. We address the legal rules in the jurisdiction of the ICC in the first, and the legal status of the ICC in the second.

Legal rules within the jurisdiction of the Permanent International Criminal Court

The lack of a legislator for international criminal law means that the ICC's governing principles are based on custom rather than precedent. This is because international criminal law takes different forms than national law, including the principle of criminal legality, which is well-known in national law (no crime and no punishment except by a text). The legitimacy of this law stems from customary principles; this is supported by the fact that, notwithstanding certain treaties, international custom has criminalised and punished most of the crimes listed in the Rome Statute of the PICC, including genocide, crimes against humanity, and war crimes. Written international

instruments that criminalize these acts, such as the Hague and Geneva Conventions, which are considered among the early international agreements that ensure that human rights are not violated in times of war and peace and regulate affairs related to the work of armed forces warring among themselves (2).

Attempts to codify the rules of international criminal law continued from different eras, as the authority of the Church was considered the highest spiritual religious authority in European society at that time, and it knew two senior clerics who devoted much research to legal jurisprudence, namely Saint Augustine for the period (355 -430), and Saint Thomas Aquinas (St. Thomas Aquin) for the period from (1255-1274), and they are credited with distinguishing between just war and unjust war, as the first war is considered legitimate and the second war is unjust. Legitimate, and on the basis of this distinction arose the duty of supporting rulers and states in combating those whose war is deemed unlawful, and in combating those whose war is deemed unlawful, imposing punishment on them, and obligating them to compensate for the damages caused by their aggression. These views had great importance in the jurisprudence of ICC, as they contributed These efforts are aimed at assisting and redressing countries that are waging a legitimate war, and attempts continued at the beginning of the nineteenth century, as it witnessed many attempts to codify legal rules for limiting force and violence. Among the most important of these treaties are the Paris Naval Declaration of 1856, and the Red Cross Convention of 1864 in Regarding regulating the condition of the sick and wounded the Hague Regulations of 1899, and passing through the international efforts made after World War I and the formation of the Responsibilities Committee in order to identify those responsible and hold those responsible for the war accountable, the Committee distinguished between the case of waging war and the case of war crimes, as it did not punish the first case. Because there is no international criminal law that punishes it, it was content with moral responsibility, while it punished the second case. This case represented a serious beginning for the emergence of written criminal rules, which were later relied upon for the emergence of ICC to try without regard to the character of the person, passing through the era of the League of Nations, which wanted Its legislators require that its articles be a document written in a way that does not threaten world peace (3).

Following the establishment and implementation of the Rome Statute of the PICC, which stipulates that the perpetrators of the crimes listed in Articles (8-5) must be natural persons, regardless of their legal status, whether they are regular citizens or holding high-ranking positions in their respective countries, the International Law Commission and the United Nations General Assembly have begun to establish principles to codify the international criminal responsibility of natural individuals, with a particular emphasis on the responsibility of the head of state and his associates. and revealing the exclusion of adhering to the duty of obedience to the orders of superiors in the event that the crime is clear with the knowledge of the subordinate that it is criminalized under the relevant rules of international law in accordance with the fourth principle (4). Guidelines for the International Criminal Court's operations and its rules of evidence (5). It is also possible for the ICC to apply international treaties and principles of public international law that have become stable and recognized, whether their source is international custom, international treaties, or legal principles agreed upon by civilized nations (6).

Thus, the rules of legal jurisdiction in the work of the ICC may be similar to the principles of international criminal law and English law in that they rely heavily on international customs for long periods of time. These customary rules were not replaced by the principle of international criminal legality until recently, and this replacement occurred gradually. And in stages until the entry into force of the Rome Statute regulating the work of the ICC. Although there are customary rules that punish war crimes and atrocity crimes and punish them, even if in a rudimentary way, from here emerged the need for the international community to follow the principle of international criminal legality, especially with the emergence of new and very dangerous forms (7).

Legal center of the permanent international criminal court

All international attempts to establish an international criminal court have collided with the wall of sovereignty that states adhere to to the greatest extent, and that the state must not be subject to any higher authority, and is not bound by any rule of law or morality, and that the existence of an international criminal legislator is considered by states to be a derogation of its sovereignty and a threat to its existence and internal judiciary (8). The person has also been awarded legal capacity. All of the crimes that are within the Criminal Court's legal authority, including crimes against humanity and aggression, must be met in order for the court to carry out its functions and accomplish its goals (9). It is also noted that the legal status of the International Criminal Court is not absolute. The fact that the ICC has international legal personality does not mean that it has become a subject of public international law in general, as is the case with states or international organizations. Rather, this legal status enjoyed by the International Criminal Court The permanent status grants it a special international legal personality, within the limits of the general framework that enables it to exercise its jurisdiction in order to achieve its goals and objectives based on the texts of the statute that regulates its work (the Rome Statute). The existence of this statute is considered the treaty law according to which the court was established. The legal status of the Criminal Court may disappear at a time when this court may exceed the limits of its powers and powers granted to it under its statute, that the Criminal Court exercises its jurisdiction, powers and functions in the territory of any country. Which is a party to this statute establishing the ICC through a special international agreement between the Criminal Court on the one hand and this state on the other (10). By virtue of an arrangement known as the Headquarters arrangement, the Permanent International Criminal Court has agreed to have its headquarters situated in The Hague, The Netherlands. This host country is the Netherlands. The head of the ICC, speaking on behalf of all nations, signs this unique agreement. Within the framework of Dutch judicial institutions, the parties to the Rome Statute have granted it legal status. This means that it can prosecute crimes that are within its jurisdiction, as mentioned above in the context of Search, and it also enjoys all the necessary legal and judicial powers. By facilitating the establishment of a PICC through the General Assembly's Sixth Committee of the International Law Commission, the United Nations has shown its interest in the matter of establishing such a court. This will allow for the trial of individuals accused of international crimes recognised by applicable international agreements, thus enhancing the Court's legal standing. The ICC has sought to give it the character of international legitimacy as an international organization specialized in trying those accused

of a certain type of international crimes. Thus, this legal status of the Criminal Court has been strengthened through the General Assembly's continued request from the Sixth Committee of the International Law Commission to continue its study and research on the subject of establishing a criminal court. International (12).

In 1998, the International Criminal Court (ICC) was established through the method favoured by the aforementioned, following a diplomatic conference convened by the UN to do so. The ICC's statute was drafted in Rome using the international multilateral agreement that was concluded under UN auspices. International Law Commission is that it is a judicial body that has independent legal status and personality, with its administrative connection to the United Nations based on Article (123/1/2) of the Rome Statute, provided that this administrative connection does not prejudice the independence of the court in performing its functions. Completely impartial and independent (13).

The political reality in the work of the permanent International Criminal Court

Considering the ideas that dealt with the concept of the political reality of the work of the International Criminal Court, which requires it to exercise its desired judicial role away from the influence of the political reality that may be imposed on it by a group of countries in accordance with what is stated in the Rome Statute of the PICC, because what is required of the court International criminal justice is the achievement of criminal justice at the basic level, which is the international level, in the circumstances in which crimes are committed against international criminal justice, and during the criminal court's performance of its judicial work, and therefore this court will have jurisdiction to try the perpetrators of these crimes so that no one escapes justice. Judicial international criminal law. In any case, in this request we will address the statement of the political reality in the work of the temporary ICC in the first section, while in the second section we will address the statement of the political reality in the work of the PICC in accordance with the Rome Statute.

The political reality in the work of temporary international criminal tribunals

Before delving into the details of this branch, it is necessary to know the truth about judicial work, whether it is an authority or a function, in order to then know the role of the judiciary in the work of these temporary criminal courts, which were formed for specific and specific crimes. Disagreement has arisen over this topic, but modern legal thought has stabilized. Considering that the judiciary is an independent authority from other authorities in the state, especially the executive authority and the legislative authority, and thus the judiciary is not just a function that is exercised by the courts due to the nature of the judiciary's work, which includes resolving individuals' disputes by applying the law professionally away from the influences of political reality, Which can only be exercised by a body independent of all other state bodies (14). Thus, the independence of the judiciary is represented by the fact that it is an authority that stands on an equal footing internally with the legislative and executive powers, as well as on the international level. The international criminal courts stand on an equal footing with the United Nations Organization and its affiliated bodies. From a legal standpoint, the United Nations

Organization or one of its bodies has no right to exercise competent to exercise any kind of political influence or interference in the work of the courts in order to deviate from their desired justice in achieving international criminal justice for the various cases heard by these courts, which requires that the international judge exercise his work without political influence or interference from any party whatsoever (15). By reviewing the statutes of previous international criminal tribunals, especially the Yugoslavia and Rwanda tribunals, we find that the authority to appoint the judges of these tribunals was given to the UN Security Council, which constitutes a phenomenon and a dangerous precedent in the field of judicial work, because the Security Council constitutes a purely political body, which calls for and may suggest submission. These judges are influenced by this political party that has appointed them to their positions instead of their submission and commitment to the regulations of these temporary international criminal courts (16).

Thus, the Security Council, a number of European countries, and the United States of America sought to make political settlements regarding the work of the International Criminal Tribunal for the Former Yugoslavia at the expense of international criminal justice, by obstructing the submission of those responsible for war crimes and crimes against humanity to this court. Likewise, through the failure of the United Nations to provide the necessary financial funding and its weakness to this court, which has affected its work and its own work in trying the accused before it, it must complete its work before 4/30/1994, as well as through placing administrative obstacles before this court through the United Nations. The United Nations decided to delay the appointment of the Prosecutor of the International Criminal Tribunal for the former Yugoslavia by the Secretary-General of the United Nations after he was authorized to do so by the UN Security Council (17). This is also true in the case of the International Criminal Tribunal for Rwanda, which was unable to fully carry out its judicial duties in investigating and prosecuting crimes committed in the name of international criminal justice due to political and administrative hurdles. For example, the court's headquarters were not located in Rwanda, but in Arusha, the capital of Tanzania. This caused delays in both the court's operations and the arrival of witnesses, meaning that the tribunal was unable to reach its intended objective of punishing those responsible for crimes and serious violations of international humanitarian law (18).

The political reality in the work of the permanent International Criminal Court

Through what was presented in the first section of this requirement, it has become clear that there is a clear political influence on the work of the temporary international criminal courts through the establishment of intended and unintended political obstacles, which effectively affected the achievement of international criminal justice, and thus the drafters of the Rome Statute of the Criminal Court. The permanent international community has tried to ensure that there is no political influence or influence on the work of judges in the International Criminal Court, and that their work should be impartial and responsible in order to achieve the desired international criminal justice. Thus, the old method used in the previous temporary international criminal courts in appointing judges by an organization The United Nations and the Security Council and the resulting political influence on them and their

work have been avoided by the PICC through the Rome Statute of this court in making the appointment of the judges of this court be through election as it is the best method for selecting judges, and this method may achieve the greatest degree of Independence of the International Criminal Court and its judges (19). Although the independence of judges was not known since ancient times, the emergence of this principle was linked after the outbreak of the French Revolution and the call for the separation of powers by the philosophers of this revolution, including the philosopher (Montesquieu), and after that it was stipulated in the French constitutions that followed the revolution and in human rights declarations, as well as This independence was stipulated in the Universal Declaration of Human Rights of 1948.

However, this independence in the work of the PICC does not mean a lack of cooperation with the rest of the other international bodies of international organizations in order to achieve complete international justice, but rather requires that this means cooperation between the bodies and the rest of the other international bodies, governmental and non-governmental organizations and states. Other relevant matters further seek this cooperation, which was embodied in accordance with the provisions of the Rome Statute of the ICC, which affirmed the principle of international cooperation in accordance with Chapter Nine thereof, which stressed the importance of this matter, and it should not be interpreted as interference or circumvention of the work of the court (21). By reviewing the work of the Permanent International Criminal Court, considering that the declared goal of establishing this court is to achieve international criminal justice by following procedures and means that are independent, effective, and fair, but this rarely happened because the establishment and the establishment of its various organs may have been Sometimes subject to the goals of political reality, but to varying degrees. Some of these agencies may also be under the control of political considerations on the other hand. What was mentioned may sometimes be revealed through public practices by some countries, or through the use of deceptive methods that As a result, they may lead to legal and administrative difficulties in the legal functioning of the International Criminal Court due to these political decisions, and at other times these political obstacles may lead to wasting time in these trials until the pressure of public opinion and its interest in establishing justice decreases (22).

Thus, the Rome Statute of the PICC gave the United Nations Security Council to postpone the investigation, continue it, or continue the trial for a full year in accordance with Chapter Seven of the United Nations Charter, and based on the text of Article (16) of the Rome Statute of the Court. ICC, with the Security Council being permitted to renew this postponement for a second or third year (23). We note from this that the political reality in the Security Council, due to the conflict of international interests between the countries of this Council, hinders the International Criminal Court from carrying out its judicial work, especially since most of the perpetrators of the international crimes referred to previously are nationals of the countries that are permanent members of the Security Council, and this may also lead to The work of the International Criminal Court is politicized according to the defendants in the cases brought before it according to international whims and interests, or they have special international relations with the Security Council countries according to which they adapt the dispute before them in this direction, which achieves the

ultimate goal of not enabling the International Criminal Court to perform its role and work, due to political tendencies. Conflicting and different international interests, which may ultimately affect the development and growth of international criminal law on the one hand, and contradict the goals and purposes of the Charter of the United Nations (24).

Conclusion

After the research has reached its end, praise be to God, it is necessary to point out the most important proposals and results that can be reached, which contribute to strengthening legal efforts aimed at deepening the legal understanding of the role of the legal and political reality in the work of the permanent International Criminal Court and the temporary international criminal courts in light of national criminal legislation or international criminal legislation, and in order to avoid repetition or prolongation, we will begin to summarize the most important results and proposals as follows:

First: Results:

- The establishment of the Permanent International Criminal Court under the Rome Statute made this Statute the legal source for the Permanent International Criminal Court in investigation and trial procedures, punishment imposition procedures, and the type of penalties imposed, and it is the source from which these penalties derive their legal legitimacy in application to the persons appearing before it and the perpetrators. For the serious crimes mentioned in Article (8-5) of the Rome Statute of the International Criminal Court, such as crimes of genocide, crimes against humanity, war crimes, and crimes of aggression.
- The statutes of the temporary ICC have taken to separating the different stages of the trial, which was driven by legal considerations as well as by political considerations in establishing these statutes in repeatedly separating these courts from their administrations, as the stages of investigation were separated from the trial, which resulted in all cases, without exception, the work of all these temporary criminal courts, which issued their rulings immediately after the trial, has been terminated. The stages of penalty implementation for the rulings issued by these temporary criminal courts, and what relates to amnesty for penalties imposed on convicts and conditional release rulings, have also been subject to the considerations of politicians in these countries and the discretion of their administrative officials, which were not at any stage motivated by international criminal justice considerations in trying those accused of committing the most dangerous international crimes to the international community.
- Emphasizing the provisions of the Rome Statute of the Permanent International Criminal Court to achieve the primary goal of the Criminal Court, which is the issuance of the criminal judgment in a sound and correct manner from a legal standpoint, and that it carries with it many meanings of justice, based on previous negative experiences in the formation of temporary international criminal courts that it did not provide international criminal justice with what it was required to provide in achieving this desired justice in creating the controls required to achieve the integrity of the criminal judgment issued by the Criminal Court away from the influence of political considerations. These controls are objective and procedural guarantees that complement each other, and must be

observed by the judges of the court. Criminal, which requires that the sentence issued by them be sound, fair and just

Recommendations:

- It is possible to say that this modest research has revealed to us the legislative shortcomings in the text of Article (16) of the Rome Statute. This article gave full legal authority to a political body, namely the UN Security Council, to suspend the work of the ICC for a full year, and to be able to do so. To be renewed for a second and third time, this in itself is considered political interference in the work of the court that must be remedied by amending the text of Article (16) of the Rome Statute by making international prosecution limited to the States Parties, the Prosecutor General of the Court, and the prosecution of the victims and preventing it from the Security Council because it is a political body.
- The research recommends the formation of an international committee whose mission is to audit, research and monitor all political factors that may lead to obstructing the work of the PICC from a legal standpoint, whether this obstruction was issued by the states parties to the statute or others, and to issue periodic recommendations in this field. To the Presidency of the Court in order to take the necessary measures in this regard
- Ensuring that the political role of states parties in the Statute of the PICC (Rome Statute) is excluded if they wish to carry out investigative procedures on behalf of the Criminal Court, and that there is no duplication in applying these standards between nationals of different countries who commit international crimes, and by excluding this The role enables the sanctions stipulated under the Rome Statute of the ICC to be applied without any political considerations or side effects, and in a legal and equal manner, to all who are convicted of committing serious international crimes that threaten international peace and security, in order for the recognized international criminal truth to emerge, despite the obstacles that have been imposed in its statute, which we hope the international community will overcome in the near future to ensure justice in general and for victims in particular.

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