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Prosecution in the scope of international criminal justice

الادعاء العام في نطاق العدالة الجنائية الدولية

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Abstract:

Prosecutors, in all international criminal tribunals and courts, are assigned to the responsibility of prosecuting individuals accused of international crimes. The various tribunals have included, either the military established by the Allies or those established by either the UN Security Council or those established by agreement between the UN and national governments, prosecutors for the sole purpose of prosecuting the most serious crimes,

The temporary criminal justice contributed in avoiding Contributed to avoid the negatives that dogged prosecutors at the time. This was evident in the first election of a Prosecutor for a permanent International Criminal Court, but the selection of the Prosecutor has always proved to be one of the most difficult issues for realistic, legal and even political reasons.

Keywords: criminal justice, criminal courts, prosecutor, election, conditions, prosecution.... ,

الملخص:

أعهد للمدعين العامين في جميع المحاكم الجنائية الدولية مسؤولية محاكمة

الأفراد المتهمين بارتكاب جرائم دولية، وقد تضمنت المحاكم المختلفة سواء تلك

العسكرية المنشأة من قبل الحلفاء أو تلك التي أنشئت سواء من قبل مجلس الأمن التابع للأمم المتحدة أو تلك التي قامت عن طريق اتفاق بين الأمم المتحدة والحكومات الوطنية، مدعين عامين لأجل هدف واحد وهو الملاحقة القضائية على أخطر الجرائم،

ساهم القضاء الجنائي الدولي المؤقت في تجنب السلبات التي لاحقت المدعين العامين آنذاك، وتجلّى ذلك في أول انتخاب لمدع عام لمحكمة جنائية دولية دائمة، ولكن ثبت أن اختيار المدعي العام يكون دائما من الأمور الأكثر صعوبة نظرا لأسباب واقعية وقانونية وحتى سياسية.

الكلمات المفتاحية: القضاء الجنائي، المحاكم الجنائية، المدعي العام، الانتخاب، الشروط، الادعاء العام، الملاحقة، ...

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1. INTRODUCTION:

In the aftermath of the First World War, the international community, especially the victorious and allied forces, tried to establish courts and commissions of investigations to establish justice through independent procedures and means. However, this failed because the establishment and management of these bodies were for political purposes at that stage, which created legal difficulties that caused the imbalance of these investigations and trials, and what characterized this period is the total absence of the so-called public prosecution.

In the aftermath of World War II, the Nuremberg trials were the first steps in the path of international criminal justice. However, its competence stemmed from agreements concluded between the majority and the defeated. Although the court's

charter stipulated that the prosecution should be appointed by the victorious states and the judges should not be challenged, the touch of the independent prosecution hadn't been seen.

After the Cold War, the tribunals for former Yugoslavia and for Rwanda emerged under UN Security Council resolutions, and although they are independent, the prosecution in these tribunals was appointed by the UN Security Council. This is what has actually materialized, so:

How has the prosecution developed in the international criminal justice?

2. Prosecution in temporary international criminal tribunals

Assessing the performance of former international criminal tribunals is very important.⁽¹⁾ It has implemented completion strategies that have contributed to the creation of the ICC.⁽²⁾ Since it takes the lead in pursuing violations of international law, it must see what has been accomplished in spite of the enormous constraints it faced, including the lack of judicial models for follow-up, lack of resources, logistical problems, and the jurisprudence of some constraints, but these important contributions to the development of codes of practice must be recognized in establishing procedures, evidence, acquisition of considerable experience in conducting international investigations as well as the selection of cases and the development of international standards for fair trial, all enriching international jurisprudence.

2.1. Prosecution in international military tribunals:

During the war, joint declarations⁽³⁾ were made between allies or from provisional governments that war criminals, those who violated their customs and laws, and perpetrators of international crimes should be prosecuted. However, these tribunals were characterized by a different prosecution where neither the defendants nor their lawyers were allowed to recuse the court.⁽⁴⁾ The apparent reason for this action was to expedite the proceedings and thereby forfeit the rights of the accused or

the public prosecution if their aim was to truly represent the international community.

2.1.1. The International Military Tribunal of Nuremberg:

The Court was established under the London Charter⁽⁵⁾ by a panel of eight judges, each two nominated by each of the four Allied forces, one judge from each country presided over the trial, the other four were alternates; the four allies also chose prosecutors, who agreed to continue the convictions against the accused on behalf of the newly formed United Nations.⁽⁶⁾

All court decisions were made by a majority vote of the four judges; neither the defense nor the prosecution were allowed to challenge the court's legal, political or military authority because its jurisdiction stems from London Charter issued by the Allies under inherent legislative powers over states that surrendered unconditionally, and according to the court, each ally has the ineligible right to legislate on the territory it has occupied.

On the basis that it was held for the purpose of bringing Nazi war criminals to justice, the Nuremberg trials were a series of 13 conducted in Germany, between 1945 and 1949 and the defendants, including Nazi Party officials and high-ranking military officers along with German industrialists, lawyers and doctors who were charged of crimes against peace and crimes against humanity (Nazi leader, Adolf Hitler committed suicide and was not brought to trial).⁽⁷⁾

US Chief Prosecutor Robert Jackson handed the opening speech to US prosecution at the IMT trials for war criminals in Nuremberg; the top prosecutors were from four countries USA, U.K, Soviet Union and France; The arrival of Jackson and his legal team in Nuremberg was at the palace of justice, where the American legal unit appointed some lawyers, researchers, secretaries, and guards. Jackson took the lead in the actual trial and delivered his opening statement: "The wrongs which we seek to condemn and punish have been so calculated, so malignant and so devastating, that civilization cannot tolerate their being ignored, because it cannot survive their being repeated."⁽⁸⁾

The major powers wanted that the members of the court and the staff of its other organs should be nationals, although the provisions of the regulation do not indicate this, thus it stipulates that each of the four signatory states appoints a Prosecutor with a Deputy Prosecutor and a delegation assisting him in gathering evidence and agree on an action plan to share the work between the Chief and other Prosecutors and the staff of the delegations.⁽⁹⁾

The Prosecution has been assigned the task of appointing senior war criminals in preparation for referral to the military tribunal. After the indictment is prepared and ratified, it shall be transmitted with all its annexes to the court with the request to take the trial procedures in respect of the contents therein. The indictment shall be carried out by one or more representatives of the Public Prosecution; the court has a jurisdiction to all acts that precede or extend beyond the proceedings.⁽¹⁰⁾

Despite the legal justifications for trials and procedural innovations that were controversial at the time, the Nuremberg trials are seen as a milestone towards the establishment of a permanent international tribunal, and set an important precedent for dealing with late cases of genocide and other crimes against humanity.⁽¹¹⁾

2.1.2. The International Military Tribunal for the Far East in Tokyo:

The origins of the IMTFE date back to December 1, 1943, at the Cairo Conference where the three allies, China, USA and G.B. decided that it was time to end the war and punish Japanese aggression and all war criminals, especially those who committed inhumane treatment of prisoners.⁽¹²⁾

The court seat was based in Tokyo after the approval of the United States, which provided the funds and staff to run it and also initiated the function of the prosecutor, making it difficult to reconcile the requirements of integrity and dispensing with "victor's justice."⁽¹³⁾

The supreme Commander, General MacArthur, set up the IMT in Tokyo to try key Japanese war criminals for crimes against peace,⁽¹⁴⁾ and he appointed judges and assistant

prosecutors after being nominated by the signatories of Japan's surrender document, and so in October 1945, USA sent other countries a request to submit the names of the judges and prosecutors who will participate in the trials of the accused, but there were few responses since the Chairman of the UN War Crimes Commission and some delegates considered the trials as low priority, unlike the American representative who considered that these views were "European" and that there was protest from these same countries to punish Nazi war criminals.

In the composition of the Tokyo prosecution team, it was said that there was some American bias because, unlike the Nuremberg trials, there was only one prosecution team in Tokyo led by the US even though the members of the tribunal were represented by eleven Allied countries⁽¹⁵⁾ as well as the official support for the Tokyo court was less than that of Nuremberg, but for the statute it states that all signatory states must appoint a prosecutor to investigate the charges and prosecute major war criminals; the chief prosecutor agrees on an individual action plan for him and his staff.⁽¹⁶⁾ The President shall act individually and work in cooperation with to accomplish the following tasks: investigate and gather the necessary evidence, prepare the indictment and the preliminary examination of all witnesses, the accused and the prosecution in the trial.⁽¹⁷⁾

The main challenge for prosecutors in the post-war period was to find the right time to establish theories used to prosecute the brutal nature of the other Japanese, including two unique Japanese actions, defined in "war crimes": "mutilation" and "cannibalism."⁽¹⁸⁾

2.2. ad hoc international criminal tribunals:

The arguments for post-conflict trials, when accusations of genocide, war crimes or crimes against humanity emerge, are based on the need for a deterrent to further crimes, the need for redress for victims and society, and the need to show what really happened as part of any process for future peaceful coexistence.⁽¹⁹⁾

The new courts represent one of the most important international authority expansions since the founding of the UN

system from 1993 with the International Criminal Tribunal for the Former Yugoslavia. The UN has had a hand in establishing a few special purpose courts, some of which are purely international (such as the ICTY and its counterpart for Rwanda). Others are “mixed” (with all international and national elements, as in East Timor, Sierra Leone, ...).⁽²⁰⁾

2.2.1. The ICTY:

The Tribunal was established by UN Security Council Resolution 827 of 25 May 1993 to prosecute persons responsible for serious violations of international humanitarian law⁽²¹⁾ committed in the territory of the former Yugoslavia since 1991.⁽²²⁾

When the first judges arrived at the Tribunal in November 1993, there were no procedural rules, no cases and no Prosecutor. Qualified professional staff were quickly recruited (hired) with expertise and working methods from the various national systems required to be integrated into the ICTY system, despite concerns of failure, and by the arrival of the First Prosecutor in August 1994, the judges had drafted the rules of procedure and evidence, while the Deputy Prosecutor set up office structures and employed investigators; Investigations began to escalate, although to deal with events was often large and covering large areas, which requires too much time.⁽²³⁾

The Prosecutor of the ICTY was responsible for duties in the tribunal and also participated in the Appeals Chamber (such as the Court of Rome). The tribunal included staff in the chambers’ organizational components, a registrar and a subordinate office presided by the prosecutor⁽²⁴⁾ responsible for investigation of crimes, collection of evidence and prosecution.⁽²⁵⁾ He was appointed by a Security Council resolution upon nomination by the Secretary-General of the United Nations.⁽²⁶⁾

Despite indictments against Bosnian Serb military commanders accused of atrocities against Muslim and Croat civilian prisoners, the war remained raging until 1994 and no one was arrested, but prosecutors proved that the tribunal was viable⁽²⁷⁾ responding to USA, which was immediately seeking a

prosecutor after the adoption of the Security Council resolution⁽²⁸⁾ Originally, USA favored Luis Moreno-Ocampo for the post, but the Argentine government, including the president, opposed his candidacy.⁽²⁹⁾ USA then suggested Cherif Bassiouni, but the Security Council members opposed the fear of the latter's prejudice because he was a Muslim and Muslims were persecuted in the former Yugoslavia.⁽³⁰⁾

The Prosecutor was independent and didn't seek or receive instructions from any external agencies such as intergovernmental or international organizations, or from any organ of the Court, and in accordance with the resolutions of the UN Security Council and the Statute of the Court, UN Member States were obliged to cooperate with the investigations and prosecutions of the Office.⁽³¹⁾

The function of the Prosecutor has been twofold: to investigate crimes and bring cases to trial later, if necessary, on appeal, and over the years, the focus of the work of the Office of the Prosecutor has shifted from investigations to prosecutions.⁽³²⁾

The two divisions worked in a complementary and integrated manner in a single prosecution division with staff of different States with expertise such as police and crime officers, forensic experts, analysts, lawyers, prosecutors and legal advisers in national systems,⁽³³⁾ which were integrated into a unique international criminal prosecution system despite the inability of the prosecutor to work in parallel with the continuation of war in the former Yugoslavia at that time.⁽³⁴⁾

2.2.2. The ICTR:

When the Tribunal's office was established by the Prosecutor, the conflict in Rwanda was over and it was not clear exactly what role Rwandans should play in the recruitment of the Tribunal, because it might be easy and too late to criticize some of the decisions taken by the Tribunal, but policies were made in good faith.⁽³⁵⁾

Unlike the ICTY, the ICTR office had no role in determining the confirmation of charges and didn't have access to sufficient information, such as the database, to be enabled to

determine what the most serious cases were, and only the prosecutor⁽³⁶⁾ is the one who looks at the entire database because he is in a position to determine the gravity; the ICTR also omits the referral criteria of gravity and the level of responsibility unlike ICTY.⁽³⁷⁾

In the Statute of the ICTR, there is no reference to the independence of the Tribunal and hence the right to an independent trial was not explicitly mentioned, for example, in articles 19 or 20 and this despite the fact that article 20 is in conformity with article 14 of the UN Convention⁽³⁸⁾, it's always the intention of the independent judiciary as a principle.

The Prosecutor of the ICTR was appointed by the Security Council on 15 September 2003 basing his Office in Arusha, Tanzania including two divisions:

- Prosecution Division, headed by the Chief Prosecutor.
- Appeals and Legal Consultancy Division to handle all plaintiffs, defense and other appeals.

It seems that the core task of the Rwanda Tribunal appears to have been lost in the daily dysfunction, internal bureaucratic conflict and the geographical division of the Office of the Prosecutor between Arusha, Kigali and The Hague, which seriously hampering investigations, also the long absence of judges and defense lawyers had not helped the trial proceedings, so the tribunal had immediately to be reviewed to meet its mandate thus the Security Council had to ask the Prosecutor to set a deadline for investigations.⁽³⁹⁾

3. Prosecution in the permanent International Criminal Court

The ICC is a unique court in many respects⁽⁴⁰⁾, and the fact that its existence depends on (almost) the opinion of the international consensus that international crimes must not go unpunished, which is unique not only in this aspect but also for the judges and the prosecutor, who closely give another form to the Court,⁽⁴¹⁾ thus unlike its predecessors, they are elected by the assembly of states parties,⁽⁴²⁾ which ensures a consensus in this regard.

3.1. The legal structure of the Prosecutor

The International Criminal Court was legally established on July 1st, 2002 under the Rome Statute, which entered into force on April 11th of the same year, after exceeding sixty ratified States, where its statute guaranteed the legal framework, mechanisms and guarantees to ensure the independence and policy of the Prosecutor, and how to promote the protection of the defense and victims' rights⁽⁴³⁾ in court proceedings.

3.1.1. Conditions to elect the Prosecutor:

The election of judges is of paramount importance to the Court. The judges will carry a weight from the Court and their work will ultimately determine its success or failure. The Rome Statute sets out detailed requirements regarding their qualifications which also apply to the Prosecutor, while at the same time giving them considerable responsibility, as their judgments will deal with procedural matters, protection of witnesses, conviction or innocence of individuals, judgment, and reparations to victims, but skeptics say it may be difficult to reconcile the fact that both the UN Secretary-General and the Prosecutor are elected by Member States and the position of maintaining political neutrality remains valid.⁽⁴⁴⁾

The role of the ICC Prosecutor is to conduct investigations and prosecutions of crimes within the jurisdiction of the ICC,⁽⁴⁵⁾ with the primary purpose "to end impunity for the most serious crimes of concern to the international community as a whole and thereby contribute to the prevention of such crimes."

Investigations begin when the Prosecutor reports a situation where there is a "reasonable basis to believe that the crimes have been committed or committed" and the referrals are made by a State party, or by the Security Council, and must be conducted on the grounds that there is a threat to international peace and security. He evaluates the material submitted to him and decides whether to proceed with the investigation or not, and if he decides to investigate, the Trial Chamber shall be authorized to do so.⁽⁴⁶⁾

The Prosecutor heads the three-part office, the Investigations Division (responsible for gathering evidence and

interrogating victims), the Prosecution Division, which is primarily responsible for litigation before the Court, and the Division for Jurisdiction, Integration and Cooperation, which helps to secure the necessary cooperation to enable the Prosecutor to fulfill its role.

3.1.2. Qualifications:

The Rome Statute sets out the detailed requirements for these qualifications. A choice is made of persons of high moral character, impartiality and integrity who possess the qualifications required in the country of origin⁽⁴⁷⁾ for appointment to the highest judicial offices⁽⁴⁸⁾ as well as gaining competence in domestic and procedural law, criminal law and international law.⁽⁴⁹⁾

The prosecutor should enjoy ethics, neutrality and integrity, thus this is requirement is similar to articles 40 and 41, which define the principles of independence, while taking over the office, article 45 provides for a solemn pledge by judges before assuming their duties, the requirements of "high morality, impartiality and neutrality" are intertwined, for example, the Statute of the ICJ refers only to the term "high morality" and does not add the term "neutrality and impartiality".⁽⁵⁰⁾ The ICTY and the ICTR statues also include the same term.

The requirements indicate the high level required and enjoyment of a high reputation reflected through their work as well as special activities, and in order to evaluate these, and for the purpose of assessing the competence of the plaintiff to deal with each case individually, detailed information must be given on the biography and background of each candidate, the most important in the requirement is its wide impact since it provides for the assumption of inherent neutrality and establishes a high threshold for any subsequent challenge.⁽⁵¹⁾

3.2. The principles governing the Prosecutor:

3.2.1. Independence

The independence of the Office of the Prosecutor is fragile. It is subject to undermining or interference, although the Rome Statute provides that the Office of the Prosecutor should be independent without instructions of any State, international

organization, NGO or individual, and the manner in which interaction, between independence and accountability is made, is always interesting.

In this regard Ocampo (the first prosecutor) said, when he was elected to office in April 2003,⁽⁵²⁾ : "I recognize that difficult and broad negotiations are needed before delegations can reach broad agreement on, both, the role of the Prosecutor to move the court's competence as well as the scope of the powers of investigation, and I am aware of the apprehension and anxiety raised by this regime to this day, especially with regard to my powers to launch an investigation on the initiative of my country of origin.

Luis Moreno-Ocampo added: "I understand these fundamental political and sensitivities concerns, however, this is the time to rethink these and other concerns, but this is the time to analyze how this new initiative can promote world peace. A vigilant reading of the Rome Statute and its supplementary tools reveals that the ICC drafters were wise to attach the of the prosecutor's powers to an appropriate system of checks and balances to prevent abuse of authority or arbitrary decisions".⁽⁵³⁾

The Assembly will monitor the behavior of the prosecutor, who in turn oversees his team; the pre-trial chamber will monitor situations and cases.⁽⁵⁴⁾

3.2.2. Professional Conduct⁽⁵⁵⁾ and impartiality:

In all cases, the prosecutor shall maintain the honor and dignity of his profession and shall always act professionally in accordance with the law, rules and ethics while exercising the highest standards of integrity and care to keep himself in the forefront and keep abreast of relevant legal developments which are perceived as consistent, independent and impartial, and shall always protect the right of the accused to a fair trial, in particular to ensure and disclose evidence in accordance with law or requirements of fair trial and the protection of public interest, respect, protect and support the universal concept of human dignity and human rights.⁽⁵⁶⁾

The members of the Public Prosecution shall perform their duties without fear, preference or prejudice, and in

particular carry out their duties impartially without being affected by individual or factional interests, public pressures or the media. Their aim shall be solely for the public interest and shall act objectively and take into account all relevant circumstances and in accordance with the law. Whether it refers to the guilt or innocence of the accused, they shall always seek the truth, assist the court in reaching it and achieve justice between the community, the victim and the accused in accordance with the law and the requirements of equity.⁽⁵⁷⁾

4. Conclusion:

To some extent, the prosecution in The ICC has learnt much from previous international tribunals as well as from national jurisdictions where international criminal law has developed as an institutional resource through which the world is increasingly turning to punish and possibly prevent mass atrocities, especially when States are unwilling or unable to do so. Thus in national courts, the ICC has therefore greatly expanded the rules governing international crime and reduced the effects of breaches of the rules of international conflicts as many researchers note.

However, safeguards have been built into the Rome Statute strictly to prevent politically motivated trials, the role of prosecutors in the court may be affected by this political perspective, external conflicts and pressures in a particular political context.

Some States also opposed the discretion of the Prosecutor to initiate investigations on his own grounds on the grounds that the Office would be overwhelmed with petty complaints and thus wasting time and precious resources while handling them. The real challenge was to choose between the merits of the appropriate complaints to intervene and vice versa.

One of the most important criticisms of the ICC is the political motives of the Prosecutor. It is clear that many opponents of the ICC are particularly concerned about the prosecution's actions proprio motu purely on political grounds, which made States mainly concerned about the composition of the National Security and the foreign policy from the prosecutor.

5. End Notes:

(1)- Colloquium of Prosecutors of International Criminal Tribunals on "The Challenges of International Criminal Justice", Report of Proceedings, From 25 November to 27 November 2004, the International Criminal Tribunal for Rwanda (ICTR) hosted a colloquium for the Prosecutors of the International Criminal Tribunals at the Arusha International Conference Center in Tanzania. It was the first colloquium. p.01.

(2)- After the establishment of the world's first permanent international criminal court, former UN Secretary-General Kofi Annan spoke of "a glimmer of hope for future generations, a giant step forward in the process of global human rights and the rule of law" and pointed out that the idea was dead and no one was Thought to achieve such an achievement.

(3)- The statement of (James Palace) on 12/1/1942 by the Government of the United Kingdom and the governments of temporary countries in exile and war-torn, stressing the need to prosecute war criminals from Germany for war crimes and crimes against humanity and crimes against peace, as A joint declaration was issued on 17 December 1942 by the Allies and announced simultaneously in London, Moscow and Washington. In addition, an official statement was issued on behalf of the Big Three on 30 October 1943, guaranteeing the need to punish those responsible for war crimes before international courts. Especially.

(4)- Article III of the Charter of the Nuremberg Tribunal.

(5)- The Nuremberg Tribunal was established under Article I of the London Treaty in 1945. The Convention contained the Regulations or Rules of the Nuremberg Tribunal and considered Article 02 an integral part of the Convention.

(6)- See Theodor Meron, "Reflections on the Prosecution of War Crimes by International Tribunals", The American Journal of International Law, Vol. 100, No. 3, Jul., 2006.

(7)- Caroline Redmond, "The Nuremberg Trials: When The World Tried To Bring The Nazis To Justice — And Failed", February 7, 2019, Updated July 10, 2019, on:

<https://allthatsinteresting.com/nuremberg-trials>

- (8)**- Suzanne McIntire, *Speeches in World History*, Facts on File Inc., USA, January, 2009, p.370.
- (9)**- Article 14 of Nuremberg Charter.
- (10)**- Article 29 of Nuremberg Charter.
- (11)**- Laura Barnett, *The international Criminal Court: role and history*, library of Parliament, Canada, 2008, p.03.
- (12)**- Article 10 of the 1945 Potsdam Declaration.
- (13)**- For details see Yuki Tanaka and others, *Beyond Victor's Justice? The Tokyo War Crimes Trial Revisited*, Brill-Nijhof publisher, 2011.
- (14)**- See David M. Crowe, *The Nuremberg and Tokyo IMT Trials*, J. M. Cho et al. (eds.), 2016.
- (15)**- Horowitz, Solis, "The Tokyo Trial", *International Conciliation* 465 (Nov), 1990, pp. 473--584.
- The chief prosecutor by the United States was erected by President Truman.
- (16)**- Article 14(a) of the report of the Commission of Inquiry and the Prosecution of War Criminals.
- (17)**- Article 15 of the same report.
- (18)**- Major Jeffrey L. S Pears, "Sitting in the Dock of the Day: Applying Lessons Learned from the Prosecution of War Criminals and Other Bad Actors in Post-Conflict Iraq and Beyond", *Military Law Review*, Vol. 176, p. 122.
- Philip R. Piccigallo, *the Japanese On Trial: Allied War Crimes Operations in the East*, 1979, pp. 128-29.
 - Robert Barr Smith, "Japanese war crimes trials", *World War II magazine*, September 1996.
- (19)**- Special Courts, overview of ICRC documents, dated 15-04-2010, on ICRC website.
- (20)**- Wayne Sandholtz, *International Criminal Tribunals: Authority and Legitimacy*, University of California, Irvine.
- (21)**- Serious breaches of the Geneva Conventions, violations of the laws or customs of war, genocide and crimes against humanity.
- (22)**- United Nations, Security Council Sixty-fifth year, 6463rd meeting Wednesday, 22 December 2010, 11 a.m. New York, p.01.
- (23)**- ICTY Manual on Developed Practices Prepared in conjunction with UNICRI as part of a project to preserve the legacy of the ICTY, Turin, Italy, 2009.
- (24)**- Security Council Resolution 1504 (2003) of 04 September 2003.

(25)- Article 16 (1) of the Statute of the Tribunal for the Former Yugoslavia, Supplement S / 2570, Report of the Secretary-General of the United Nations.

(26)- Article 16 (4) of the Statute of the Tribunal for the Former Yugoslavia, Supplement S / 25704, Report of the Secretary-General of the United Nations.

(27)- Vohrah, L.C., "Some Insights into the Early Years", *Journal of International Criminal Justice*, 2004, 2, p. 388.

(28)- David J. Scheffer, Symposium on 'The ICTY 10 Years On: The View from Inside,' Three Memories from the Year of Origin, 1993, 2004, 2, *JICJ*, pp. 353, 359.

(29)- Scheffer, "Symposium on 'The ICTY 10 Years On,'" 353; see also Scheffer, *All the Missing Souls*, 31.

(30)- Harry M. Rhea, "The United States and International Criminal Tribunals", A thesis submitted to the Irish Center for Human Rights In conformity with the requirements for the degree of Ph.D. in Law School of Law National University of Ireland, Galway, Ireland, August, p. 144.

(31)- See Dagmar Strob, "state cooperation with ICTY and ICTR", *Max Planck yearbook of UN law*, volume 05, 2001, p.249-283.

(32)- According to the Tribunal's strategy, final convictions were issued at the end of 2004 after years of trial.

(33)- Despina Kyprianou, *Comparative Analysis of Prosecution Systems (Part I): Origins, Constitutional position and Organization of Prosecution Services*, is partially based on my PhD Thesis 'The Role of the Cyprus Attorney General's Office in Prosecutions: Rhetoric, Ideology and Practice' University of London.

(34)- See Florian Bieber, "The Conflict in former Yugoslavia as a «Fault Line War»?", *revue d'études pluridisciplinaires*, Vol. 03, n° 1, juillet 1999.

(35)- Investigators faced the first major challenge: the investigation of alleged crimes while the conflicts in Croatia (1991-1995) and Bosnia and Herzegovina (1992-1995) are still ongoing.

- However, the UN Protection Force (UNPROFOR) deployed in each of these countries has no control over security on the ground, and the warring parties have often refused to allow court investigators access to the reported crime scene or witnesses.

(36)- UN Security Council Resolution 1505 (2003) of 04 September 2003.

(37)- Emilie Hunter, "The International Criminal Court and Positive Complementarity: the Impact of the ICC's Admissibility Law and Practice on Domestic Jurisdictions", EUI PhD Thesis, European University Institute Florence, 11 November, 2014, p.116.

(38)- Everyone has the right to a fair and public hearing by a competent, independent and impartial tribunal established by law.

(39)- For details see Erik Møse, *Managing Trials*, on:

<http://unictr.irmct.org/sites/unictr.org/files/publications/compendium-documents/i-managing-trials-mose.pdf>

(40)- See:

<https://pdfs.semanticscholar.org/2fd4/85496f078a02fb7ed19312bb58765161283b.pdf>

(41)- The Rome Statute has already established the basic principles of the nomination and election process (arts. 36 and 37), but some of these principles have not been defined and decided.

(42)- At its ninth session, in April 2002, the Preparatory Commission for the International Criminal Court began negotiations on the procedure for the nomination and election of judges and the Prosecutor, and consensus was reached on some procedures on nominations, but the main issue that remained outstanding was the electoral process.

(43)- See Volker Roben, *The procedure of the ICC: Status and function of the prosecutor*, Max Planck yearbook of UN law, volume 07, 2003, p.513-552.

(44)- Luis Moreno-Ocampo has repeatedly affirmed that his mandate was to follow the rule of law and the rules provided for in the Rome Statute, but this confidence in the ability to be non-aligned does not generate blind optimism.

(45)- Volker Roben, *op.cit.*

(46)- Morten Bergsmo, *Preliminary observations on the powers and role of The ICC prosecutor*, on:

<http://www.legal-tools.org/doc/6cff4b/>

(47)- For judges, there must be representation of the principal legal systems of the world, equitable geographical representation and equitable representation of females and males (art. 8.36 (a)). It is also required that some judges have expertise on specific issues, including violence against women. Therefore, one of the main tasks of the Assembly of States Parties is to decide how to implement, enforce and implement these requirements.

(48)- Article 3.36 (a) of the Rome Statute.

(49)- Article 3.36 (b) of the Rome Statute.

(50)- See The ICJ : Handbook, The Hague, Netherlands, 2013, p.23.

(51)- See Yonko Grozev and others, promoting prosecutorial accountability, independence and effectiveness: Comparative Research, Open Society Institute, Sofia, 2008.

(52)- He also said: “My election was both a great privilege and responsibility. The Court had been established following 10 years of complex discussion and in recognition that certain crimes affected the entire international community...”, see Assembly of States Parties, international criminal court’s president, newly elected prosecutor address states parties, outline court’s initial challenges, First Session (Resumed), 11th Meeting, APRIL 22nd, 2003.

(53)- See Yonko Grozev and others, op.cit.

(54)- Courting History, The Landmark International Criminal Court’s First Years, July 11th, 2008.

(55)- Standards of Professional Responsibility and Statement of Duties and Rights of Core Prosecutors Approved by the International Association of Prosecutors on the 23rd day of April 1999, p. 01 to 05. The Association was established in June 1995 in the United States. In September 1996 at its first General Assembly meeting in Budapest the following year in Ottawa, the AGM approved objects of the Association which are now dedicated in Article 2.3 of the Constitution of the Assembly.

(56)- Colleen Rohan and Gentian Zyberi, The Role of the Defence in International Criminal Justice, Cambridge university press, 2017, p.63.

(57)- Articles (a) 2 and 13 (a) adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders Havana, Cuba, 27 August to 07 September 1990.