

1. INTRODUCTION

Criminal justice is defined as "the legal manifestation of societal response to offenders, which takes the form of punishment facing the committed crime, or in the form of precautionary measures facing those deemed criminally dangerous, in order to achieve the objectives targeted by each of them." (Aouadh-Bilel, 1996, pp. 10-11), the International Criminal Court is considered one of the tools of international criminal law in imposing criminal justice and combating impunity by adopting a punitive policy similar to that in national criminal law. This punitive policy encompasses both criminal prosecution and the imposition of penalties. (Abdelmonaim Abdelghani, 2010, p. 329).

The massacres committed by the Israeli occupation against Palestinians in the October 2023 Gaza War are among the most heinous crimes that have afflicted humanity since antiquity, necessitating the creation of an international legal mechanism embodying the idea of combating impunity.

This study primarily aims to provide a criminal description of the massacres perpetrated by Israelis against the unarmed Palestinian people (civilians) in the October 2023 Gaza War. These actions constitute severe violations of international humanitarian law and the Geneva Conventions of 1949, potentially qualifying as acts of aggression, war crimes, or crimes against humanity under Articles 5, 6, 7, and 8 of the Rome Statute.

Hence, we can raise the question of whether the International Criminal Court has jurisdiction to prosecute Israeli war criminals for their massacres during the October 2023 Gaza War. Additionally, are there alternative methods available for holding these Israeli perpetrators accountable?

To address this problem, we adopted an analytical and descriptive approach. We addressed the Rome Statute and various relevant international agreements, analyzing their legal texts to provide a criminal description of the crimes committed. Our paper is divided into two sections: the first section discusses the International Criminal Court in terms of definition, jurisdiction, and applicable law. The second section specifically explores the possibility of the International Criminal Court's jurisdiction to prosecute Israeli criminals for the crimes committed in the October 2023 Gaza War.

2. The Concept of the International Criminal Court

In this section, we will delve into the definition of the International Criminal Court (ICC), followed by its jurisdiction and the applicable law.

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2.1 Introducing the International Criminal Court: Defining the International Criminal Court necessitates addressing its establishment as well as its jurisdiction.

Firstly, Establishment of the International Criminal Court: Regarding the establishment of the International Criminal Court, it can be said that its founding came in accordance with Article 1 of the Rome Statute (Rome Statute, The International Criminal Court (ICC) was established by the Rome Statute, 1998), which stipulates that the Court is a permanent body with the authority to exercise its jurisdiction over persons accused of committing the most serious crimes that have received international attention and have been committed after the entry into force of the Rome Statute (after 2002). The Court is considered complementary to national judicial systems, and its jurisdiction and procedures are subject to the provisions of the Rome Statute.

It should be noted that the International Criminal Court operates as an independent body within the international criminal system. The Court has handled over 30 cases, but its jurisdiction is primarily limited to specific regions of the world, divided as follows: Venezuela and the Philippines in Latin America, Libya, the Democratic Republic of Congo, Sudan, Kenya, Ivory Coast, the Central African Republic, Uganda, Mali, and Burundi in Africa, Bangladesh, Burma, Afghanistan, and the State of Palestine in Asia. Some refer to this Court as the Court of Weak States, questioning its ability to prosecute nationals of major or powerful states who may be implicated in crimes stipulated by the Rome Statute.

Secondly, regarding the Exercise of the Court's Jurisdiction: According to the Rome Statute, the International Criminal Court has jurisdiction over crimes committed by nationals of States Parties on the territories of States Parties, as well as crimes committed by nationals of non-States Parties that have recognized the Court's jurisdiction through declaration. Additionally, the Court's jurisdiction includes crimes referred to it by the United Nations Security Council under Chapter VII of the United Nations Charter.

In addition, the Court also relies on the Assembly of States Parties (Rome Statute, Article 14), composed of representatives of states parties, which is responsible for electing judges, the prosecutor, and approving the Court's budget. The Court has a total of eighteen judges, with one-third, i.e., six judges, elected every three years for a term of nine years.

The International Criminal Court also utilizes the Trust Fund for Victims (Rome Statute, Article 01) established by the Assembly of States Parties to compensate victims within the framework of the policy of restitution and

rehabilitation, as it has done in Uganda, the Central African Republic, and the Democratic Republic of Congo (*The International Criminal Court, 2023*).

It is worth noting that the International Criminal Court consists of four main organs (*Rome Statute, Article 13*): the Presidency of the Court, responsible for external relations with states and organizing judicial work; the Judicial Divisions (Pre-Trial, Trial, and Appeals Divisions), responsible for managing judicial proceedings; the Office of the Prosecutor, which deals with preliminary investigations and prosecutions; and the Registry, which has a non-judicial role focusing on security, information, awareness, and support for defense lawyers and victims.

2.2 The jurisdiction of the International Criminal Court (ICC) and the applicable law : are outlined within chapter two of the Rome Statute under the title "Jurisdiction, Admissibility, and Applicable Law."

Firstly, The International Criminal Court (ICC) has several jurisdictions:

- **Personal Jurisdiction:** This refers to the authority of the ICC over natural persons as stipulated in Article 25 paragraph 01 of the Rome Statute. This article states that the ICC has jurisdiction over individuals who commit crimes within the scope of international criminal responsibility as defined in the Statute. Thus, individuals who commit crimes falling within the jurisdiction of the ICC are personally liable for their actions and may face the penalties specified in the Statute.

However, states and international organizations are not subject to international criminal responsibility, although they may be held civilly liable for damages if found responsible (*Youcef Echoukri, 2014, p. 234*). The article 25, paragraph 03 provides some details on the circumstances under which individuals are criminally responsible and thus liable to punishment (*Rome Statute, Article 11*). The ICC also recognizes the principle, acknowledged in major criminal legal systems worldwide, that individuals under the age of 18 should not be tried before regular courts and should be referred to specialized juvenile courts (*Maamar Yachoui, 2014, p. 159*).

- **Subject-Matter Jurisdiction:** This refers to crimes falling within the jurisdiction of the ICC based on the criminal conduct of the perpetrator. According to Article 5 of the Rome Statute, the ICC's subject-matter jurisdiction includes four precisely defined crimes: genocide, war crimes, crimes against humanity, and the crime of aggression, as specified in Articles 5, 6, 7, and 8 (*Cherif Bassiouni, 2004, pp. 27-29*).

- **Temporal Jurisdiction:** According to the Rome Statute, the law applies immediately and does not extend to events that occurred in the past.

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In other words, the jurisdiction of the International Criminal Court (ICC) applies only to crimes committed after the statute entered into force (Rome Statute, Article 08). This is stipulated in Article 24, paragraph 1, which states that individuals cannot be held criminally accountable for acts committed before the statute's entry into force. Furthermore, Article 24, paragraph 2, adopts the principle of the most favorable law to the accused, meaning that individuals cannot be punished for acts that were crimes under the old law or for which the punishment was less severe under the old law in which the crime was committed (Youcef Echoukri, 2014, p. 240).

- **Territorial Jurisdiction:** The ICC has jurisdiction over crimes committed within the territory of each State Party to the Rome Statute. However, this jurisdiction only applies if the concerned state declares its unwillingness to prosecute or if the prosecution is merely formal. Nevertheless, territorial jurisdiction may be established for non-party states if there is a special agreement between the Court and the state consenting to the Court's jurisdiction over a specific crime before joining the Rome Statute (Rome Statute, Article 12 paragraph 2). However, applying this principle may pose a challenge to the functioning of international criminal justice if a state does not accept the ICC's jurisdiction, potentially allowing perpetrators to escape punishment if the state does not join the Rome Statute (Abdelkader El-Kahouadji, no publication date, p. 329).

Secondly, Cooperation with the Court and the Applicable Law before it : Cooperation with the ICC is mandatory for States Parties, but the law applied by the Court in the presented conflict varies according to priority.

- **Cooperation with the International Criminal Court:** Article 86 of the Rome Statute mandates the required cooperation of States Parties with the ICC within its jurisdiction. This cooperation enables the Court to conduct investigations and prosecute individuals for crimes falling within its purview, such as genocide, war crimes, and crimes against humanity. When the Court requests cooperation from a State Party, non-compliance can lead to appropriate measures, including referring the matter to the Assembly of States Parties or to the Security Council, should the latter intervene (Radjeb Attia, 2009, pp. 115-156) .

Areas of cooperation are diverse and include, in particular, the surrender of wanted individuals to the Court upon arrest, the execution of arrest warrants issued by the Court, the extradition of suspects to the Court for trial, and the enforcement of judgments issued by the Court (Radjeb Attia, 2009, p. 157). Global commitment to the principles of international justice and the need to combat

serious crimes and ensure accountability for those responsible are reflected in this cooperation.

- The law to be applied before the International Criminal Court:

Article 21 of the Statute specifies the law to be applied by the Court in the dispute before it, according to the following sequence:

- The Statute of the International Criminal Court: This refers to the rules and provisions contained in the Statute, which include regulations related to jurisdiction, such as the types of crimes the Court can investigate and prosecute, the personal jurisdiction concerning individuals and legal entities subject to prosecution before the Court, and the temporal jurisdiction determining when and where the Court can investigate and prosecute crimes falling within its jurisdiction. It also encompasses the elements of crimes, investigation procedures, presentation of charges, trial proceedings, and judgments. These are all outlined in the Statute of the International Criminal Court, which contains a set of rules and provisions defining the powers and procedures of the Court, including:

- Applicable treaties, principles of international law, and its rules, including international treaties related to the application of justice and extradition of criminals: This also encompasses principles established in international law for armed conflicts, such as the principle of non-impunity, respect for human rights, the principle of fairness and justice, and the principle of international cooperation to ensure accountability for those responsible for committing serious crimes and to deliver justice to victims. This applies to crimes falling within the jurisdiction of the Court as specified in Article 5 of this Statute.

- The general principles of law recognized by all major legal systems in the world : which are suitable for application in international criminal trials to address many of the gaps in international criminal regulation. These principles are essential to ensure the success of international criminal trials, achieve international justice, and uphold human rights and human dignity.

- The legal interpretations of legal principles and rules: which the Court has previously settled in its judgments, must be in line with human rights according to Article 21 of the Rome Statute (Rebecca Young, 2011, pp. 189-208). This means ensuring that laws, their interpretation, and their application are consistent with the principles of human rights, committing to justice and equality before the law. These are fundamental values in many advanced legal systems.

3. The jurisdiction of the International Criminal Court to prosecute Israeli criminals for crimes committed in the October 2023 Gaza War.

Perhaps the most effective way to confront criminals due to their most serious crimes and the concern of the international community is to refer these criminals to justice to receive their punishment, and this can only be achieved through national or international judiciary.

3.1 Preventing Israeli officials from escaping punishment before national criminal justice: National judiciary plays a crucial role in combating impunity as it is a means of prosecuting war criminals in Gaza in October 2023.

Firstly, the principle of complementarity: By the principle of complementarity, we mean the jurisdiction granted to the national judiciary to prosecute Israeli war criminals in the October 2023 Gaza war, where priority is given to national criminal justice over international criminal justice. By national criminal justice, we mean the jurisdiction possessed by both the Israeli and Palestinian judiciaries.

Therefore, the concept of complementarity revolves around the prioritization of national courts to prosecute individuals accused of committing crimes within their territory. If there is no possibility or willingness to prosecute the accused at the national level, the International Criminal Court (ICC) can assume jurisdiction to prosecute those crimes (Youcef Echoukri, 2014, p. 159). This reflects the right of the national system to deal with crimes committed within its territories. However, in cases where there is a lack of capacity or willingness to administer justice at the national level, international law can intervene to ensure justice is served.

The principle of complementarity is clearly affirmed in Article 1 of this framework, explicitly stating the primacy of national criminal justice and that the jurisdiction of the ICC is complementary to national criminal justice. Paragraph 7 of the preamble of the foundational framework also emphasizes each state's obligation to exercise its criminal jurisdiction over individuals responsible for committing international crimes. This means that states are required to prosecute individuals for crimes such as genocide, crimes against humanity, and war crimes committed on their territories. Meanwhile, paragraph 11 of the foundational framework acknowledges the complementary jurisdiction of the ICC (Radjeb Attia, 2009, pp. 142-143), meaning it will complement national criminal jurisdiction (Rome Statute, Article 01).

- **Israeli judiciary:** According to Article 146 of the Fourth Geneva Convention, of which Israel is a party, the Israeli judiciary has legal jurisdiction to prosecute Israeli war criminals. However, practical experience

has shown that the Israeli judicial system serves as a tool to deny justice to Palestinian civilians and as a means to evade punishment directly under the pretext of exercising national jurisdiction. This aims to block the path for international justice to exercise its jurisdiction over these criminals, arguing against trying them for the same crime twice, which could allow them to escape punishment.

Therefore, Israeli trials, which were often symbolic, for some Israeli soldiers and officers have served as a tool to encourage Israeli occupation forces to continue committing further crimes against Palestinian civilians, the latest of which occurred in its war on Gaza in October 2023.

- Palestinian judiciary: International legislation, including the Fourth Geneva Convention, the Convention on the Prevention and Punishment of the Crime of Genocide of 1948, and Palestinian penal law, grants national courts jurisdiction to consider crimes committed within their territories. This jurisdiction applies to crimes committed by ordinary individuals, military personnel, or civilian officials, regardless of their nationalities.

Referring to the provisions of Article 146 of the Fourth Geneva Convention and Article 88 of the First Geneva Protocol, both affirm the right of affected parties of international crimes to demand accountability and prosecution before national courts, including their trial as war criminals. The principle of territorial jurisdiction allows the state where the crime was committed to consider crimes that occurred within its territories and exercise its jurisdiction primarily (Charles Rousseau, 1976, p. 95).

However, for Palestine, some legal scholars argue that it lacks recognition as a state in the context of international law and thus does not represent a state in the concept of international law. Nevertheless, this issue was overcome by the issuance of United Nations General Assembly Resolution 19/67 in 2012, which granted Palestine non-member observer state status at the United Nations.

Secondly, The judiciary of other states (universal jurisdiction): Under this jurisdiction, any state can take legal action against individuals suspected of committing serious crimes such as genocide, crimes against humanity, and war crimes, regardless of their nationalities or the location of the crimes committed (Bouchet-Saulnier, 2005, p. 65). This exceptional measure grants states the authority to prosecute individuals who have committed certain serious crimes, regardless of the state's connection to the accused or the crimes committed.

Although this principle reflects the international community's commitment to achieving justice for all serious crimes regardless of their

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location or the nationalities of the accused, there must be a principle of legitimacy and balance in the application of universal jurisdiction, considering the rights of the accused and ensuring fair legal procedures. Additionally, states must cooperate in investigations and exchange information to ensure the highest degree of justice is achieved.

This grants other countries the right to pursue perpetrators of these crimes committed over Palestinian territories in the October 2023 war, based on the principle of universal jurisdiction. Geneva Conventions impose significant obligations on states regarding achieving international justice and holding accountable those accused of committing serious violations of these conventions. Among these obligations are searching for suspects, bringing them to trial, and cooperating in extradition (The Geneva Convention, 1949).

However, the lack of specific definitions and enumeration of elements of international crimes may pose a problem for judges in those countries wishing to apply the principle of universal jurisdiction. The specific and qualified elements of the crime may be relatively insufficient compared to those related to the national system. This is because the list of crimes in the founding statute of the International Criminal Court under Articles 6 and 8 is extensive and highly detailed. However, the court's publication of its practices and case law can help judges understand crime definitions and elements (Xavier, 2006, p. 99).

The provisions of the Geneva Conventions impose a set of obligations on states in the field of judicial cooperation and combating international crime. States are compelled to choose between prosecution or extradition and are obligated to search for criminals. Additionally, they must provide guarantees for the accused, including the right to defense and human rights, even during the extradition or prosecution process. Thus, the provisions of the Geneva Conventions are considered to exceed traditional cooperation ties between states (Bouchet-Saulnier, 2005, p. 66).

In general, universal jurisdiction is currently considered the most effective approach internationally (Blanco cordero, 2008, pp. 59-100), as it contributes to combating impunity for Israeli war criminals who committed more serious crimes, a matter of concern for the international community in the 2023 Gaza war. Especially when this practice is integrated into many international agreements.

Universal jurisdiction allows all member states and concerned countries to apply international justice and gives them the right to prosecute Israeli criminals if Israel fails to achieve justice by prosecuting its own war criminals. Responsibility lies with every state in the world, representing the

international community as a whole. A prime example of the application of universal jurisdiction is the arrest of the Chilean dictator Augusto Pinochet in London on charges of torture. Many considered this an important means of seeking justice for human rights victims when their national judiciary was unwilling or unable to hold violators accountable.

For reference, many Palestinian human rights organizations have attempted to activate this method, which would lead to tightening the noose on Israeli criminals and holding them accountable by filing lawsuits in European national courts. European courts have previously taken up several cases against Israeli officials. Former Israeli Prime Minister Ariel Sharon, for instance, faced an arrest warrant issued by the Belgian judiciary. Similarly, Spanish authorities issued an arrest warrant for Israeli Prime Minister Benjamin Netanyahu, along with seven other Israeli officials and former ministers. Additionally, the British judiciary issued an arrest warrant for Tzipi Livni in December 2009, accusing her of committing war crimes in the Gaza Strip during the 2008/2009 aggression.

On the 12th of February 2024, a Dutch appellate court ordered the Dutch government to ban all exports of F-35 fighter aircraft spare parts to Israel due to concerns about their potential use in violations of international law during the Israeli attack on the Gaza Strip. This reflects a state of concern in Europe. The court stated, "It cannot be denied that there is a clear risk that exported F-35 spare parts could be used in serious violations of international humanitarian law," (Roach & Baazil) ruling in favor of a lawsuit filed by human rights groups, including a branch of Oxfam in the Netherlands, against the Dutch government regarding fighter aircraft spare parts exports.

3.2 Demand is to prevent Israeli criminals from evading accountability before the International Criminal Court (ICC).

According to the principle of complementarity, national judicial jurisdiction takes precedence, where countries must first ensure justice by prosecuting individuals suspected of committing international crimes within their territories. If states are unable or unwilling to prosecute suspects domestically, the International Criminal Court (ICC) can intervene to prosecute the case (Bouchet-Saulnier, 2005, p. 159). The ICC did not come to replace or serve as an alternative to national judiciary but rather to intervene in the most serious cases and where domestic criminal justice systems are absent or ineffective (Bouchet-Saulnier, 2005, p. 163).

a- the possibility of the ICC's jurisdictional competence is acknowledged: When states realized that their national mechanisms or domestic legislation were insufficient in certain circumstances to deal with

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crimes that severely violate fundamental humanitarian principles and, more importantly, to prevent impunity, they accepted that their systems might need new international mechanisms. Consequently, they considered the idea of international judicial jurisdiction as a means to enhance efforts to combat impunity, always keeping in mind the goal of achieving justice (Solera, 2002, p. 166).

According to Article 05 of the Rome Statute, there is a possibility for the jurisdiction of the International Criminal Court to encompass Israeli occupation crimes in its war on Gaza in October 2023, as they constitute more severe crimes and are of concern to the international community. These crimes include forcible displacement, genocide, targeting civilian objects, and persons protected by international law.

The definition of war crimes provided in Article 08 of the Rome Statute (**Rome Statute, Article 08**), is not directly or exclusively derived from the Geneva Conventions of 1949 and their Additional Protocols of 1977. Since not all states have ratified these Protocols, the prohibitions and crimes outlined in them do not enjoy the same international prohibition or customary nature. This means that states are not obligated by the provisions of the Protocols or to prosecute individuals according to the definitions of crimes contained therein. Therefore, the law only explicitly refers to conventions and adds definitions for other crimes considered part of customary rules of international humanitarian law, which can be subject to its jurisdiction (**Bouchet-Saulnier, 2005, p. 266**).

Nevertheless, the Protocols may contribute significantly to the development of international law and the standardization of concepts related to serious crimes. Their adoption may lead to the tightening of national legislation in some countries or increase pressure on the international community to achieve consensus on international standards of criminal justice.

The foundational statute of the International Criminal Court regards war crimes as among the most serious crimes falling under its jurisdiction (**Rome Statute, Article 14**), the Article 08 paragraph 01 specifies the Court's jurisdiction over war crimes, especially if these crimes are committed as part of a systematic plan or state policy explicitly advocated by Israeli officials through their public and explicit calls for the destruction of the Gaza people.

Furthermore, war crimes subject to the Court's jurisdiction are outlined in paragraph 02 of Article 08 as follows: (Article 08/2/A) and (Article 08/2/B). These provisions encompass war crimes in international armed conflicts, including serious violations of the Geneva Conventions of

1949 and grave breaches of customary rules of international armed conflicts.

b- the consequences of Palestine's accession to the International Criminal Court (ICC): Palestine is a state under Israeli occupation, and according to the rules of international humanitarian law, particularly the Fourth Geneva Convention of 1949, the occupying state bears a set of responsibilities and obligations, including the protection of civilians during times of war. It is primarily responsible for security in the occupied Palestinian territory and for the basic aspects of Palestinians' lives.

Palestinian attempts to hold Israeli war criminals accountable before the ICC for their ongoing crimes against the Palestinian people since 2002 have been numerous. The first of these attempts occurred after Palestine submitted a declaration on January 22, 2009, accepting the jurisdiction of the International Criminal Court under Article 12, paragraph 3 of the Rome Statute. In this declaration, Palestine expressed its willingness to cooperate with the ICC without delay or exception, pursuant to Chapter IX of the Court's Statute.

With the ICC's announcement on April 1, 2015, officially accepting Palestine's accession to the Court, making it the 123rd member, Palestine had signed its accession instrument to the Court on December 31, 2014, which entered into force on April 1, 2015. Palestine thereby gained the right to resort to the International Criminal Court to demand the prosecution of Israeli officials involved in war crimes during their war on Gaza in October 2023 and to ensure their punishment, as a member of the Court.

Therefore, Palestine must align its criminal law with international law and the Court's Statute. For example, it could amend its penal code to include crimes falling within the Court's jurisdiction and prescribe punishment for them, or incorporate provisions into Palestinian fundamental law regarding this matter.

c- The basis for the jurisdiction of the International Criminal Court over Israeli criminals: As known according to the principle of complementarity, national jurisdiction is the primary authority to investigate or prosecute war criminals. Therefore, the Israeli judiciary will find many ways to prevent the International Criminal Court from exercising its complementary jurisdiction over Israeli criminals by conducting superficial and farcical trials that do not rise to the level of the heinous crimes committed by its officials in the October 2023 Gaza war.

Therefore, Palestine must block this path on the basis that Israel is a state unwilling to conduct a serious investigation and prosecute those involved. Previously, it has investigated thousands of incidents, but generally

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exonerated the perpetrators. The few convicted received very lenient formal judgments that did not match the scale of the crime committed. Additionally, these crimes are generally not carried out through individual initiatives but as the implementation of decisions taken by high military and political levels.

The crimes committed by Israel in its war on Gaza in October 2023, including systematic targeting by Israeli fighter jets and artillery of UNRWA schools, systematic destruction of buildings and civilian objects, targeting civilians, children, and individuals protected by international law such as UN employees and journalists, not to mention the issue of forced displacement, all constitute acts within a military plan emanating from high authorities. Therefore, they rise to the level of war crimes from the perspective of international humanitarian law and the Geneva Conventions of 1949. based on these actions, the jurisdiction of the International Criminal Court can be established through one of the following options (Abdullah Al-Aqad, 2017, pp. 360-361):

- By referral to the Prosecutor by another state party to the Rome Statute regarding facts that may constitute one or more crimes as stipulated in Article 05 that were committed in Gaza : If the state is not a party to this statute, it can do so provided that the Court's jurisdiction is accepted, describing it as a non-party state to the Rome Statute, confirming its prior acceptance of the Court's jurisdiction and its provisions in a letter sent to the Court (Rome Statute, Article 14) .

However, Palestine's request will encounter Israel's non-acceptance of the jurisdiction of the International Criminal Court according to Article 12 because Israel is not a party to the ICC. Nevertheless, the procedures proceed as follows:

- The State of Palestine submits a request, considered a complaint, to the Registrar of the International Criminal Court, requiring the initiation of an investigation regarding cases that constitute violations of international humanitarian law and the Geneva Conventions of 1949, which could be considered crimes occurring in the October 2023 Gaza war.

- The request or complaint is then referred to the Prosecutor, who has discretionary authority to accept or reject it based on reasonable grounds.

- If the complaint is accepted, the Prosecutor decides to bring charges and declares it.

- The decision is referred to a Chamber of Judges composed of three judges who review and approve it.

- If the decision is affirmed, an indictment is issued, which is also referred to a Chamber of Judges responsible for issuing arrest warrants for

the accused.

- The United Nations Security Council can refer issues related to the maintenance of international peace and security to the Prosecutor of the International Criminal Court: under Chapter VII of the UN Charter when there is a belief that war crimes, crimes against humanity, or genocide have been committed. Therefore, the Security Council can refer cases that may constitute criminal offenses as stipulated in Article 05 and have been committed in Gaza (following the same aforementioned procedures). However, this situation will also face the American veto in the Security Council, which will oppose the referral of the Security Council to the Prosecutor, as has happened in many resolutions discussed by the Council regarding issuing a resolution to stop aggression on Gaza. Each time, the American veto was an obstacle to issuing the resolution.

- If the Prosecutor has initiated an investigation into a crime in one of the cases mentioned above, according to Article 15 of the Rome Statute: The Prosecutor can start investigations into crimes falling within the jurisdiction of the International Criminal Court based on the information received, whether such information comes from States Parties, non-States Parties, or other sources. It is important that the information provided to the Prosecutor be reasonable and contain sufficient evidence to initiate an investigation. The decision to initiate an investigation is subject to the prior approval of the Pre-Trial Chamber, which is the body responsible for reviewing requests and information submitted by the Prosecutor to ensure that there is a reasonable basis to proceed with the investigation (Rome Statute, Article 13). If the necessary conditions are met, the Prosecutor can start the necessary investigations for the purpose of bringing charges against those responsible for the crimes and gathering the necessary evidence to present them for trial before the International Criminal Court.

However, based on the events and statements of the prosecutor made publicly through the media on many occasions during the Gaza War of 2023, it can be said that the initiation of investigations by the prosecutor based on the jurisdiction granted by the Rome Statute regarding the crimes that have come to his knowledge remains a distant possibility at the present time

4. CONCLUSION

This study has led us to a fundamental conclusion: the massacres committed by Israelis during the Gaza War constitute severe violations of international humanitarian law and the Geneva Conventions of 1949. These actions potentially qualify as acts of aggression, war crimes, or crimes against humanity under Articles 5, 6, 7, and 8 of the Rome Statute of the International

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Criminal Court. Consequently, it is imperative to establish the jurisdiction of this court to hold Israeli perpetrators accountable and prevent impunity. Filing a lawsuit against Israelis before the International Criminal Court also grants the injured party several civil and criminal rights.

- **Civil rights:** Civil rights encompass the obligation to remedy the harm caused and prevent its ongoing effects. Therefore, Israelis must cease their unlawful practices. If restoring the situation to its pre-harm state is impossible, they must provide financial compensation to all those affected by their aggression. These principles align with Articles 3 and 53 of the Fourth Hague Convention. When assessing the damage caused to Palestinians due to unlawful actions, the occupying state must adhere to international responsibility provisions.

- **As for criminal rights:** In addition to the civil rights of Palestinians, Israelis are held criminally responsible. Individuals, who ordered, planned, or carried out unlawful acts, which constitute crimes under the Rome Statute of the International Criminal Court and the rules of general international humanitarian law, must be punished.

Based on the foregoing, it can be said that the convening of the International Criminal Court to punish those Israeli criminals may face some practical challenges—such as procedural complexity and double standards, in addition to US intervention to support Israelis. It is worth exploring an alternative, more effective approach. One such approach involves adopting the principle of universal jurisdiction. By mobilizing international support against these Israeli criminals and isolating them on the global stage, or by bringing them before the courts of other countries for trial and punishment, we can seek justice beyond the ICC's limitations.

Finally, the question can be raised: to what extent is it possible to expand the jurisdiction of the International Criminal Court to include investigating the crimes that Israel alleges were committed by the Palestinian organization Hamas (Hamas leaders).?

5. Bibliography List:

- **Legal Texts**

Rome Statute, R. S. (1998, 07 17). *The International Criminal Court (ICC) was established by the Rome Statute*. United Nations Diplomatic Conference of Plenipotentiaries.

The first, the second, the third and the fourth, *The Geneva Convention*, T. G. (1949, August 12).

- **Dictionaries**

Bouchet-Saulnier, F. (2005). *The Practical Guide to Humanitarian Law*. Lebanon:

Dar Al-Ilm Lil-Malayin.

- **Books**

Abdelkader El-Kahouadji, A. (no publication date). *International Criminal Law, Major International Crimes, International Criminal Courts*. Beirut: Publications of Al-Halabi Human Rights.

Abdelmonaim Abdelghani, M. (2010). *International Criminal Law - A Study of the General Theory of International Crime*. Alexandria: New University Publishing House.

Abdullah Al-Aqad, T. K. (2017). *Rights of Victims in Light of the Provisions of International Criminal Law*. Giza: Arab Studies Center for Publishing and Distribution.

Aouadh-Bilel, A. (1996). *The general theory of criminal punishment*. Cairo: Dar Al-Nahda Al-Arabiya.

Charles Rousseau, C. R. (1976). *Droit international public*. Paris: Maison d'édition Dollaz.

Cherif Bassiouni, M. (2004). *The International Criminal Court: An Introduction to the Study of Provisions and Mechanisms of National Sovereignty Rescue in the Statute*. Cairo: Dar Al-Shorouk.

Maamar Yachoui, L. (2014). *The Permanent International Criminal Court and Its Jurisdictions*. Amman: Dar Al-Thaqafa for Publishing and Distribution.

Radjeb Attia, H. (2009). *The International Criminal Court and its Relations with National Judiciary*. Menoufia: Printing Press of Menoufia University.

- **Articles**

Rebecca Young, R. Y. (2011, JANUARY). Internationally Recognized Human Rights Before The International Criminal Court. *The International and Comparative Law Quarterly*.

Blanco cordero, I. (2008). Universal jurisdiction General report. *Revue internationale de droit pénal*

Solera, O. (2002). complementary judicial and international criminal justice. *The International Red Cross Magazine*.

Xavier, P. (2006). Principles of Universal Jurisdiction and Complementarity. *The International Review of the Red Cross*.

- **Websites**

Roach, A., & Baazil, D. (s.d.). Dutch Court Orders Halt of F-35 Parts Shipment to Israel. Consulté le 02 23, 2024, sur bloomberg: www.bloomberg.com/news/articles/2024-02-12/dutch-ordered-to-halt-shipments-of-f-35-parts-to-israel

Mahmoud, A. (2015, 04 15). A study of the *Statute of the International Criminal Court*. Consulté le 04 15, 2015, sur <http://om.edu/ylomu%20Articles/pdf>

The International Criminal Court, T. I. (2023, 11 25). *The International Criminal Court*. Consulté le 11 25, 2023, sur French Diplomacy: <https://www.diplomatie.gouv.fr/ar/politique-etrangere-de-la-france/la-justice-internationale/institutions-internationales/cour-penale-internationale-cpi/>

Youcef Echoukri, . A. (2014). *International Criminal Justice in a Changing World*. Amman: Dar Al-Ridwan for Publishing and Distribution.