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## **Studies and Researches**

### **Human Rights and International Criminal Justice**

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The themes and issues of concern for international human rights law are closely linked to the issues with which international humanitarian law is now concerned. The latter law arrived earlier on the international scene and is the one concerned with these issues in light of the problematics of wars and armed conflicts. This is in view of natural communication and mutual influence of both areas, both in peacetime and in times of war and conflict. This has been directly reflected in international efforts and decisions on the drafting of relevant international conventions. It addresses the identification and characterization of rights and liberties protected by these conventions, acts, violations and areas of criminalization in both international human rights law and international humanitarian law. International accountability for violations has been shaped by international mechanisms both within the United Nations system and through treaty mechanisms established under the relevant international conventions or judicial mechanisms represented in international criminal justice.

We will deal with this subject, with a concision which will not, I trust, be unseemly, in three sections:

#### **First: Special International Criminal Tribunals: Origin and Application**

After the long suffering of mankind in wars, conflicts and colonialism at all levels and the diversity of its parties and causes, there is no doubt that the horrific scourge and devastation of the First World War was the catalyst that helped to draw attention to the idea of international criminal justice to prosecute war criminals.

This concept crystallized in Articles 227 and 228 of the Treaty of Versailles in 1919, which were concluded between the Allies, but efforts at that time resulted in the establishment of commissions of inquiry



into war crimes. Germany had responded positively to the Allies' request to initiate trials of war criminals by passing national legislation authorizing the application of Articles 227 and 228 of the Treaty of Versailles bringing the accused to trial before the German Supreme Court in Leipzig.

In particular, these efforts were focused on consolidating the idea of punishment for a crime against peace. The international efforts to achieve the above recommendations were subsequently stepped up to achieve this goal in two phases: the first is the special trials and the second is the establishment of the permanent International Criminal Court. We will refer in this item to the first phase, namely the trials of the Second World War, the Tribunal for the former Yugoslavia and the Tribunal for Rwanda.

### **Second: The International Criminal Court: Establishment and Jurisdiction**

In the midst of this growing international tide of interest in international human rights conventions and international humanitarian law and despite the difficulties and obstacles set by the United States during the negotiations to establish the mechanism, the international community succeeded on 17/7/1998 to adopt the Rome Statute of the International Criminal Court endorsed in the United Nations Diplomatic Conference of Plenipotentiaries concerned with the Establishment of an International Criminal Court. At the time, the draft was approved by 120 countries with 21 countries abstaining and 7 countries rejecting the law (the United States, Israel, China, Iraq, Yemen, Libya and Qatar). The Convention went into force on 11/4/2002 after the completion of the minimum number of countries needed for its implementation was completed. The number of countries joining the Court reached 124 in July 2016.

The preamble to the Statute reflected the consensus of the international community, stating that the aim was to address through a permanent and independent international judiciary crimes of more concern to the entire international community in a way that complements the role of national criminal jurisdiction. The Statute explained in Article 7 that crimes falling within the jurisdiction of the Court are: genocide, crimes against humanity, war crimes and crimes of aggression. The Statute also included certain crimes within the jurisdiction of the Court as defined in international human rights instruments (torture, apartheid and forced disappearance) as international crimes against humanity in certain cases



and under certain conditions, when committed in the context of a widespread or systematic attack directed against any civilian population with knowledge of the attack (Article 7/1).

**Third: Practical Observations on the International Criminal Court**

Here we refer, with some clarification and concision, to a number of general remarks on some of the concerns that resulted from the final text of the Convention and shed light on several ones. We will also highlight the position of Arab and African countries and the implications thereof and then state the Egyptian position on the Convention.

In this clause, we will refer, with some clarification and briefness, to a number of general remarks on some of the concerns that resulted from the final texts of the Convention and shed light on a number of them, then on the stance of the Arab and African countries, the dimensions of this matter and its implications and then on the Egyptian stance on the Convention. Finally, we refer to the future vision of this long overdue international judicial achievement and the extent of its success in realizing the hopes of mankind.

**1. General Remarks**

The wording of the articles of the Statute of the Court revealed many important legal observations and practical paradoxes. Application revealed that this wording was dominated by the influence of the political nature that shaped the roles of the delegations. These delegations were most keen on pursuing the interests of their countries and adjust the convention to these interests in order to avoid or circumvent their obligations. This attitude was most strongly seen in the withdrawal by the United States of its signature under President Bill Clinton as a result of the rejection of its proposals to limit the jurisdiction of the court to those countries that accept it and subordinate the court to Security Council, a proposal aimed at protecting its soldiers deployed in many countries of the world from prosecution.

**2- Position of Arab Countries**

In February 2002, the Arab League issued a recommendation to the Arab states to join the International Criminal Court. That recommendation meant the following:

- **First:** To join the international community in its efforts to combat crimes of concern to the Court, especially in light of the membership of Arab countries to the international conventions concerned with the enforcement of the convention (the four Geneva



Conventions and the Convention on the Prohibition of Genocide).

- **Second:** To ensure the Arab presence in the structures of that court and active Arab participation in preparing the list of crimes and procedures and defining the crime of aggression.
- **Third:** To take advantage of the competence of the Court in the Arab-Israeli conflict in light of the Israeli occupation of Palestine and the repeated attacks on the Palestinian people in the occupied territories.
- **Fourth:** To show that Arab countries are most vulnerable to the possibility of external aggression. As a result, eleven Arab countries have signed the Convention: Egypt, Bahrain, Algeria, Syria, UAE, Yemen, Oman, Kuwait, Morocco, Comoros, Sudan. Three other Arab countries ratified the Convention: Jordan, Djibouti and Palestine.

### 3. African States

As of July 1, 2016, 124 countries have ratified the Convention, of which 34 are African, more than half the countries of Africa. The court has also levelled charges against 36 Africans in nine African countries and has worked with African cases in Uganda, the Democratic Republic of the Congo and Central Africa, including the indictment of the Sudanese president for war crimes in Darfur. This case was referred to the court by a Security Council resolution pursuant to Chapter VII of the UN Charter as Sudan did not ratify the agreement establishing the court. The court issued its decision to arrest the then President of Sudan and two of the defendants as the investigations confirmed their role in these crimes. During his stay in South Africa, an arrest warrant was issued against President al-Bashir by the national judiciary against him in light of South Africa's membership in the court. This was settled as part of South Africa's commitment to Sudan not to subject the Sudanese President to the arrest order during his participation in the African summit. This issue remains unresolved despite the revolution in Sudan and the ousting of Al-Bashir. Sudan seems to insist that he should be trialed before the national judiciary.

### 4. Egypt

Based on the long history of its efforts to enforce the rule of law and its leading position among African and Arab countries, Egypt assumes its responsibilities in the international community to combat the crimes that harm all humanity, specially since Egypt is a member of the four Geneva Conventions of 1949 on war crimes and the International Con-



vention on the Crime of Genocide of 1948 under Law No. 121 of 1951. Egypt is also a member of the international conventions on the prohibition of forced labor, slavery, racial discrimination and torture. Other acts are punishable under the Egyptian Penal Code regardless of the number of victims. Although Egypt did not accede to the 1968 Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity, the Egyptian Constitution stipulates that the offenses relating to assaulting rights and freedoms must not be subject to limitations (Article 99) of the new Constitution issued in 2014, and therefore there is no contradiction with the principle of non-statute of limitations contained in the Convention.

Moreover, the Egyptian legal system within the framework of the principle of the rule of law established by the Egyptian Constitution is characterized by solidity and stability. The judiciary is characterized by impartiality and independence. Thus, the legal system and the judiciary have all the established international standards for this. This makes Egypt immune from the jurisdiction of the International Criminal Court in cases of unwillingness or incapacity referred to in Article 17, as well as conditions for retrial of individuals pursuant to Article 20 of the Statute.

Therefore, on 26 December 2000, Egypt signed the Statute of the International Criminal Court, thereby becoming an observer to the Assembly of States Parties pursuant to Article 112. At the time of signing, Egypt deposited certain statements affirming the importance of the interpretation and application of the Statute of the Court in accordance with the universally recognized principles and fundamental rights agreed by the international community and in accordance with the principles, objectives and conditions of the Charter of the United Nations, the general principles and rules of international law, and international humanitarian law. Egypt's remarks also clarify the fact that it will interpret and apply the sources contained in the Court statute on fundamental rights and international standards for the two terms 'fundamental rights' and 'international standards' regarding the concept on sources of fundamental rights, internationally recognized norms and standards adopted by the international community.

Egypt's signing of the International Criminal Court Convention indicates its acceptance of the provisions and rules contained in the Court Statute and the absence of constitutional or legal difficulties preventing



it. The declarations made by Egypt upon the signing of the Rome Statute of the International Criminal Court include the confirmation of several facts regarding the interpretation of certain terms used and do not amount to legal reservations. Egypt's signature of the Convention allowed it to participate in the work of the Assembly of States Parties as an observer pursuant to Article 12 of the Statute. This will allow Egypt to closely monitor the work of the Assembly of States Parties on the preparation of the Elements of Crimes and the Evidence Rules of the Assembly of States Parties.

### **Conclusion**

There is no doubt that, after the Statute is put into force, signatory States shall, as a minimum and regardless of their accession to the Convention, harmonize their constitutional and legislative systems with the provisions of this Statute. This harmonization comprises both the substantive standards relating to the criminalization of the acts contained therein and procedural standards relating to procedures of trials. The aim is to ensure the national jurisdiction will take hold of such crimes in order to avoid the provisions of the Statute that disregard national proceedings in the circumstances stipulated in article 27 of the Statute. Australia was the first State to introduce in its federal criminal legislation the crimes under the Rome Statute of the International Criminal Court.

In conclusion, if we believe that what has been achieved recently is a measure of success that we hope to continue, it will take actual effect only through the use of the Court as an international judicial mechanism breathing life into its halls by submitting various criminal cases in line with its terms of reference, in particular transnational organized crimes in all their forms and types. This has become the task of States, international activists and supporters of the Court, that is, to help it succeed in its administration of justice.