

PROCEEDINGS BEFORE THE INTERNATIONAL CRIMINAL COURT

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ABSTRACT

The article dealt with the existing international judicial system today, reviewing its procedural aspect, mechanisms, conditions, field of activity and then its effects, and concluded that the referral by a decision of the Security Council in accordance with Chapter VII of the Charter of the United Nations, expands the jurisdiction of the International Criminal Court to universality.

The indictment before the ICC takes place in two stages, the first at the level of the Prosecutor, who makes the indictments initially, and then comes a second stage before the Trial Chamber, in which the charges for which individuals will be tried are actually determined through the confirmation hearing.

The Prosecutor also has broad powers in his investigative proceedings, enabling him to search for various evidence, from examining and hearing witnesses, requesting information from any sources he deems credible, and even consulting with the Trial Chamber on certain matters, and even concluding agreements with States on cooperation with him.

Keywords: International Criminal Court - International Justice - Right of the Accused - Investigation before the International Criminal Court.

1. **Introduction:**

The concept of State sovereignty is no longer absolute as it used to be, but has become limited to the fundamental rights and freedoms of the individual, who has also become a subject of international law, who cannot be subjected to material or moral aggression and then take refuge in immunity.

This is reflected in the establishment of the International Criminal Court as a judicial body complementary to the jurisdiction of national criminal courts, so that it replaces it in the event of its inability to prosecute the most serious crimes of international concern, and guarantees the right to litigation for victims, through international criminal litigation, which includes a set of procedures that move the case before the Court, which we study in this research, which is of great importance.

1.1 Research problem:

The development of the international criminal judiciary had a great impact on the establishment of a permanent international criminal court, and the development of its rules in the Rome Statute, and the clarification of the mechanisms on the basis of which cases are presented before it and prohibited so that the court can carry out its tasks, which makes the main problem of the subject of this research is the following question:

What are the procedures for initiating proceedings before the ICC, what are the nature of these procedures and to what extent do they guarantee a fair trial?

2.1 Importance of research.

The subject of the research is of great importance, including:

- The research deals with an important international organization, especially in light of the current circumstances that many countries are going through.
- The research shows the mechanisms and procedures of litigation before the International Criminal Court.
- The research deals with the effectiveness of the rules and procedures of the Statute of the International Criminal Court, in the follow-up of international crime.
- The research clarifies the definition of the crime of aggression reached at the Review Conference of the Statute of the International Criminal Court held in Kampala on 11 June 2010, in accordance with Articles 121 and 123 of the Statute of the International Criminal Court.

Based on the above, it can be said that the research seeks to achieve a number of goals.

3.1 Research objectives.

Among the objectives of the research can be mentioned the following:

- A statement of the organs that have the power to refer to this court.
- Presentation of the most important principles and principles adopted by this court as well
- Clarify the procedures followed before this court and contribute to facilitating access to it.
- Clarify the role and powers of the Public Prosecutor before this Court during all stages of the proceedings.
- Understand the modus operandi of the accusatory, the investigation and the sentencing authority, as well as the appellate body before this court.
- Indicate the extent and impact of States' cooperation with the Court in carrying out its functions, particularly with regard to the enforcement of its sentences.

The desire to achieve these goals is one of the reasons for choosing this topic.

4.1 Research Methodology:

It is clear that the problem requires the adoption of several approaches. For considerations related to the subject, a number of methodological mechanisms have been adopted, with a focus on the analytical and deductive approach, in the analysis of legal texts and facts related to the initiation of proceedings, in addition to the comparative approach in distinguishing the nature and characteristics of the Statute of the International Criminal Court with previous international criminal courts. With the critical approach to show some legal gaps and the ambiguity that may

exist in the rules and procedures, and to answer the problem posed above, the research was divided into sections.

2. **Referral of the case to the International Criminal Court**

When a case is referred to the ICC Prosecutor, whether through the Security Council, the State Party or the State Non-Party, the ICC Prosecutor shall initiate investigations when it is ascertained that there are reasonable grounds for conducting the proceedings in accordance with the Statute 1.

The Statute of the International Criminal Court promulgated on 17 June 1998 defines three different organs competent to raise the complementary jurisdiction of the International Criminal² Court and defines the competences of this Court on four bases.

1.2 Jurisdiction of the International Criminal Court in the prosecution of international crimes

The Statute of the International Criminal Court defines the competences of the Court on four grounds: the type of crime, the place and time of the crime and the person who committed it.

1.1.2 Limitation of the substantive jurisdiction of the International Criminal Court

The jurisdiction of the Court shall be limited to the most serious crimes of concern to the entire international community, and under this Statute the Court shall have jurisdiction over the following crimes:

- (a) The crime of genocide;
- (b) Crimes against humanity.
- c. War crimes.
- (d) The crime of aggression³.

The crime of genocide

The crime of genocide of the human race is one of the most serious crimes that threaten the human race, as it represents an attack that affects a person as a member of a particular group, in his life, health and dignity. The 4 United Nations General Assembly dealt with the definition of genocide on 11/12/1964 in its resolution No. 96, where it stated that "the denial of the right to exist for entire human groups, such as murder, which represents the denial of a person's right to life, and since there have been many examples of crimes of genocide of the human race, as they were completely exterminated or in part human groups for racial, religious, political or other character"⁵

¹Mohamed El Sherif Bassiouni, International Criminal Court, 3rd Edition, New Rose Youssef Press, Cairo, p. 167.

² Linda Muammar Yesui, The Permanent International Criminal Court and its Jurisdictions, 1st Edition, Dar Al-Thaana for Publishing and Distribution, Amman-Jordan, 2008, p. 133.

²Linda Muammar Yesui, The Permanent International Criminal Court and its Jurisdictions, 1st Edition, Dar Al-Thaana for Publishing and Distribution, Amman-Jordan, 2008, p. 133.

³Article 5 of the Statute of the International Criminal Court.

⁴Essam Abdel Fattah Matara, International Criminal Justice: Principles of E, Its Substantive and Procedural Rules, New University Publishing House, Alexandria, 2006, p. 129.

⁵Montaner Said Hammoud, International Criminal Court, The General Theory of International Crime, New University Publishing House, Alexandria, 2006, p. 104.

This resolution was a prelude to the issuance of the International Convention on the Prevention and Punishment of the Genocide of 1948, which was unanimously approved by the United Nations General Assembly on 09/12/1948 and its preamble contained the same content as its resolution No. 96, and Article II also defined the crime of genocide of the human race.⁶

In 1993, the ICTY defined the crime of extermination as any killing of individuals in part of a group located in a small geographical area, even if the death toll was small, as long as it was carried out with the intention of destroying that part of the group.⁷

The Statute of the International Criminal Court has established the literal definition of the crime of genocide as contained in Article 02 of the 1948 Genocide Convention⁸.

Second: Crimes against Humanity

Talk about the criminalization of acts against humanity began from the era of the jurist Jiro Jos, who in many of his writings called for criminal sanctions against those who commit war crimes, crimes against peace or crimes against humanity, and fatly supported this and went to the possibility of military intervention in any country for humanitarian considerations and reasons.⁹

This crime is defined in jurisprudence as "an international crime of common law according to which a State is considered a criminal if, because of sex, intolerance of the homeland, or for political or religious reasons, it harms the life, freedom or rights of a person or group of persons innocent of any common law crime, or if its damage exceeds the penalties provided for such crimes".

It is also defined as "an organized plan of many actions aimed at destroying the social foundations of the life of national groups, with a view to eliminating such groups, the purpose of which is to destroy the political, social and cultural systems, the language and national sentiments, religion and the social and economic entity of national communities, and to destroy the personal security, personal freedom, health and dignity of persons, as well as the lives of individuals belonging to such groups".¹⁰

The sixth principle of the Nuremberg Principles of 1945 stated that crimes against humanity meant acts of murder, extermination, deportation and any other inhumane act committed against any civilian people, before and during war, as well as acts of persecution based on political, sexual or religious grounds, whenever such acts or persecution were committed against or related to peace,¹¹ war or war.

As for the Rome Statute, in the chapeau of Article 07, it set a high ceiling, which singled out the acts constituting a crime against humanity with a special status and raised it to the international level, which is to be committed within the framework of a systematic or

⁶Youssef Hassan Youssef, International Criminal Law, 1st Edition, Al-Wafaa Legal Library, Alexandria, 2011, p. 55.

⁷Khaled Mostafa Fahmy, International Criminal Court, 1st Edition, Dar Al-Fikr Al-Jamia, Alexandria, 2011, p.

⁸ Qaida Najib Hamad, op. cit., p. 144.

⁹ Montaner Saeed Hammoud, previous source, p. 118.

¹⁰Abdel Fattah Bayou mi Hegazi, The International Criminal Court: A Specialized Study in International Criminal Law, Dar Al-Kutub Al-Qanoon, Egypt, Mahalla Al-Kubra, 2008, p. 461.

¹¹ Essam Abdel Fattah Matara, op. cit., p. 143.

widespread attack, which means that attacks do not constitute a crime against humanity unless they occur within a specific policy or a deliberate plan, otherwise in a way that targets a large number of civilian victims, as distinct from war crimes that deal with military personnel ¹².

2.1.2 Consideration of natural persons within the jurisdiction of the International Criminal Court.

The establishment of the principle of criminal responsibility of individuals is essential to prevent international crimes or at least to avoid their exacerbation ¹³.

In fact, international criminal responsibility gradually occupied its place in the theory of international responsibility after contemporary international organization considered the individual one of the most important subjects of public international law.

He paid attention to the range of rights and obligations of the latter and worked hard to protect them, unlike in traditional international law, which concerned only States and never recognized the individual as the subject of international criminal law. ¹⁴

Article 25, paragraph 01, of the Statute of the International Criminal Court affirms that the personal jurisdiction of the Court ¹⁵ is limited to the trial of natural persons, who are individually responsible for the commission of any of the crimes within the jurisdiction of the Court ¹⁶. ¹⁷ of them to compensate the damages arising from their act when their responsibility is proved. ¹⁸

Nationality forms the second basis of the ordinary jurisdiction of the International Criminal Court, and jurisdiction in this sense is limited in principle to nationals of States Parties who were eighteen years of age at the time of the commission of the offence and extends to nationals of third States subject to provisional jurisdiction of the Court, and nationals of third States accused of committing a crime in article 05 of the Statute of the International Criminal Court on the territory of a State Party¹⁹.

The criminal accountability of the individual before the ICC extends not only to the direct perpetrator but also to the accomplice to the commission of the crime in any of the forms provided for in the Statute of the International Criminal Court²⁰.

As a means of operationalizing the role of the Court and performing its functions under article 05 of the Statute of the Court, article 27 of the Statute indicates that the official capacity of the

¹² Qaida Najib Hamad, *op. cit.*, p. 149.

¹³ Omar Mahmoud al-Makhloufi, *op. cit.*, p. 320.

¹⁴ Hussein Nesma, *International Criminal Responsibility*, Master's Note, Faculty of Law and Political Science - University of the Monture Brothers, Constantine, 2006/2007, p. 55.

¹⁵ Article 25, paragraph 01 states: "The Court shall have jurisdiction over natural persons pursuant to this Statute."

¹⁶ Omar Mahmoud al-Makhloufi, *op. cit.*, p. 320.

¹⁷ Qaida Najib Hamad, *The International Criminal Court Towards International Justice*, 1st Edition, Al-Halabi Human Rights Publications, Beirut, 2006, p. 141.

¹⁸ Ali Yusuf al-Shukri, *op. cit.*, p. 186.

¹⁹ Qaida Najib Hamad, *op. cit.*, p. 141.

²⁰ Omar Mahmoud al-Makhloufi, *op. cit.*, p. 321.

accused is not an impediment to responsibility, nor even a mitigating excuse, and²¹ therefore immunities or procedural rules established for the accused under national law do not prevent the International Criminal Court from exercising its jurisdiction before that person²².

Article 28 of the Statute of the Court adds another provision, relating to the responsibility of the superior for the acts of his subordinates, whereby the superior is criminally liable for crimes within the jurisdiction of the Court committed by subordinates under his effective authority and control, for failure to exercise proper control over such subordinates²³.

In this regard, article 98, paragraph 1, of the Statute of the International Criminal Court provides for an important exception that prevents the International Criminal Court from requesting assistance from any State or providing persons to the Court, if this would require a breach of an agreement concluded by the State Party with a third State, except with the latter's consent, as well as if the request for assistance or rendering constitutes a breach of the State Party's obligations under general international law²⁴.

Article 26 of the Statute of the Court also expressly excluded persons under the age of 18 at the time of the commission of the crime against them, thus establishing the principle recognized in the world's major penal legal systems, that juveniles under the age of 18 should not be brought before ordinary courts and referred to their own courts.

However, there is a gap and contradiction between Article 26 and Article 08 of the Statute of the International Criminal Court, which criminalizes the recruitment of those under the age of 15 as a war crime, so that those who recruit those between the ages of 15 and 18 will remain unpunished²⁵.

2.2 Mechanisms for referring a case to the International Criminal Court

The International Criminal Court shall exercise its jurisdiction after referring the case to it by one of the mechanisms referred to in its Statute in accordance with Article 13.

2.2.1 Ensuring the right of States Parties to refer to the International Criminal Court

According to article 02, paragraph 01, of the 1969 Vienna Convention on the Law of Treaties, a state party means any State party that has agreed to be bound by the treaty and the treaty has entered into force for it, such as ratifying, accepting, approving or acceding to the treaty, while a third party according to the same article is a State that is not a party to the treaty.²⁶

As States are the principal parties to the International Criminal Court, it is self-evident that it should first be guaranteed prosecution before the Court before any other organ, that it should refer to the²⁷ Prosecutor any case relating to one or more crimes within the jurisdiction of the

²¹ Ali Yusuf al-Shukri, *op. cit.*, p. 187.

²² Linda Muammar Shajib, *op. cit.*, p. 164.

²³ Omar Mahmoud al-Makhloufi, *op. cit.*, p. 322.

²⁴ Qaida Najib Hamad, *op. cit.*, p. 142.

²⁵ Omar Mahmoud Makhloufi, *op. cit.*, p. 325.

²⁶ Nasreddine Bou Sakha, *International Criminal Court - The Crack of the Rome Statute*, Article, Part 1, Dar Houma for Publishing and Distribution, Algeria, 2008, p. 58.

²⁷ Linda Muammar Ishi, *op. cit.*, p. 234.

Court and that it should request the Prosecutor to initiate investigative proceedings with a view to reaching the conclusion that a particular person should be charged with the crimes prohibited by article 05 of the Statute of the International²⁸ Criminal Court. Such referral shall, as far as possible, be accompanied by sufficient data, evidence and information on the subject, persons and circumstances relating to the case at hand²⁹.

Just as the right of referral was given to States Parties under the above-mentioned article 13, it was also granted to non-parties under article 12, paragraph 03, of the statute, whereby a State not party to the statute has the right to accept the jurisdiction of the International Criminal Court over crimes committed in its territory or for which one of its nationals was accused, if they occurred after the entry into force³⁰ of the Statute, by declaration deposited with the Registrar of the Court³¹.

This declaration by a third-party State accepting the jurisdiction of the Court is an exception to the principle of proportionality of treaties, since a State becomes obliged to cooperate with the Court in accordance with its Statute even though it is not a party to it³².

Among the cases referred to the ICC by States parties are:

1. The Court's first investigation into the case concerning the Democratic Republic of the Congo was held on 23 June 2004, in the light of a letter from the President of the Democratic Republic of the Congo to the Prosecutor General referring the situation in the Congo to the International Criminal Court³³.
1. In December 2003, the ICC Prosecutor received a letter from the Ugandan President referring the situation in Uganda and the crimes committed by the Lord's Resistance Army to the ICC³⁴.

2.2.2 Security Council authority to refer to the International Criminal Court.

The Charter of the United Nations, issued in 1945, entrusted the Security Council with the task of maintaining international peace and security, and³⁵ granting it broad powers in this regard, and on the basis of the same mission and for the same purpose, the Statute of the International Criminal Court gave the Security Council the power to refer a case to the Prosecutor of the

²⁸ Essam Abdel Fattah Matara, *op. cit.*, p. 330.

²⁹ Sana Odeh Muhammad Eid Investigation and Trial Procedures before the International Criminal Court According to the Rome Statute 1998, Master's Thesis, Faculty of Graduate Studies, An-Najah National University, Nablus, Palestine, 2011, p. 61.

³⁰ Linda Muammar Yesui, *op. cit.*, p. 235.

³¹ Article 12, paragraph 03, of the Statute of the International Criminal Court.

³² Nasreddine Boamah, *International Criminal Court, Explanation of the Rome Statute, article, part 1*, Dar Houma for Publishing and Distribution, Algeria, 2008, p. 59.

³³ Omar Mahmoud Makhoulfi, *International Humanitarian Law in the Light of the International Criminal Court*, 1st Edition, Dar Al-Thaana for Publishing and Distribution, Amman, 2008, p. 367.

³⁴ Omar Mahmoud Makhoulfi, *Ibid.*, p. 374.

³⁵ Charter of the United Nations of 1945 quoted by the site: <http://www.un.org/ar/documents/charter>

Court if he considers that the commission of one or more crimes within the jurisdiction of the Court threatens international peace and security,³⁶ even if it is a crime of aggression³⁷.

The Security Council may initiate direct recourse to the Court, dispensing with the requirement that the State accept the Court's jurisdiction³⁸.

When the Council decides to refer such a case, the Secretary-General of the United Nations shall immediately transmit the written decision of the Security Council to the Prosecutor, together with documents and other material relevant to the Security Council resolution³⁹.

The Security Council must bear in mind the willingness and ability of the State concerned to hold the perpetrators of such crimes accountable, but there is another view that whenever the Security Council refers a situation to the International Criminal Court acting on behalf of Chapter VII of the Charter of the United Nations, it is unwilling for national authorities to address that situation, especially if the Security Council includes in its resolution on that situation a clause requiring States to refrain from intervening in the situation in question, or Perform certain actions in relation to them⁴⁰.

The granting of the right to initiate proceedings to a political body, the UN Security Council, has drawn many criticisms, as⁴¹ it can lead to the politicization of cases before the Court and remove them from its proper legal framework. While the International Law Commission, during discussions on the establishment of the Statute of the International Criminal Court, considered this necessary to enable the Security Council to use the Court as an alternative to the establishment of specialized tribunals, and as a reaction to crimes that shock the conscience of humanity.

It should be noted that the Security Council has exercised its right to refer situations to the Court, and this was related to the situation in Darfur, Sudan, as the Security Council decided, at its 5158th meeting, held on 31/03/2005, to refer the situation in Darfur since 2002 to the Prosecutor of the International Criminal Court, in accordance with resolution 1593.

Perhaps the most prominent example illustrating the Security Council's exercise of the referral power transferred to it under Article 13b of the Statute of the International Criminal Court is the unanimous adoption of resolution 1970-2011, which referred the situation prevailing in Libya since February 15, 2011 to the Prosecutor of the International Criminal Court.

On 27 August 2011, the Pre-Trial Chamber I judge issued arrest warrants for Muammar Gaddafi, Saif al-Islam Gaddafi and Abdullah al-Senussi for the crimes of murder as a crime

³⁶Essam Abdel Fattah Matara, *op. cit.*, p. 331.

³⁷Linda Muammar Yesui, *op. cit.*, p. 240.

³⁸Ziad Tiani, *The International Criminal Court and the Development of International Criminal Law*, Al-Halabi Human Rights Publications, Beirut, 1st Edition, 2009, p. 320.

³⁹Baraa Muncher Kamal Abd al-Latif, *op. cit.*, p. 136.

⁴⁰Omar Mahmoud al-Makhloufi, *op. cit.*, p. 360.

⁴¹Baraa Muncher Kamal Abd al-Latif, *op. cit.*, p. 137.

against humanity under Article 71a of the Statute and persecution as a crime against humanity under Article 71h of the Statute.⁴²

1. **Effects of initiating proceedings before the International Criminal Court**

The case before the International Criminal Court goes through a set of stages, starting with the Prosecutor, then the Pre-Trial Chamber, then the Trial Chamber and the Appeals Chamber, until it reaches a final judgment in it, and the Court follows a set of rules and procedures stipulated in the Statute

1.3 Investigation before the International Criminal Court

Investigation means a set of procedures aimed at searching for information and evidence that may lead to the knowledge and collection of the truth, which entails referring the accused to the competent court for prosecution, in the event that such information gives rise to suspicions that he has committed the crime or his release if it does not suggest this.

1.1.3 Initiation of an investigation before the ICC

Once the Prosecutor has ascertained the seriousness required and has come to the conclusion that there is a reasonable basis for initiating the investigation, he or she shall apply to the Pre-Trial Chamber in order to obtain permission to commence a preliminary investigation.

If, after conducting the preliminary investigation, the Prosecutor concludes that the information provided does not constitute a reasonable basis for initiating a preliminary investigation, he or she shall inform the providers of his findings and shall inform the Pre-Trial Chamber of his decision not to conduct the investigation.⁴³

If the Prosecutor initiates an investigation proprio motu on the basis of article 15 of the Statute, his authority to initiate it is restricted by the authorization of the Pre-Trial Chamber, but in the case of a State or the Security Council, the initiation of the investigation does not require the approval of the Pre-Trial Chamber.

First: Initiating the investigation with the permission of the Pre-Trial Chamber

The Prosecutor of the International Criminal Tribunal shall initiate an investigation only after the Pre-Trial Special Affairs Chamber has determined that there is a reasonable basis for initiating the investigation, that the case falls within the jurisdiction of the Court.⁴⁴

As for the procedure for obtaining leave from the Pre-Trial Chamber, the Rules of Procedure and Evidence of the Tribunal are set out in rule 50, which are brief:

1. After the Prosecutor has gathered what information, he deems sufficient, he shall inform the victims and witnesses of his intention to obtain permission from the Pre-Trial Chamber, as he considers that this does not endanger the victims or witnesses.
2. A written request shall be made to the Pre-Trial Chamber clarifying the information it has found, and victims shall submit their written statements within a specified time limit, and

⁴² Fifth report of the Prosecutor of the International Criminal Court to the United Nations Security Council pursuant to Council Resolution 1970 2011, issued by the ICC by the Office of the Prosecutor, accessed on 25/06/2023 at : www.icc_cpi.int/iccdocs/doc/traslation_

⁴³Linda Muammar Yasha Ibid., p. 50

⁴⁴Baraa Muncher Kamal Abdel Latif, *ibid.*, p. 259.

- during the hearing of the request the Pre-Trial Chamber may request the Prosecutor or victims to provide further information.
3. Thereafter, the Pre-Trial Chamber shall issue a reasoned decision, and such decision shall be without prejudice to the Tribunal's subsequent determination with respect to questions of jurisdiction and admissibility.

Second, the Public Prosecutor of the States Parties must be notified of the decision to conduct an investigation.

If the Prosecutor of the Criminal Court decides to conduct an investigation, he shall notify all States Parties, States which, in the light of available information, consider it customary to exercise jurisdiction over the crimes in question, and the Prosecutor may notify them confidentially, and the Statute shall be given one month from the date of receipt of such notification, during which the State may inform the Court that it is conducting or that it has conducted an investigation with its nationals or others within the limits of its jurisdiction.

It then submits a request that the Prosecutor of the International Criminal Court waive the conduct of an investigation, and the State may request additional information from the Prosecutor to assist it, without prejudice to the one-month period allowed, to which the Prosecutor shall expedite the response.

If the State does not request a referral and the Prosecutor obtains permission from the Pre-Trial Chamber, then he shall initiate preliminary investigation proceedings, and on this basis, he shall expand the investigation, where he shall collect and excavate evidence, determine its validity and strength, and to do so, it is necessary to move to the crime scene, and take all necessary measures for the investigation, such as preserving evidence and hearing witnesses and experts. To the extent that there is criminal liability under the Statute or not, the Prosecutor in this case must cover both the circumstances of incrimination and the circumstances of acquittal and must also take all appropriate measures to ensure the effectiveness of the investigation, with full respect for the interests of victims and witnesses.

On the other hand, the Statute authorizes the Prosecutor to conduct investigations in the territory of a State party to this Statute with the authorization of a Pre-Court Chamber or in the territory of another State that has consented to execute the request for cooperation, to request cooperation from any State, intergovernmental organization and any other intergovernmental arrangement, to take the necessary measures and conclude such agreements as may be necessary to facilitate cooperation with an intergovernmental organization or a person.

In the event that a State expresses its willingness to perform its duties and submits a written request for referral of the case to the Court, it is the responsibility of the State to provide information relating to its investigation, and the Prosecutor may request additional information from that State, in order to allow the Court to monitor any investigations or trials of which it shows some suspicious attitude.⁴⁵

⁴⁵Linda Muammar Yesui, op. cit., p. 253

It can also be ascertained that the State is carrying out its duties properly, and the Prosecutor may, upon waiving the investigation, request the State concerned to inform him periodically of the progress of its investigation and of any subsequent prosecution.

We note that the circumstances in which the Prosecutor waives an investigation may change, as his waiver of the investigation to the State is subject to review by the Prosecutor six months after the date of the waiver, and at any time there is a significant change in circumstances.

If, in his opinion, there is a unique opportunity to investigate, that there may no longer be an opportunity for the purposes of trial or taking the testimony of a witness who fears his doom, inaccessibility or other reasons, and that there is an opportunity that may not be sustained or repeated in relation to the acquisition, examination or selection of evidence, then here, at the request of the Prosecutor, the Pre-Trial Chamber may authorize the Office of the Prosecutor to take special action to obtain available evidence.

The Pre-Trial Chamber then intervenes by issuing orders and recommendations specifying the action to be taken, ordering the preparation of a record of the actions taken, taking the necessary measures to protect the rights of defence and representation before the Tribunal, as well as during the investigation, and assigning a judge from the Trial Chamber to monitor the investigation process.

2.1.3 Recognition of people's rights during interrogation and interrogation

Investigation procedures often affect the basic rights of individuals, but these procedures have always justified the right of society to detect the crime, so criminal legislation usually stipulates the rights that people must enjoy at this stage, and at the level of international criminal justice, the statutes of international criminal courts that preceded the Rome Statute, had stipulated a set of rights whose details vary from one court to another; The interrogation shall also take the form of an audiovisual recording in accordance with the procedure provided for in Article 43 of the Code of Procedure and Evidence of the International Criminal Tribunal for Rwanda in 1994, in addition to several rights, including the right to counsel and the right to remain silent. Article 55 of the Statute of the International Criminal Court provides for two paragraphs⁴⁶: the first is on the rights of persons in connection with any investigation.

Second: When questioning a person, there are reasons to believe that he has committed a crime, and this is what we will explain in the following:

First: Persons enjoy public rights during any investigation.

There are a range of rights enjoyed by persons during the investigation phase when taking one of its actions, the most important of which are the following:

1. A person shall not be compelled to incriminate himself or to confess guilt, and under this Statute such person shall not be physically or morally compelled to confess to himself that he is guilty or has committed the international crime or crimes under investigation.
2. A person shall not be subjected to any form of coercion, coercion and threat, nor shall he be subjected to torture or any other form of cruel, inhuman or degrading treatment or

⁴⁶Moussa Fadil, International Criminal Tribunal for Rwanda, Dar Houma for Printing, Publishing and Distribution, Algeria, 2007, p. 54.

punishment, a right that derives from the rules of international humanitarian law relevant to the Universal Declaration of Human Rights.⁴⁷

3. The right to use an interpreter free of charge to obtain the necessary translation In view of the importance of this right to the administration of justice, it is stipulated in Article 55 of the Statute of the Tribunal, as well as in many international and regional conventions, and this right has already been adopted by international criminal tribunals, as Article 14, paragraph (c), of the Charter of the Nuremberg Tribunal stipulates that pre-trial investigations with the accused must be conducted in the language he understands, or be translated into that language.
4. Not to subject a person to arbitrary arrest or detention, or deprivation of liberty except for reasons and in accordance with the procedures provided for in the Statute, and granting this right to suspects and accused at the investigation stage stems from the human right to liberty and security, as freedom is the origin and deprivation of it must be an exception, and only as a last resort, as affirmed in rule 1.6 of the United Nations Standard Minimum Rules for Non-Protest Measures. of 1990, known as the Tokyo Rules, which stipulated that pre-court detention in criminal proceedings shall be used only as a last resort, with due regard to the investigation of the alleged offence and to the protection of society and the victim.

Second: Granting special rights to persons during interrogation.

Due to the importance of this distinct procedure, contemporary criminal legislation has surrounded it with multiple guarantees aimed at preserving personal freedom to harm badly contrary to the law, as it is the result of the legislator's balance between the need for interrogation as an important investigative procedure on the one hand and the hypothesis of innocence, which assumes that a person is innocent until proven guilty.

Article 55 of the Statute of the International Criminal Court therefore entitles him to the following rights:

1. Be informed prior to the commencement of his interrogation that there are grounds for believing that he has committed a crime within the jurisdiction of the Court, and the importance of this right is that it enables persons to prepare their own defence or, if necessary, through their lawyers, and this right is also affirmed in article 14.3.a of the International Covenant on Civil and Political Rights
2. This important guarantee has been confirmed by many international conferences, including the recommendation of the twelfth International Conference of the International Society of Penal Law held in Hamburg, Germany, in 1976, and article 42/a/3 of the Rules of Procedure and Evidence of the Tribunals for the former Yugoslavia and Rwanda contains an explicit reference to it.
1. Use of legal aid of his or her choice, if the person does not have legal assistance to be provided in any case where the reasons of justice are required and without the person paying for such assistance in any such case, if the person does not have sufficient means ⁴⁸

⁴⁷Montaner Saeed Hammoud, op. cit., p. 256.

⁴⁸Article 55, paragraph 2c, of the Statute of the International Criminal Court.

3.1.3 Broad power of the Security Council to defer investigation or prosecution

The Security Council may request the postponement of investigation or prosecution proceedings for a period of 12 months from trial, if it deems it necessary, in the light of Chapter VII of the Charter of the United Nations, that is, when the Security Council decides that the interest of international peace and security requires a path other than that leading to The Hague, on the basis of the text of Article 16 of the Statute of the Criminal Court, which sets the rules for the exercise of this power by the Security Council as follows:

1. The request to the Court must be based on a Security Council resolution on the matter.
2. That the Council act under Chapter VII of the Charter of the United Nations, in other words, that the Council considers that the investigation or trial in question would continue to constitute a threat to international peace and security.

2.3 The Prosecutor adheres to the outcome of the investigation.

Based on the investigation body's completion and completion of the investigation, it may issue one of two decisions: a decision that there is a sufficient basis for prosecution before the referee, and a decision that there is no sufficient basis for prosecution. 49

3.2.1 Conviction of the Prosecutor that there is sufficient basis for prosecution

This case is the next and direct link in the proceedings after the conclusion of the investigation, and it is simply in the case of the Public Prosecutor finding that there are sufficient grounds and basis for bringing the accused to trial based on the outcome of the investigation and the evidence its findings, and this is in the following cases:

- (a) The information available to the Prosecutor provides a reasonable basis for believing that a crime within the jurisdiction of the Court has been or is being committed⁵⁰
- b- if the case is admissible or may be admissible under Article 17
- c. If he/she believes, taking into account the gravity of the crime and the interests of the victim, that there are substantial grounds for believing that the investigation procedures should continue.

Here, the Prosecutor refers the case file to the Pre-Trial Chamber to proceed with the subsequent procedures of holding a confirmation hearing and then approving it after referral to the Trial Chamber.

First: The Pre-Trial Chamber's oversight of the Prosecutor's work.

After a person has been brought before the Court, or voluntarily appearing before the Court or pursuant to a summons to appear, the Pre-Trial Chamber shall be satisfied that the person has been informed of the crimes alleged to have been committed and of his or her rights under the Statute, including the right to seek provisional release pending trial.

There are reasonable grounds to believe that the person has committed a crime within the jurisdiction of the Court.

⁴⁹Sana Odeh Muhammad Eid, previous source, p. 380

⁵⁰Sana Odeh Muhammad Eid, op. cit., p. 81.

1. The arrest of the person appears necessary to ensure that he or she appears in court or does not obstruct or jeopardize the investigation or trial proceedings.
2. Where reasonable to prevent the person from continuing to commit that crime, and to prevent the commission of a related offence that falls within the jurisdiction of the Court and arises from the same circumstances, if it is not satisfied with this, it may release him with or without conditions.

The Pre-Trial Chamber periodically reviews its decision regarding the provisional release or detention of the person and may do so at any time at his or her request or at the request of the Prosecutor.⁵¹

In order to ensure a speedy and fair trial, the Statute required the Pre-Trial Chamber to ensure that a person was not detained for an unreasonable period due to undue delay by the Prosecutor, and the principle of the presumption of innocence must serve as a basis for the proceedings of the Tribunal at various stages until the accused was found guilty.

Second: The freedom of the Pre-Trial Chamber to hold a hearing to confirm the charges.

Upon arrival at the Tribunal of the person against whom the arrest warrant has been issued or appeared, he shall appear before the Pre-Trial Chamber in the presence of the Prosecutor, and upon his first appearance, that Chamber shall determine the date on which it intends to hold a hearing to confirm the charges on the basis of which the Prosecutor intends to request trial, and shall ensure that the date and possible postponements of such hearing have been announced⁵².

The Pre-Trial Chamber shall convene in the presence of the Prosecutor, the accused and his counsel within a reasonable period from the date of the person's submission to the Tribunal or his voluntary appearance before the Court for confirmation of the charges⁵³, and this hearing may be held in the absence of such person under trial in the following cases:

1. When such person voluntarily and freely waives his right to be present.
 2. When such person has escaped and is not found, provided that all reasonable steps have been taken to ensure that the person appears before the Tribunal and is informed of the charges and the confirmation hearing, in which case the latter may be allowed to attend if the Pre-Trial Chamber considers that a reasonable period of time before such hearing has been done
1. Provide the person with a copy of the document containing the charges on the basis of which the Prosecutor intends to bring the person to trial.

⁵¹Rule 118, sub-rule 02, of the Rules of Procedure and Evidence provides that "the Pre-Trial Chamber shall review at least every 120 days its judgement on the release or detention of a person in accordance with article 60, paragraph 03, and may do so at any time at the request of the person concerned or the Prosecutor".

⁵² Baraa Muncher Kamal Abdel Latif, *ibid.*, p. 292

⁵³Ali Yusuf al-Shukri, *op. cit.*, p. 202.

2. Inform the person of the evidence on which the Prosecutor intends to rely at the hearing, and the Pre-Trial Chamber may also order the disclosure of information for the purposes of the confirmation hearing against that person. The Prosecutor shall submit to the Pre-Trial Chamber and to the person concerned no later than 30 days before the hearing, a detailed statement of the charges, as well as a list of charges

3.2.2 The Pre-Trial Chamber must be notified that there is insufficient basis for prosecution

If, after full investigations, the Prosecutor finds that there is insufficient basis for prosecution because⁵⁴:

- 1- The lack of sufficient legal basis, when there is no sufficient legal basis for the Public Prosecutor to request the issuance of an arrest warrant or a summons, which means that the accused cannot be prosecuted or tried as long as - in the beginning - it is not possible to issue a warrant for his arrest or his presence, and these include several possibilities: for example, it is found that the accused was in a state of legitimate defense, or that the act does not constitute a crime within the jurisdiction of the court.

2. There is no factual basis for requesting an arrest warrant or a summons, such as that the act attributed to the accused did not take place and that the evidence is insufficient.

3. If the case is inconsistent with the rules relating to admissibility before the International Criminal Court.

4. If, after reviewing all the issues related to the case, the Prosecutor considers that all circumstances, including the age of the accused, his state of health, the seriousness of the crime, the interest of the victims and the role of the offender, and the Prosecutor concludes from this that the trial will not serve justice, despite the availability of all the elements and elements in the crime and their attribution to the perpetrator

In such cases, the Prosecutor shall notify the Pre-Trial Chamber in writing as soon as possible, as well as the State or States to which the situation was referred or, if the case has been referred by him, the Security Council.

Such notifications shall include the decision of the Prosecutor and the reasons for which that decision was taken, taking into account the necessary measures such as protecting the security of victims and witnesses participating in the proceedings.⁵⁵

The Pre-Trial Chamber may, at the request of the complainant State or the Security Council and on its own initiative, review the Prosecutor's decision not to initiate an investigation and trial procedure and may request him to reconsider it, and the Prosecutor's decision thereon shall not be effective until it has been approved by the Pre-Trial Chamber.

A written motion, supported by reasons, must be made within 90 days of the notification by the Prosecutor, and the Pre-Trial Chamber may request the Prosecutor to transmit to it such information, documents or summaries in its possession as it deems necessary for review, and

⁵⁴Article 61, paragraph 03, of the Statute of the International Criminal Court

⁵⁵Baraa Muncher Kamal Abdel Latif, *ibid.*, p. 260.

the Pre-Trial Chamber may take such measures as may be necessary to protect information and documents and to protect witnesses, victims and members of their families.

It should be noted that the decision of the Public Prosecutor not to prosecute or not to conduct an investigation does not have any legal force, as he may reverse it if he finds new information or facts that justify this and provide a belief that the crime is attributed to the person under investigation or prosecution.

The end

The research dealt with the existing international judicial system today, reviewing its⁵⁶ procedural aspect, mechanisms, conditions, field of activity and then its effects, and the research concluded the following results:

1. ⁵⁷Conclusions

1. The Statute of the International Criminal Court relied on three initiation mechanisms and distributed among States Parties, the Security Council and the Prosecutor.
2. Referral by a Security Council resolution in accordance with Chapter VII of the UN Charter extends the jurisdiction of the ICC to universality.
3. The Statute of the International Criminal Court unites the indictment and the investigation, placing both in the hands of the Prosecutor, but the latter is subject to the control of the Pre-Trial Chamber in carrying out investigative proceedings, as he is unable to initiate the investigation on his own initiative, cannot issue arrest warrants or summons, and is not free to confirm charges, except with the consent of the Pre-Trial Chamber.
4. The indictment before the ICC takes place in two stages, the first at the level of the Prosecutor, who brings the charges on a preliminary basis, and then comes a second stage before the Trial Chamber, in which the charges for which people will be tried are actually determined, through a confirmation hearing.
5. The Prosecutor has broad powers in conducting investigative proceedings as he can search for various evidence, from examining and hearing witnesses, requesting information from any sources he deems credible, and even consulting with the Trial Chamber on certain matters, and even concluding agreements with States on cooperation with him.
6. Judgements rendered by the Trial Chamber are subject to appeal to the Appeals Chamber, and the judgements of the Trial Chamber are subject to review.

7. The cooperation of States Parties with the Court for the enforcement of sentences is essential, without which the Court cannot carry out execution.
8. Penalties of deprivation of liberty are carried out in countries that are willing to do so to the Court, if not in the host State
1. A convicted person who is serving his sentence on the basis of a judgment issued by the International Criminal Court shall be subject to the authority of the Court, and the State of the place of execution of the sentence shall have no jurisdiction over him and shall revert to the Court in all applications submitted to it and all matters relating to him.

Recommendations

1. The referral mechanisms are insufficient and must be expanded to ensure their effectiveness, and this can be done by granting the right of referral to the UN General Assembly so that it is able to issue a referral decision to the ICC by majority.
2. The decision to refer the ICC by a UN Security Council resolution seems rigid and ineffective, because the adoption of such a resolution requires the approval of nine members of the Security Council, including the five permanent members, which is difficult to obtain, and this decision must be issued only by a majority of all members of the Security Council.
3. Granting the right to defer an investigation or trial to the Security Council for an indefinite period seriously undermines the independence of the court, finds no legal justification, and its abrogation is inevitable for the requirements of justice.
4. The limitation of the territorial jurisdiction of the International Criminal Court to States parties and States that accept the Court's jurisdiction has been an obstacle to this competence in exercising its jurisdiction, especially in light of the passivity of the Security Council in its use of its right of referral.
1. It is noted that the Court is unable to implement its decisions and rulings because it does not have the organs and places of execution, and in order to overcome this deficit, new mechanisms can be found that allow it to work with direct international bodies established specifically for this purpose, such as a police formation among the States parties.

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