

**Abstract:**

On 17 July 1998, following the signing of the Rome Treaty, the Permanent International Criminal Court (ICC) was founded. The ICC is an international organization separate from the United Nations and not subordinate to the UN Security Council or any other body in the United Nations. Its mandate is to pursue and prosecute every individual responsible for serious international crimes such as genocide, war crimes and crimes against humanity regardless of his/her official title. In essence, the court performs the role of national law systems in pursuing and persecuting criminals.

The creation of this international judicial body has raised several questions related to international law and international relations, and the connection between the two. The relationship between both these fields has been a primary force behind the establishment of the International Criminal Court. This study aims to link the foundation of the International Criminal Court to developments that occurred in international relations in the second half of

the 20<sup>th</sup> century. It is argued that a major impetus behind the creation of the ICC was a redefinition of the concept of "international" within the sphere of international relations. If this change had not occurred, no compromise would have been made at the Rome Conference and States would not have founded an international system with the (partial) effect of eroding the concept of state sovereignty and the role of states in the international system.

This study is also significant to the Palestinian case. Crimes committed by the Israeli occupation that constitute war crimes and crimes against humanity will someday fall under the jurisdiction of this court. Studies on the origins, work and principles of this court will thus be beneficial to those interested in this field.

Moreover, despite the difficulty of turning to this court in the Palestinian case, studying its structure, administration, jurisdiction and the role of the prosecutor is important. This study will contribute to the idea of using international universal jurisdiction in other national judicial bodies in cases involving crimes of the Israeli occupation.

**The Main Questions in the Study:**

Is the development in international criminal law a result of progress in international relations? In other words, is the creation of the permanent

International Criminal Court the result of a redefinition of the concept of "international" in international relations?

And consequently, does this development violate classical international law which honors the primacy of national states in international relations and where the principle of sovereignty is a fundamental element? How will the existence of this court affect the development of this legal system?

**The theoretical approach of this study is based on two levels.**

**The First Level:**

Part one: presents the historical development of the international judicial system from the establishment of Nuremberg Court up to the creation of two special tribunals in former Yugoslavia and Rwanda. The Nuremberg Court was the first international judicial body that dealt with the subject of individual criminal responsibility. It was the first time the world witnessed the overriding of the concept of sovereignty and the diplomatic immunity of presidents in international law.

Following the onset of the Cold War, no international judicial body moved against those who had committed crimes in wars and armed conflicts. This period witnessed the primacy of the role of state, the concept of sovereignty and the principle of no interference in internal affairs. The establishment of special tribunals involved interference in internal affairs and the privileged relationship between states and citizens.

Part Two: presents a theoretical analysis of the redefinition of "international" in the sphere of international relations. This involves a shift in the principal actors within the international arena and the location of power internationally. This section examines the development in the position of a state and its effect on international relations.

A theoretical distinction is drawn between "International Order" and "World Order", expanding on the term "International Society" as used by the English expert in international relations, Hedley Bull. Bull uses this term to illustrate certain standards all the members of this Society are committed to. The transition from international order to world order as presented by Bull is offered as an explanation for the establishment of a permanent international judicial body such as the International Criminal Court.

**The Second Level**

Analysis of the Rome Treaty will also include an examination of the preparatory work that preceded the Rome Conference. This preparatory work is important since it strongly expresses the position of different states

concerning essential issues related to the court's work, its performance, its role in the future, the court's jurisdiction, its specialization, the role of the prosecutor, the concept of complementary to national criminal jurisdiction and the definition of crimes.

These positions express the states' views and their vision of fundamental concepts in international relations. In other words, how these states see their relations with each other and with individuals within their borders can be discerned from this analysis.

The analysis will also show to what extent these states were willing to compromise their own interests for the sake of the common interest. This is an indicator of an approaching "World Order" as expressed by Hedley Bull and the Constructivists.

Analysis of the role of prosecutor, the concept of complementary to national criminal jurisdiction, specialization and admissibility contributes to an explanation of the role that the court will play, and the relation between the court and the national courts. This is particularly important when the ICC will deal with a case under the jurisdiction of these national courts. We can draw from this analysis an appreciation of the extent that the work of the court will be considered an erosion to the role of the national legal system, and consequently to the role of the state.

### **Conclusion:**

The signing of the Rome Treaty and the establishment of the International Criminal Court indicates that the development of international relations after the Second World War, specifically after the Cold War has come to an end, has given the opportunity to the international community to establish this body.

This development occurred at a period of transition from an anarchic "International Society" which recognized as a competition between the states. To a "World Community" which lacks superior authority but ruled by common standards which privilege individual rights and protection of their interests. This is the principal factor that explains why the Rome Treaty was signed at that time.

Being separate and independent from the United Nations and its various bodies - specifically the Security Council - and the expanded authorities of the prosecutor to initiate investigations, provides hope that this international body is removed from the political dominance of powerful countries.

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The concept of complementary to national criminal jurisdiction is an indicator that the work of this court will not greatly decrease the role of states. Nevertheless, it cannot be ignored that establishing such an international body reveals the conflict between sovereignty and human rights. Consequently, the definition of State Sovereignty takes primarily into account human rights – specifically sovereignty of individuals.

What is really emphasized here is that establishing the ICC involves an attempt to redefine the principle of sovereignty to give more attention to the issue of individual rights.