

## Controls on international criminal accountability for international environmental crimes

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### Abstract

This study came from the premise that what we see today of unjustified damage to the environment during armed conflicts requires research into the problem of what is the status of crimes against the environment during armed conflicts of international crimes, and to which of them they belong, and what is the effectiveness of the International Criminal Court in addressing the accountability of the perpetrators of these crimes in accordance with the rules of international criminal accountability? The study concluded that The International Criminal Court (ICC) has settled the controversy over the legal adaptation of environmental crimes by its decision issued at the beginning of September 2016, where the court announced that it will begin classifying crimes that lead to environmental destruction, land misuse, and illegal land ownership as crimes against humanity. The study recommended that the international community should include environmental crimes within the jurisdiction of the International Criminal Court explicitly in the text, whether by making it a fifth jurisdiction of the Court, or as a crime against humanity as stated in the Court's decision issued at the beginning of September 2016.

**Keywords:** International criminal question, International environmental crimes, International criminal court

### Introduction

Conflicts over the last decade have led to increased attention to accountability for international crimes such as genocide, crimes against humanity, serious human rights violations and environmental crimes. Naturally, and these crimes are generally characterized by their scope and impact, and therefore the purposes of accountability for these crimes are somewhat different from the purposes of accountability common criminals (Finell, 2002).

She clarified Environmental crime is one of the most dangerous forms of organized crime, they are a threat to the future of man and the sustainability of life. Serious about any other terrorist crimes. lose The British newspaper "The Times" had published a report on private companies During the U.S. occupation of Iraq, Its mission is waste recycling operating inside U.S. bases. I deliberately mixed up This waste The report stated that US forces left about (10) million kilograms of hazardous waste, and

worked to dispose of (14,500) tons of oil and contaminated soil. as The U.S. side disposed of toxic materials by landfilling them at local sites instead of sending them to the United States, and the number of toxic waste towards 11 million pounds caused outbreaks of disease and serious environmental damage (Kazem, 2019).

Where the Statute of the International Criminal Court was adopted in Rome, Italy, on July 17, 1998, and it entered into force on the first of July 2002 after the deposit of the sixtieth ratification necessary for its entry into force, and the aim of establishing an International Criminal Court is to grant it jurisdiction over serious crimes of concern to the international community, and the system of the International Criminal Court is based on the principle of individual responsibility, and international responsibility for international crimes, as there is no doubt that there are some dangerous acts that cannot be approved. The Statute of the Court was keen to emphasize this concept, stating: "The criminal responsibility of

individuals does not affect the responsibility of states in accordance with international law (Article 25/4). Although the objective of establishing the International Criminal Court (ICC) was not primarily directed at prosecuting perpetrators of environmental war crimes, the Court's 1998 Statute referred to some crimes of an environmental nature, especially in Article VIII, which stipulates that the Court has jurisdiction over war crimes, particularly within the framework of a plan or policy, or in the context of a large-scale commission of these crimes. The second paragraph of this Article that some crimes are grave breaches of the four Geneva Conventions of 1949, and also constitute war crimes, the text referred to biological experiments, and intentionally causing severe suffering or serious harm to the body or health. The 1998 Statute of the International Criminal Court stipulates that, with regard to environmental damage, the Statute is as follows: For the purpose of this Statute, war crimes mean: "intentionally launching an attack with the knowledge that such an attack would result in consequential loss of life, civilian injury, civilian harm, or widespread, long-term and severe damage to the natural environment that is manifestly excessive in relation to the totality of the concrete and direct anticipated military gains".

The importance of this research lies in the fact that the subject of international criminal accountability for international environmental crime is the subject of the hour and is constantly on the carpet of international forums, the number of international and non-international armed conflicts has increased significantly, especially at the present time, so that the environment, and the destruction and pollution of the hour, has become the subject of the hour, so it has become necessary to subject this crime to the provisions of the International Criminal Court. However, given the gravity of the effects of an attack on the environment, which is an attack on man himself and destroys the necessities of life, we try to single it out as an independent international crime, whether committed in time of peace or war, and in accordance with the general provisions of international criminal law. As a reflection of what we see today of unjustified damage to the environment during armed conflicts, as a result of the development of weapons and their frequent use in these conflicts, especially what has happened and is happening in many of our Arab countries, the problem of this study

lies in showing what is the location of crimes against the environment during armed conflicts of international crimes, and to which of them they belong, and the effectiveness of the International Criminal Court in addressing the accountability of the perpetrators of these crimes in accordance with the rules of accountability. International Criminal Court?

A number of sub-questions arise from this problem:

1. Does international criminal justice play its role in prosecuting perpetrators of international environmental crimes?
2. To which class of international crimes do crimes against the environment during armed conflict belong?
3. Are there mechanisms to hold perpetrators of these crimes accountable and punish them? What are the impediments to the implementation of such accountability?

## Literature Review

### The first topic

#### The role of the international criminal court in holding perpetrators of environmental crimes accountable

Environmental crimes are often committed in wartime in the context of war crimes and other crimes against humanity, and expanding the scope of ICC crimes would also send a strong message to national states pressuring them to adopt their domestic legislation. The ICC has already proven to have a significant impact in encouraging a number of States to harmonize their national criminal justice systems with the Rome Statute and to participate in international criminal prosecutions (Rauxloh, 2011). In the following, we will present the importance of this system in the process of holding the Criminal Court accountable for perpetrators of environmental crimes, according to the following demands:

### First requirement

#### Legal adaptation of environmental crimes in accordance with the statute of the court

The jurisdiction of the International Criminal Court in terms of subject matter according to Article 5 of the

Court's Statute of 1998 includes four international crimes: genocide, crimes against humanity, war crimes, and crimes of aggression. The author of the Statute of the International Criminal Court and the enumeration of crimes within the Court's substantive jurisdiction finds that they are competent to consider environmental crimes, sometimes on the basis that they are war crimes, at other times on the basis that they are genocide, crimes against humanity, and finally as a crime of aggression (Jarrah, 2025).

The question then arises of the legal adaptation of environmental crimes, or in other words, are environmental crimes considered genocide, war crimes, crimes against humanity, or a crime of aggression?

The answer to this question necessarily requires us to examine articles (6-8) of the Statute of the International Criminal Court, which define the concept of crimes within its international jurisdiction and the extent to which environmental crimes can be considered among the crimes that fall within them, and this will be according to the following branches:

### 1- Characterization of environmental crimes as war crimes

The International Criminal Court is competent to try environmental crimes on the basis that they are war crimes, which is derived from the text of Article (8/b) of the Statute of the Court, which states: "It is considered a war crime: intentionally launching an attack knowing that such attack will result in widespread, long-term and severe damage to the natural environment", this text is a clear dedication to criminalizing attacks on the natural environment, as an attack that is intended, or expected to cause significant damage to the natural environment, is considered an environmental crime. Falls within the scope of war crimes (Ibrahim, 2018), and this text looks very similar to the text of Article (35/3) and Article (55) of the First Additional Protocol of 1977 to the Geneva Conventions of 1949, where the latter criminalizes the use of means of warfare methods that are intended or may be expected to cause serious damage to the natural environment, as well as Article (8/b/9) of the Statute of the International Criminal Court on environmental crimes as war crimes as follows: "Deliberately directing attacks against buildings designated for religious, educational or

artistic purposes, historical monuments, hospitals and places where the sick and wounded gather," this text is a consecration of environmental crime, as it expresses the violation of the rules for the protection of the cultural environment and the built environment (Maash, 2017).

The Statute of the Court also criminalizes attacks on the constructed environment and its definition as a war crime in Article (8/A/4) thereof, where it stipulates that: "Causing widespread destruction and seizure of property without justifying military necessity and in violation of the law and in a frivolous manner", this criminalization is also found in Article (50) of the First Geneva Convention, which considers the destruction or unlawful seizure of property, and on a large scale not justified by military necessities as a breach. The Grave of IHL (Graff, 2019).

### 2- Characterization of environmental crimes as crimes of genocide or crimes against humanity

The International Criminal Court is competent to consider environmental crimes as crimes of genocide or crimes against humanity, as according to Article 6 of the Statute of the Court, it is stipulated that genocide means: "any act committed with the intention of destroying a national, ethnic, racial or religious group as such, in whole or in part, including: (a) killing members of the group (c) deliberately subjecting the group to living conditions intended to destroy it in whole or in part." As well as the text of Article (7) of the Statute of the Court, which states: "A crime against humanity shall be considered one of the following acts, when committed in a broad or systematic manner against any civilian population and with knowledge of the attack: (a) murder, extermination, torture, rape and (k) other inhumane acts of a similar nature which intentionally cause great suffering or serious harm to the body or mental or physical health."

These two texts, although their author has singled them out for the crime of genocide and crimes against humanity, but we can rely on them to criminalize attacks on the environment, as killing has many ways and means, including the destruction of materials that are indispensable for the survival of the civilian population, which leads to certain death, this act is considered an environmental crime in itself, and its prohibition was stipulated in Article (54) of the First

Additional Protocol of 1977 to the Geneva Conventions of 1949 (Makhzoumi, 2008).

Environmental pollution crimes are also considered genocide and therefore fall within the jurisdiction of the International Criminal Court if the purpose of pollution is total or partial destruction of a national, ethnic or national group through pollution of the environment in which they inhabit, for example, the release of weapons with dangerous radiation that lead to environmental pollution, and thus the total or partial destruction of the target group of the crime. Moreover, causing serious damage to the environment can lead to This causes the destruction of part of the population, in addition to being an inhumane act that causes severe suffering and serious harm to the body and physical health, so the destruction of the environment is considered a crime of genocide (Jarrah et al., 2025).

### 3- Adaptation of environmental crimes as a crime of aggression

The crime of aggression is the fourth crime within the jurisdiction of the International Criminal Court, and it is stipulated in the first paragraph of Article V (5) of the Statute of the Court relating to the Court's *ratione materiae*. However, this crime is not defined and defined within the articles of the Statute, but only stipulates that the Court exercises its jurisdiction over the crime of aggression when it is defined and included in the Law under Articles 121 and 123 thereof relating to the amendment, although there is a definition of the International Law Commission according to the Assembly's resolution. United Nations General No. (3314) issued on 14/12/1974, where the first article of which states that aggression is the use of armed force by one state against the sovereignty, territorial integrity or political independence of another state or in any way inconsistent with the Charter of the United Nations (El-Desouky, 2017). Indeed, it was agreed to define the concept of the crime of aggression at the thirteenth session of the Review Conference of the International Criminal Court on June 11, 2010, where the Conference decided to delete paragraph (2) of Article (5), and to add Article (8 bis) to the Statute, thus becoming the crime of aggression is: "A person, who is in a position to actually control the political or military action of the State, or to direct such action, plans, prepares, initiates or carries out an act of

aggression which, by virtue of its nature and gravity, constitutes Its scope is a clear violation of the Charter of the United Nations."

What interests us in this regard is the compatibility of the crime of aggression with environmental crimes, and here we say that the link between the crime of aggression and environmental crime is rather weak compared to the rest of the international crimes stipulated in the Statute of the International Criminal Court, and the reason for this is that the crime of aggression by its nature is an initial stage for the outbreak of international armed conflict, unlike other crimes, which are in advanced stages of fighting, but this does not mean that there is no link between aggression and environmental crime, which is What we conclude from the second paragraph of Article (8 bis) of the Statute of the Court in enumerating the acts constituting the crime of aggression, where we find among those acts: "the invasion or attack on the territory of another State by the armed forces of another State", as well as "the bombing of the territory of another State by the armed forces of another State, or the use by one State of any weapons against the territory of another State", These acts often target vital installations containing dangerous forces and the infrastructure of the aggressed State, These acts thus constitute environmental crimes under this Statute, as well as under the four Geneva Conventions and their Protocols (Ibrahim, 2018).

### The position of the international criminal court on this adaptation.

In this regard, we recall that the International Criminal Court has settled the controversy surrounding the legal adaptation of environmental crimes, by virtue of its decision issued at the beginning of September 2016, where it was announced that the jurisdiction of the International Criminal Court was extended to include crimes that affect the environment and constitute its destruction, and that was by the International Criminal Court announcing that it will begin to classify crimes that lead to the destruction of the environment, land misuse, and illegal land ownership from its owners as crimes against humanity ( Ambos, 2018).with regard to the crimes of land appropriation that the International Criminal Court has annexed to its jurisdiction, these crimes are committed by private



investment companies, with the support and facilitation of governments, which has led to the confiscation of many lands over the past years, in addition to the displacement of thousands of people and the commission of cultural genocide against the indigenous communities of those lands. Among the cases that are expected to be heard by the ICC after the expansion of its powers is that brought by counsel "Richard Rogers" in 2014 on behalf of (10) Cambodian citizens who claim that private sector companies in the country, in collusion with the government, have committed environmental crimes that have led to the confiscation of the lands of approximately (250) thousand people since 2002, and this lawsuit, if considered by the court, is expected to constitute the first case to be discussed in the Hague Court from the perspective of environmental crimes classified as crimes against humanity (Maash, 2017).

In addition, there are many lawsuits and files that are awaiting the court's admissibility, including those filed by the Palestinian Authority in 2015 to investigate the settlement work carried out by the Zionist entity, and the subsequent environmental crimes such as confiscating agricultural land, draining and poisoning spring water, and uprooting trees, especially perennial olive trees (Ibrahim, 2018).

Therefore, we conclude that this decision by the International Criminal Court to consider environmental crimes as crimes against humanity constitutes a qualitative leap in the field of international environmental justice, as it allows violators of environmental crimes to be punished before the International Criminal Court without regard to the immunity of any of them.

## Second requirement

### Mechanism of the international criminal court in accountability for environmental crime

The International Criminal Court has indicted more than forty people, all from African countries, whose first referral was made by the UN Security Council in 2005 for crimes committed in Sudan's Darfur region. This was followed in 2011 by the referral of the Libya file. In addition, the Office of the Prosecutor opened investigations on its own in Kenya in 2010, Ivory

Coast in 2011, Georgia in 2016 and Burundi in 2017. Preliminary investigations have been opened in Ten other countries, including Afghanistan, Colombia and Myanmar.

The process of accountability for environmental crimes within the framework of the International Criminal Court begins with the referral of the crime file to the court, then the initiation of the necessary investigations to prove the accusation and limit the list of accused, and then, as the last stage, comes the trial and the determination of responsibility (Girault & Gravelet, 1999).

This is what will be explained in several branches as follows:

#### 1- Referral to the court

Article 13 of the Statute of the International Criminal Court specifies how to exercise its jurisdiction through the so-called referral mechanism (Article 13), and this power is exercised by each of the States Parties in the event that it appears to them that one or more crimes have been committed, requesting the Prosecutor to investigate to charge one or more persons for committing a crime within the jurisdiction of the Court, provided that they provide the Prosecutor with all the documents available to them to support Claim.

The Prosecutor may also initiate investigations personally if he learns of the crime on the basis that he has information relating to a crime within the jurisdiction of the Court (Atlem, 2012); he analyses the seriousness of the information he has received, and he may request additional information from States, United Nations organs, international organizations or any other sources. Crime investigation.

Thus, the Prosecutor may, in application of Article 15 of the Statute of the Court, initiate the opening of an investigation on his own, even in the absence of a referral from a State party, non-party, or even the Security Council. However, before opening an investigation, the Prosecutor must submit to the Pre-Trial Chamber (article 15 of the Statute of the Tribunal) and obtain authorization, by voting, where a majority vote (at least two to three judges) is required.

The referral could also be by the Security Council by virtue of a resolution issued in accordance with Chapter VII of the Charter of the United Nations, which is the only case in which the Court grants universal jurisdiction that is compulsory over all States, including those that have not ratified the Statute.

## 2- Investigation and trial procedures

Upon receipt of the referral or acting on his own initiative, the Prosecutor shall initiate an investigation into the request for referral and evidence, unless he determines that there is no reasonable basis for initiating the investigative proceedings (Girault & Gravelet, 1999; Rahimian et al., 2025; Dikme. 2021).

If the Prosecutor considers that the evidence presented and obtained is sufficient to initiate the case, he shall apply to the Pre-Trial Chamber to conduct the investigation, and if it agrees, the Prosecutor shall expand the investigation and shall take all appropriate measures to ensure the effectiveness of the investigation (Article 14).

The trial sessions are then held in public unless otherwise necessary, such as in relation to the protection of confidential or sensitive information, and at the commencement of the trial, the Trial Chamber shall read out the charges adopted by the Pre-Trial Chamber against the accused, taking care to ensure that the accused understands their content and nature while guaranteeing all his rights.

The Prosecutor then delivers an opening statement, witnesses for the prosecution and evidence are presented, after which the defense of the accused makes an opening statement, and witnesses on his behalf and exculpatory evidence are presented to refute the charges of the Public Prosecution "The Prosecutor".

The court may order the summons of witnesses, testify, documents, etc., the court may request the prosecutor to produce new evidence with the burden of proving it, maintain order during the trial and ensure a complete record of the trial.

## 3- Pronouncement of judgment

The judgement of the Trial Chamber shall be

rendered in public session, shall be in writing and analysed, shall indicate whether it has been rendered unanimously or by majority, in which case it shall include the views of the majority and minority, and the pronouncement or summary thereof shall be pronounced in public session. In principle, the procedural system of customary law does not provide for the possibility of judgement par contumace.

The absence of the accused leads to a paralysis of the proceedings before the International Criminal Court.

Therefore, for this reason, France has proposed that the Statute of the Court include a provision allowing the Court to pronounce the task entrusted to it despite the deliberate absence of the accused. In order not to violate the right to a fair process, the accused is sentenced again in the event of arrest.

Unfortunately, the Statute of the Court does not adopt this solution and, in order to judge a person, must necessarily be present (Article 63.1: The accused must be present at his case).

The court may issue a direct order to the convicted person who has been found guilty of the charges against him, specifying reparations, in addition to issuing judgments imposing penalties on the offender.

## The second topic

### Assessing the role of the international criminal court in accountability for environmental crimes

Assessing the role of the International Criminal Court in deterring environmental perpetrators is a summary of everything we have said about environmental crimes, and the role of the International Criminal Court in holding them accountable, so we will address this element in two parts: the first is theoretical, in which we address the most important criticisms directed at the Court, and the second is applied, which is a projection of those criticisms on some cases of international environmental crimes that the world still hopes that the perpetrators will be punished for that.

All this will be through the following two requirements:

### First requirement

## Statute's inadequacy in achieving accountability

The concern and apprehension about the effectiveness of this new judiciary is evident through the detailed examination of cooperation measures or implementation mechanisms. While Article 86 of the Statute of the Court imposes on the States parties to the Convention establishing the Court a general obligation to cooperate, it must be noted that the Statutes adopted for the International Criminal Court do not have any binding force vis-à-vis States that have not signed the Convention. Since the entry into force of the Statute of the Court, the positions of analysts have varied in their readings of the provisions of the Statute on the one hand, and cases have begun to be raised on the international arena regarding those responsible for violating international criminal law with impunity so far, in addition to the positions of some countries opposed to the establishment of the Court, and obstructing its work with the influence it enjoys, all of this made the shares of criticism go to the effectiveness of this Court in accountability (Makhzoumi, 2008).

### First: Criticisms of the court's jurisdiction:

#### 1 Lack of comprehensiveness of *ratione materiae* over all environmental crimes:

Despite the progress made by the Statute of the Court in the field of criminalization, and the introduction of some international crimes, it did not include criminalizing the use of weapons with indiscriminate effects on humans and the environment alike, because by criminalizing them, it is forbidden to use weapons of mass destruction and new weapons used today by major countries in their wars, such as white phosphorus bombs and depleted uranium used by the United States of America in its war on Iraq in 2003, as well as Israel in its war on Lebanon in the summer of 2006 and its aggression at the end of 2008 and 2009 on Gaza (Graff, 2019; Abbas et al., 2024).

**2 Neglect of environmental crimes occurring before the entry into force of the statute:** The Statute of the International Criminal Court was criticized in terms of temporal jurisdiction, as it does not have a mechanism that enables it to go back to the past in order to follow up on crimes committed before its entry into force, and in this context we recall the intervention of Professor "Harvey Cassin" before the

French Senate in 1999, where he addressed the issue, considering that the provision that the Court does not apply its jurisdiction over international crimes occurring before the entry into force of its own system, is politically embarrassing as It enshrines an implicit recognition of the failure of the Security Council to do its part to prevent such crimes (Choi, 2008).

In addition, there is the text of Article 24 of the Statute of the International Criminal Court, which contradicts the jurisprudential trend that determines the time of commission of a crime by the time of its results, thus limiting the Court's jurisdiction to continuing crimes, which are the main feature of environmental crimes, by stipulating the phrase: "A person shall not be criminally liable under this Statute for conduct prior to the entry into force".

**Second: criticism of the mechanism of initiating the case:** The attribution of international criminal responsibility to the individual, and his submission to appear before an international criminal court, as well as the recognition of his right to defend his interests as a victim in international crime, is an additional argument to emphasize the international status that the individual has become, and jurisprudence has defended the idea of the individual's right to resort to international justice by saying: "If international justice is dedicated to the prosecution of individuals, they must in return have the right to claim before it" (Al-Anani, 2014; Farooq et al., 2010).

We conclude that if we refer to the significance of the establishment of the International Criminal Court, we find that it is the protection of peoples from international crimes, and the focus of protection is the human being, but we find that the Statute of the International Criminal Court has obscured the role of the individual in initiating proceedings at the level of the Court, and limited it only to States, the Prosecutor of the International Criminal Court and the Security Council.

**1 Inability of the court in the event of non-international cooperation:** The obligation established by the Rome Statute to cooperate with the Criminal Court can only be considered a formal obligation, as this statute did not include the provision of any actual penalty that could be imposed on the State Party refusing to cooperate to enable the

Court to be held accountable for environmental crimes, and only stipulated in Article (87/1) thereof the procedures for requesting international cooperation with the Court, and in accordance with what is established in international jurisprudence and custom about the violation of obligations by a State Party. As a result of its accession to a multilateral international agreement, other countries may freeze their membership as a form of pressure, but can this pressure be useful for the state to refrain from violating its obligations? In this case, it is as if we are asking the following question: Is freezing membership in an international treaty useful as a means of pressuring a state party to it that originally wants to evade it? The answer will inevitably be no, and even if the ICC returns to the Security Council as another measure and the Security Council uses force to force the state to cooperate under a regulation, will we reach actual participation and cooperation? The answer is also no.

**2 Criticism of the possibility of deferring accountability:** The possibility of the Security Council postponing the process of prosecuting perpetrators of environmental crimes is considered the negative role of the UN Security Council regarding issues of international crimes in general and environmental crimes in particular, as under Article (16) of the Statute of the International Criminal Court, the Security Council can take a decision to postpone consideration of a case, at any stage, whether at the beginning of the investigation or trial, for a period of (12) months, renewable for unlimited times, based on a decision issued by the Council. Under Chapter VII of the Charter of the United Nations. This negative role was the subject of severe disagreement between the delegations participating in the Rome Conference, led by international human rights organizations, which expressed their fear of the principle of power politics that govern the Court's work system, and in this regard we say that the expression of Prof. Dr. "Hazem Muhammad Atlam" is the best expression of the bad authority when he said: "It is the authority of the Security Council to assassinate allegations submitted to the International Criminal Court."

## Second requirement

### Court's failure to hold perpetrators of environmental crimes accountable

We will devote this requirement to analyzing the possibility of prosecuting the criminals of the United States of America, Britain and Israel, who committed international crimes against the environment, and reaching the failure of the court to hold the most important cases of environmental crimes accountable.

### First: The court's failure to hold the perpetrators of environmental crimes accountable in Iraq:

British and American forces committed several environmental crimes during their war on Iraq - as we mentioned above - and if the responsibility of the two countries is irreproachable for these crimes, the possibility of prosecuting those responsible is the problematic that arises.

### 1 Reasons for not holding British criminals accountable:

Global and actual attention to the need to take action against American and British practices in Iraq began after the publication of "shameful" images of torture in Iraqi prisons, not to mention the environmental crimes committed by American and British forces, where it became necessary to activate the mechanism of the International Criminal Court to put an end to these crimes.

Referring to Britain's position towards the International Criminal Court, we find that it was the first to ratify the Statute of the Court, that is, it is subject to its provisions, and then criminals with British nationality are tried before this Court, according to Article (12/2/b) of the Statute of the Court. However, in practice, we find that Britain is not ready to cooperate with the court, such as providing evidence, or testimonies incriminating its soldiers or commanders, as it is clear that it has no intention of submitting to the court, as evidenced by the British Prime Minister's denial - with living evidence - of the involvement of British soldiers in these crimes. However, we find that the jurisdiction of the Court still exists, even with the lack of cooperation of Britain, according to the provisions of Article (17) of the Law, in particular paragraph (2/"b" and "c"), which stipulates that the jurisdiction of the Court is held if the State with the original jurisdiction is unwilling to exercise it, and this is evidenced by the State's failure to take any action to bring the accused to justice, or the occurrence of unjustified delay in the proceedings contrary to the intention to bring persons to trial. Despite all this, To date, the STL



initiates any action that demonstrates its intention to hold British soldiers accountable for environmental crimes committed in Iraq (Mashhadani, 2014).

**2 Reasons for not holding American criminals accountable:** Referring to American practices towards the Criminal Court, and before analyzing the possibility of prosecuting the perpetrators of international crimes in Iraq, we find that the United States of America did not ratify the Statute of the Court, but rather embarked on a global campaign against it, which began by threatening the Security Council to withdraw its peacekeeping missions, as well as not paying the financial share prescribed for this operation, estimated at (25%), unless this Council issues a resolution immunizing its soldiers from follow-up before the Court. At this point, we find that the Security Council, with the complicity of China and Russia, actually issued a resolution under Chapter VII of the Charter of the United Nations exempting all Americans from appearing before the International Criminal Court for a period of (12) months (2003-2004), after which this decision was extended.

From a legal and scientific point of view, we find that the International Criminal Court is not competent to punish the criminals of the United States of America, for several reasons, the most important of which is that the United States of America is not considered a party to the Statute of the Court because it did not ratify it, as well as the issuance of the Security Council resolution granting immunity to soldiers of the military forces of the United States of America.

Even if we assume that the Prosecutor has initiated investigations himself under Articles (13 and 15) of the Statute of the Court, what is expected is that the United States will pressure the Security Council to issue an order to postpone the investigation under Article (16) of the Statute, and therefore it seems clear that the trial of US soldiers, led by the then Secretary of Defense Donald Rumsfeld, who claimed full responsibility for what happened in Iraq, is not possible at least for the time being.

**Second: The Court's failure to hold accountable the perpetrators of environmental crimes Palestine:** in We mean here the crimes of the Zionist entity, which soon stepped on the Palestinian territories until it began to commit all kinds of

international crimes, including environmental crimes, as we have already pointed out, and it is obvious that Israel was the first to reject the Statute of the Court, as it sought in consultations to prepare it not to include settlements among the war crimes, and by failing to do so, its position against the Court increased, and therefore Israel's position towards The Court is the status of a non-party State.

If there is no doubt that the environmental crimes committed by Israel in Palestine, especially its aggression against Gaza in 2008 and 2009, are international crimes, the question arises about the possibility of accountability for these crimes?

We have already said that the jurisdiction of the International Criminal Court vis-à-vis a non-party state is convened in one of two ways, either by the non-party state's acceptance of the court's jurisdiction or by the Security Council referring the case to the court. If Israel's acceptance of the Court is hopeless, the hypothesis that the Security Council refers one of Israel's crimes to the Court is determined by the position of the United States of America regarding Israel's aggression against the Court. Gaza in 2008-2009, as although the Security Council adapts the aggression as a threat to international peace and security calls for referral to the International Criminal Court to prosecute the perpetrators of international crimes against civilians and property protected by internationally prohibited weapons, but twelve days after the aggression the Security Council issued a resolution under the number (1860) for a ceasefire and the immediate withdrawal of Israeli forces from Gaza, and of course without a vote of the United States of America, if this abstention was issued regarding a resolution under Chapter VI of the Charter of the United Nations, so how about if it is under Chapter VII of the Charter? Had that happened, Israel's enduring ally, followed by France and Britain, would have all vetoed it at the same time.

While the last option to pursue the criminals of the Zionist entity remained the Prosecutor to hold him accountable himself under Article 13 and Article 15 of the Court's Statute, we find this - especially in the case of Israel - not possible in two respects:

The first is from the statement of Prosecutor Luis Moreno Ocampo to the New York Times on April 2,

2006, where he said: "I am a prosecutor

This statement indicates the limited capabilities of the Court in activating its work through this mechanism; for not finding sufficient support and the necessary capabilities from states; to exercise its functions well; to refer the case to the Court, on the one hand, and on the other hand, there is the Security

Council under the auspices of the United States of America to obstruct accountability by abusing its power to postpone the investigation under a resolution based on Chapter VII of the Charter of the United Nations based on Article 16 of the Statute of the International Criminal Court.

### Findings and recommendations

The study described what man commits against the environment in times of armed conflicts as international environmental crimes, which must be legalized and punished for their commission, and the idea of legalization and punishment put forward another idea that is the basis of international protection of the environment, which is the idea of international criminal accountability for international environmental crimes.

The main findings and recommendations of this study are as follows:

#### First: the results of the study.

1. The study showed that the four Geneva Conventions of 1949 include an article that describes acts of widespread destruction as a grave violation of the provisions of this Convention, if these acts are not justified as a military necessity, and in fact the destruction of environmental elements and components often comes widespread during armed conflicts, causing damage that appears clearly and directly during military operations.
2. The study showed the provisions of violating the international rules for the international humanitarian protection of the environment during armed conflicts within the framework of international humanitarian law and international criminal law, in terms of the provisions of international criminal

responsibility for damage to the environment during armed conflicts.

3. The study showed that the International Criminal Court has settled the controversy surrounding the legal adaptation of environmental crimes, according to its decision issued at the beginning of September 2016, where it was announced to extend the jurisdiction of the International Criminal Court to include crimes that affect the environment and constitute its destruction, and that the Court announced that it will start classifying crimes that lead to environmental destruction, land misuse, and illegal land ownership from its owners as crimes against humanity. This decision constitutes a qualitative leap in the field of international criminal justice, as it allows violators of environmental crimes to be punished before the International Criminal Court without regard to the immunity of any of them.

#### Second: study recommendations.

1. The exception to the possibility of suspension of investigation or prosecution proceedings should not be made if the Security Council requests the International Criminal Court to suspend proceedings for a renewable period of 12 months, based on Chapter VII of the Charter, with regard to the investigation of environmental crimes due to their gravity; within the jurisdiction of the International Criminal Court.
2. The need to include environmental crimes within the jurisdiction of the International Criminal Court explicitly in the text, whether by making it a fifth jurisdiction of the Court, or as a crime against humanity, as stated in the Court's decision issued at the beginning of September 2016, classifying crimes that lead to environmental destruction, land misuse, and illegal land ownership from its owners as crimes against humanity.
3. Call for the conclusion of a special convention, or at least the issuance of a special protocol, related to the protection of the environment during armed conflicts, by giving importance

to the concerted efforts of the international community to formulate legal rules for the protection of the environment during armed conflicts.

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