

The Hague Invasion Act And International Criminal Justice: The Attitude Of The United States Towards The International Criminal Court (ICC)

Haider Abdulrazaq Hameed

PhD candidate at the College of Law, Government and International Studies, Universiti Utara Malaysia, 06010 UUM Sintok, Kedah Darul Aman, Malaysia. Lecturer at College of Law and Political Science, Diyala University, Iraq.

Nuarrual Hilal bin Md. Dahlan

Associate Professor, College of Law, Government and International Studies, Univeriti Utara Malaysia, 06010 UUM Sintok, Kedah Darul Aman, Malaysia.

Abstract

International Justice is the concern of the international community, and its success and sustainability depends on the acceptance and recognition by the world. However, the interests of the individual country are a major obstacle to ensure its success. A good example of such a country is the USA. Since many serious attempts to establish an international criminal court (IC') after World War II had been made, the USA was supportive of the establishment of an ICC to prosecute the perpetrators of international crimes. Nevertheless, after the establishment of the ICC in 2002 and the achievement of the long awaited dream, it is found that the USA has become one of the strongest opponents of its existence. Thus, the current article will answer the question as to why the USA was against the ICC, given that the ICC is a permanent court and the only platform that carries out the international criminal justice. This paper attempts to prove this as well as to provide solutions to this problem. The methodology adopted in this paper is a doctrinal legal research, this methodology has been chosen the issues examination involved and clarifying ambiguities and placing them in a logical and coherent structure. It is clear that the position of the USA was characterised by its position against the ICC and its serious attempts to influence it. The paper focuses on the issue of the attempt made by the United States to avoid punishing international criminals under its jurisdiction before the ICC. This paper may help the international community to understand the international impunity issues as well as providing solutions to this problem.

Keywords: International Criminal Court (ICC), International Crimes, United States of America (USA), The Hague Invasion Act, International Criminal Justice.

Introduction

In conjunction with the Rome Statute with regard to the establishment of the International Criminal Court which came into effect on July 1st, 2002, the United States of America issued the American Service members' Protection Act (ASPA). This act is also known as 'Hague Invasion Act', named after the city where the International Criminal Court is located. This name derives from the permission given by the aforementioned act to the American President to use military force, if necessary, to free any American citizens being held by the International Criminal Court.¹ This has been chosen as a title for to highlight the size of the opposition shown by the United States against international criminal justice represented by the ICC, Although the position of the United States was supporting the ICC after World War II up to the establishment in 2002. Thus, the current paper will answer the question as to why the USA was against the ICC, given that the ICC is a permanent court and the only platform that carries out the international criminal justice. This paper attempts to prove this as well as to provide solutions to this problem.

Research Methodology

This paper contains a doctrinal legal research on the legal issues involved in the quest to understand the reality of the position of the USA against international justice represented by the ICC for supporting international criminals' escape from punishment for their actions committed against innocent people on personal interests. In this paper, the data for analysis are drawn from primary sources such as international and regional treaties, UN resolutions, statutes of the International Criminal Court, the domestic laws and international documents and non-governmental organisations such as Amnesty International. Secondary sources obtained from books, articles, publications and internet sources will be referred to as well. The rationale for the choice of this methodology is

¹ Article 2008 of the American Servicemembers Protection Act (ASPA).

underpinned by the fact that the issues involved require clarifying ambiguities and placing them in a logical and coherent structure which can only be effectively carried out by a doctrinal approach.¹

The present paper discusses the position of the United States before the establishment of the ICC as well as its position after the establishment of the ICC.

(1) The position of the USA before the establishment of the ICC

After the victory of the USA in World War II, The USA at this stage supporter of international justice, through its participation in the establishment of the Nuremberg and Tokyo trials and it joined the international conventions relating to international crimes.

After the end of World War II, some of the leaders of the victorious countries suggested to execute the Nazi military leaders;² however, the United States did not agree to this proposal and insisted that there would be no peace unless there is an International court to prosecute those perpetrators before it for violating the norms of international law.³ Furthermore, the American judge, Robert Jackson,⁴ at the London meeting in 1945, presented a project of international convention to establish an international court for the prosecution of defeated Europeans in war⁵ commissioned by President Truman.⁶ Accordingly, established the Nuremberg Tribunal.⁷ In November 21, 1945 Jackson face of the Nazi leaders accused of committing war of aggression and crimes against peace.⁸

Following the success of the Nuremberg Tribunal, the Commander in Chief of allied forces in the far East, the American General Douglas MacArthur, made a special declaration to create an international military court in Tokyo to prosecute war criminals in the far East.⁹ The United States contributed to the Tokyo Court not only General MacArthur as Supreme Commander of the Allied powers, but through the choice of US Judge John Hganx as a member of the court in addition to the choice of the US representative Joseph caiman procurator in this court.¹⁰

After the Nuremberg and Tokyo trials, the United States joined international conventions criminalising serious acts and considering them international crimes namely:¹¹ The Convention on the Prevention and Punishment of the Crime of Genocide in 1948,¹² Geneva Conventions in 1949,¹³ The Covenant on Civil and Political Rights in 1966,¹⁴ The Convention on Racial Discrimination in 1965,¹⁵ The Convention against Torture in 1984.¹⁶ Perhaps

¹ Paul Chynoweth, 'Legal research' (2008) *Advanced Research Methods in the Built Environment*, Wiley-Blackwell, Oxford 28,38.

² Britain and the former Soviet Union have provided evidence to execute enemy leaders.

Vijay Padmanabhan, 'From Rome to Kampala: The U.S. Approach to the 2010 International Criminal Court Review Conference' No. 55, (New York: Council on Foreign Relations(CFR), 2010), 6.

³ Azza Kamel Almaqhur, 'The United States and the International Criminal Court,' the website of the Ministry of Justice – State of Libya, <http://aladel.gov.ly/home/?p=1566> (Accessed April 4, 2016).

⁴ He is one of the judges of the Supreme Court of the United States, and he represented his country at Nuremberg Court as the United States Attorney General (A.G). See Mohamed Mohyideen Awad, 'Studies in International Criminal Law' (1965) *Journal of Law and Economics* 2 206.

⁵ Ibid, 205.

⁶ Khiaati Mukhtar, 'The role of the international criminal justice in the protection of human rights,' (Master Thesis, University Mouloud Mammeri Tizi Ouzou, 2011) , 70.

⁷ Nuremberg is a German city, she was also the headquarters of the Nazi party. Hameed Al-Saadi, *Introduction to the study of international criminal law* (Baghdad: Knowledge Press, 1971), 339.

⁸ Ibid., 399.

⁹ Ali Abdul-Qadir Qahwaji, *International Criminal Law* (Lebanon: Al-Halabi Legal Publications, 2001), 261.

¹⁰ Awad, 'Studies in International Criminal Law,' 240-241.

¹¹ In contrast, the United States has not ratified the Convention on the Rights of the Child in 1989, and the Convention on Discrimination against Women in 1979. Peter Malanczuk, 'The International Criminal Court Laudmines: What are the Consequences of Leaving the US Behind?' *European Journal of International Law* 11, 1 (2000), www.ejil.org/article.php?artical=522&issue=39. (Accessed April 16, 2016).

¹² The United States signed this Convention on December 11, 1948, and ratified it on November 25, 1988. United Nations website on the link: https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-1&chapter=48lang=en. (accessed May 15, 2016). The delayed ratification of the United States may be because of its responsibility for the acts of genocide against indigenous people, that is, American Indians. Mukhallad Tarawneh, 'International Criminal Justice,' the *Journal of Law* 3, the Twenty-Seventh Year (September 2003): 156.

¹³ The United States signed the first and second Geneva Conventions in August 12, 1949, and ratified them on February 8, 1955. World Intellectual Property Organisation (WIPO). http://www.wipo.int/treaties/en/remarks.jsp?cnty_id=5122c (accessed January 12, 2017).

¹⁴ The United States ratified it in 1992. Malanczuk, 'The International Criminal Court ...'.

¹⁵ The United States ratified it in 1994. Ibid.

¹⁶ The United States ratified it in 1994. Ibid.

most important, the contents of these international agreements is the text on the principle of universal jurisdiction, which reflects the idea that certain serious acts in violation of international law constitute crimes against the entire community regardless of where they occurred or the nationality of the perpetrator and that any country has the right and even the obligation to prosecute.¹

In the area of the United Nations, the USA contributed to a project inviting the International Law Commission to study the issue of establishing an international criminal court on December 9th, 1948.² As well the United States was one of seventeen members of the Committee formed by the United Nations General Assembly on December 5th, 1952, to study the obstacles to the establishment of an international criminal court.³ The USA worked to create special international courts, by the Security Council resolutions, such as the International Criminal Court for the former Yugoslavia in 1993,⁴ and the International Criminal Court for Rwanda in 1994.⁵ There are also hybrid courts such as the Special Court for Sierra Leone in 2000,⁶ Cambodia Court,⁷ and the International Court for Lebanon.⁸ Not only this, the USA participated in a high-level delegation in the United Nations Diplomatic Conference on the establishment of the International Criminal Court for the period from June 15th to July 17th, 1998. which resulted in an agreement in Rome on 17 July, 1998, establishing the ICC.⁹ Furthermore, the United States signed the treaty establishing the ICC a few hours before the legal deadline for the closure of signatures on December 31st, 2000.¹⁰

This shows that the position of the United States during this period was supportive of the establishment of an ICC.

(2) *The position of the United States after the Establishment of the ICC*

The first step taken by the United States against the ICC was on May 6th, 2002, when it withdrew its signature of the Rome Convention establishing the ICC.¹¹ The United States has justified its withdrawal by stating that the ICC will hinder its fight against terrorism on the one hand,¹² and that it wants to protect its citizens working in United Nations peacekeeping operations.¹³

The United States has sought bilateral immunity agreements (BIA) with 101 States to prevent the appearance of its soldiers before the ICC, using its diplomatic methods at times, and threatening to suspend military assistance with countries that refuse to sign it¹⁴ (This point will be discussed later). This was based on the text of Article 98 (2) of the Statute of the ICC.¹⁵ The United States has had agreements with 3 different types of countries:¹ First,

¹ Almaqhur, 'The United States and the International Criminal Court,'.

² World Intellectual Property Organisation.

³ Ibid.

⁴ Security Council, S/RES/808 (1993).

⁵ Security Council, S/RES/955 (1994).

⁶ Security Council, S/RES/1315 (2000).

⁷ Cambodia Court for War Crimes was formed in 2003 under an agreement between the United Nations and Cambodia. General Assembly, A/RES/57/228 (2003).

⁸ Security Council, S/RES/1757 (2007).

⁹ Baria Al-Qudsi, 'The Nature and Jurisdiction of the International Criminal Court and the Position of the United States and Israel on it,' the Damascus University Journal of Economic and Legal Sciences 20, 2 (2004): 149.

¹⁰ Dahmani Abdul Salam, 'The Current Challenges of the International Criminal Court under the Domination of the UN Security Council' (Doctoral Dissertation, Mouloud Mammeri University- Tizi Ouzou, 2012), 205. President Clinton has justified this by saying, 'The signing of the treaty falls within the tradition of American moral leadership in the world.' Abdullah Turkmani, 'The International Criminal Court and the Fear of Justice.' <http://alarabnews.com/alshaab/GIF/16-08-2002/a28.htm> (accessed April 17, 2016). In contrast, the real reason for this signature is that it will enable its country to engage in the Assembly of States parties, and therefore it will have the role it hopes within this new organisation. Wld Yusuf Mouloud, 'The Shifts of International Criminal Justice and their Role in the Protection and Development of the Right to a Just and Fair Trial' (Master thesis, Mouloud Mammeri University- Tizi-Ouzo, 2012), 147.

¹¹ This was based on Article 127 (1) of the Statute of the International Criminal Court. Al-Maqhur, 'The United States and the International Criminal Court', 4. This is not the first time that the United States used such method, prior to this it had withdrawn its consent to the compulsory jurisdiction of the International Court of Justice in 1984, when the verdict against it and in favour of Nicaragua about the US military and paramilitary operations with regard to the planting of bombs in Nicaraguan ports. Abdul Salam, 'The Current Challenges,' 205.

¹² Abdel Fattah Bayoumi Hijazi, *The International Criminal Court* (n.p., 2009), 437.

¹³ Khamasi Hind, 'The International Criminal Court in the Light of the Rome Convention,' *Civilised Dialogue*, 4854 (7/2015), www.ahewer.org/debat/show.art.asp?aid=474570 (accessed May 2, 2016).

¹⁴ ICC, 'Overview of the United States Opposition to the International Criminal Court,' www.iccnw.org (accessed April 20, 2016).

¹⁵ Article 98: (2. the Court may not proceed with a request for surrender which would require the requested State to act inconsistently with its obligations under international agreements pursuant to which the consent of a sending State is required

the United States signed agreements with state parties that were in the system but did not ratify it, such as Israel. Second, the USA signed agreements with states parties to the ICC that also ratified it, such as Romania, Tajikistan and Jordan. Third, an agreement was signed with a State which is not a member of the Court, namely East Timor. All of these agreements had one meaning and objective: the attempt of the United States to achieve impunity for its soldiers. However, the question that arises here is what is the impact of such agreements on the ICC in particular and International Law in General?

Making such conventions lead to the interpretation of Article 98 of the Statute of the ICC is contrary to the general objective of the ICC. These conventions conflict with the intentions of the delegations that participated in the drafting of the court system as they stressed that this article was set to prevent the legal incompatibilities which may happen because of the existing agreements and not to develop new conventions.² Taking into consideration the United States interpretation of Article 98 of the Statute of the ICC indicates the US grant of immunity for its citizens from prosecution by the ICC.³ The question that arises here is if this interpretation had been true, the Statute would not have issued Article 27, which states:

- (1) *'This Statute shall apply equally to all persons without any distinction based on official capacity. In particular, official capacity as a Head of State or Government, a member of a Government or parliament, an elected representative or a government official shall in no case exempt a person from criminal responsibility under this Statute, nor shall it, in and of itself, constitute a ground for reduction of sentence.'*
- (2) *'Immunities or special procedural rules which may attach to the official capacity of a person, whether under national or international law, shall not bar the Court from exercising its jurisdiction over such a person.'*

A good example of this article is the ICC warrants of arrest for current Sudan's President Ahmed Hassan al-Bashir in 2009 and 2010.⁴ The current President of Sudan, al-Bashir accused of committing international crimes by the ICC, after the UN Security Council referred the Darfur case to the ICC⁵ as per Article 13 (b) of the Statute of the ICC.⁶

The manipulation of the text as well as spirit of Article 98 of the Statute of the ICC is incompatible with the text and spirit of Article 31 of the Vienna Convention on the Law of Treaties in 1969, which stipulates that the provisions of the treaties are implemented in good faith so as to give its meaning the dimension required of its topic and purpose.⁷ This was confirmed by the rule of the International Court of Justice (ICJ) in December 20, 1974 on the issue of French nuclear tests.⁸ In this case, Australia and New Zealand have claimed to the ICJ,

to surrender a person of that State to the Court, unless the Court can first obtain the cooperation of the sending State for the giving of consent for the surrender). It is worth mentioning that this article was introduced into the Statute of the International Criminal Court under the pressure of the United States through threatening to significantly reduce the percentage of its contribution to the UN budget, which amounts to 27% of the budget. Faleh Al-Taweel, 'The International Criminal Court and the Hashemite Kingdom Relations with the United States.' <http://www.alrai.com/print.html> (accessed April 18, 2016).

¹ Ziad Itani, *The International Criminal Court and the Development of International Criminal Law* (Lebanon: El-Halabi Legal Publications, 2009), 445-446.

² This was the view of Canada and Germany on Article 98 and its concept, as the meaning is 'The conventions existing at that time' and not any subsequent conventions to find a legal way out of the conflict of the conventions with the Statute. Ibid., 447.

³ Mouloud, 'Shifts of International Criminal Justice,' 152-153.

⁴ ICC, Warrants of Arrest for Omar Hassan Ahmad Al Bashir, (No.: ICC-02/05-01/09 Date: 4 March 2009) and (No.: ICC-02/05-01/09 Date: 12 July 2010), <https://www.icc-cpi.int/darfur/albashir> (accessed January 23, 2017).

⁵ Security Council Resolution S/RES/1593 (2005).

⁶ Article 13:

'The Court may exercise its jurisdiction with respect to a crime referred to in article 5 in accordance with the provisions of this Statute if:

(b) A situation in which one or more of such crimes appears to have been committed is referred to the Prosecutor by the Security Council acting under Chapter VII of the Charter of the United Nations; or'

⁷ Itani, International Criminal Court, 447. The striking, the principle of good faith got a great place in the US laws, for example, mentioned the principle of good faith 50 times in the US Uniform Commercial Code (U.C.C) (2002), and Article 103/2/b defined good faith as:

"Good faith' in the case of a merchant means honesty in fact and the observance of reasonable commercial standards of fair dealing in the trade'.

Raghad AbdulAmeer Madhloom, 'The principle of good faith in carrying out the International Treaties,' *Diyala Journal, No.*

obliging France to halt nuclear tests in the South Pacific; the ICJ decided that the French government implement what it said about the cessation of nuclear tests in good faith.¹

The States that signed such conventions have violated their international obligations as they signed and ratified the International Convention whose obligations are inconsistent with their agreement with the United States.²

This is confirmed by Article 53 of the Vienna Convention as a treaty should be void if it is inconsistent with a commanding rule of general international law at the time it is held.

Through the Security Council, the United States issued a series of decisions that would fight the ICC and cause its lack of jurisdiction against its citizens.

The first was the Security Council resolution 1422 (2002). 12 days after the Statute of the ICC came into force,³ the Security Council issued Resolution 1422⁴ unanimously⁵ with regard to the renewal of the work of UN peacekeepers in Bosnia and Herzegovina. This gave immunity against the investigation of the ICC on the charges against the citizens of the states that did not ratify the Statute of the ICC, the citizens of the United States of America, during their participation in peacekeeping operations⁶ for the 12-month period from the 1st of July 2002, which is renewable.⁷ This decision was based on Article 16 of the Statute of the ICC.⁸ For instance, Mr. Anders Kompas⁹ spoke about peacekeeping forces committing violations in Bosnia and Herzegovina, notably corruption and exploitation.¹⁰

Then the Security Council Resolution 1487 (2003).¹¹ According to the content of paragraph 2 of Resolution 1422, the Security Council issued Resolution 1487 on the 12th of June, 2003, which came into full conformity with Resolution 1422.¹²

64 (2014), <http://www.iasj.net/iasj?func=fulltext&aid=101121> (accessed February 7, 2017).

⁸ UN, Judgments and advisory opinions of the ICJ,

http://www.un.org/ga/search/view_doc.asp?symbol=ST/LEG/SER.F/1/Add.1&referer=/english/&Lang=A (accessed February 9, 2017).

¹ Ibid.

² Ahmed Al-Jubeir, 'The US Bilateral Agreements and their danger to the International Criminal System,' *Civilised Dialogue*, 1977 (7/2007), <http://www.ahewar.org/debat/show.art.asp?aid=102713> (accessed June 1, 2016).

³ The Statute of the ICC came into force on the 1st of July, 2002.

⁴ Security Council, S/RES/1422 (2002).

⁵ This unanimity was a result of the use of the veto by the United States on the 30th of June, 2002, when requesting renewal for peacekeepers in Bosnia and Herzegovina, which is a State party to the Statute of the International Criminal Court, and the threat of using this weapon in all future peacekeeping operations. Furthermore, the United States threatened not to pay the financial portion for peacekeeping operations contributed by the United States, which constitutes 25%. Coalition for the International Criminal Court, *Compilation of Documents on UN Security Council Resolutions 1422/1487*. <http://www.iccnw.org/>. See also: Thaqal Saad El-Ajmi, 'The Security Council and its relationship with the Statute of the International Criminal Court,' *The Journal of Law* the 29th year, 4 (December 2005), 46.

⁶ The first paragraph of the resolution.

⁷ The second paragraph of the resolution.

⁸ Article 16: (No investigation or prosecution may be commenced or proceeded with under this Statute for a period of 12 months after the Security Council, in a resolution adopted under Chapter VII of the Charter of the United Nations, has requested the Court to that effect; that request may be renewed by the Council under the same conditions). In fact, this article was included in the Statute of the International Criminal Court for the purpose of enabling the Security Council to conduct sensitive peace negotiations for a while in some special circumstances. Amnesty International, 'The International Criminal Court: The Security Council must refuse to renew unlawful Resolution 1422,' IOR 40/008/2003.

⁹ He was the director of field operations in the UN Office of the High Commissioner for Human Rights.

¹⁰ Anders Kompas, 'EXCLUSIVE: The ethical failure – Why I resigned from the UN,' *The inside story on emergencies (IRIN)*, Geneva, June 17, 2016, <http://www.irinnews.org/opinion/2016/06/17/exclusive-ethical-failure-%E2%80%93-why-i-resigned-un> (accessed January 24, 2017).

¹¹ Security Council, S/RES/1487 (2003).

¹² It is worth mentioning that Kofi Annan, the UN Secretary General, expressed his fears of this resolution by stating: But allow me to express the hope that this does not become an annual routine. If it did so, I fear the world interpret it as meaning that this Council wished to claim absolute and permanent immunity for people serving in the operations it establishes or authorizes. And if that were to happen, it would undermine not only the authority of the ICC but also the legitimacy of United Nations). In Statement to Security Council, Secretary – General Voices Concerns Over Extending UN Peacekeepers Immunity from ICC Action, Press Release (SG/SM/8749-SC/7790) (June 12, 2003) www.un.org/. Security Council, S/RES/1497 (2003).

Finally, the Security Council resolution 1497 (2003). As a result of the conflict in Liberia, the Security Council adopted Resolution 1497 to create a multinational force to support the implementation of the ceasefire agreement reached.¹ However, what is striking in this resolution is that it exempted these forces from the jurisdiction of the ICC and all the officials and staff involved in the operations established or authorised by the United Nations.² The exemption and immunity from the jurisdiction of the ICC also came absolute, without any time limit. This is contrary to the provisions of Article 16 of the Statute of the ICC and Resolutions 1422 and 1487 that the immunity from the jurisdiction of the ICC will be temporary and limited to 12 months, renewable for a similar period.³

Under the planned US war against 'terrorism', US Senator Jesse Helms and US Representative Tom Delay presented a project to protect American soldiers in 2002.⁴ Actually, the US President, George W. Bush, signed this act on the 2nd of August, 2002.⁵ The most important points made by this Act; is to prevent US cooperation with the ICC.⁶ As well as to ban the US participation in peacekeeping operations unless it gets a guarantee not to expose its soldiers to prosecution in States on whose territory they are present.⁷ To ban confidential information exchange related with national security directly or indirectly with International Criminal Court.⁸ To ban military assistance to states parties to the International Criminal court.⁹ US President authorization to use all possible means to free any US citizen detained by the ICC.¹⁰

According to the provisions of Article 123 (1) of the Statute of the ICC,¹¹ the ICC Review Conference was held in Kampala (Uganda) for the period from 31 May to 11 June 2010 to discuss the review of Article 124 of the Statute, the crime of aggression and the inclusion of the use of certain weapons as war crimes in the context of non-international armed conflicts.¹² The United States has contributed to this Conference as an observer and with a high level delegation.¹³ The US delegation has demanded amendments that would impose further domination and interference in the work of the ICC by the Security Council, but their attempts were faced with strong disapproval and threatened with withdrawing from the Rome Statute if the US delegation insists on the amendments presented.¹⁴ Although the Conference achieved developments in international criminal justice and

¹ Security Council, S/RES/1497 (2003).

² Paragraph 7 of the resolution.

³ Al-Ajami, 'Security Council,' 48-49.

⁴ Coalition for the International Criminal Court, US Congress Passes Anti-ICC 'Hague Invasion Act', www.iccnw.org (accessed April 23, 2016).

⁵ Independent News 'Scoop', US 'Hague Invasion Act Becomes Law,' August 3, 2002, www.scoop.nz/ (accessed April 25, 2016).

⁶ Article 2004 from (ASPA).

⁷ Article 2005 from (ASPA).

⁸ Article 2006 from (ASPA).

⁹ Article 2007 from (ASPA). In 2008, the Congress cancelled the restrictions on military assistance to States parties, which made the United States abandon further efforts to conclude such conventions. Padmanabhan, 'From Rome to Kampala,' 8.

¹⁰ Article 2008 from (ASPA). The response through the US Embassy in the Hague in Netherlands after the Dutch Parliament debate on the subject, was that the Netherlands is an ally of the United States and a NATO member and that resolving this issue should be through diplomatic negotiations to extradite this person, especially as this law has stipulated the use of 'all possible means', including military force, which means that it is possible to solve this issue peacefully. Itani, International Criminal Court, 438.

¹¹ Article 123 (1):

'Seven years after the entry into force of this Statute the Secretary-General of the United Nations shall convene a Review Conference to consider any amendments to this Statute. Such review may include, but is not limited to, the list of crimes contained in article 5. The Conference shall be open to those participating in the Assembly of States Parties and on the same conditions.'

¹² Coalition for the International Criminal Court, The Review Conference of the Rome Statute, questions and answers, www.coalitionfortheicc.org. (accessed April 23, 2016).

¹³ This delegation included both Harold Koh (a professor of the current international law, at the Faculty of Law, Bill University, and the former the Legal Adviser of the Department of State, 2009-2013), and Mr Todd Buchwald (Assistant Legal Adviser for United Nations Department). Next year will be worse: The catastrophic amendments to the International Criminal Court 'for crimes of aggression.' This has been recommended by Vijay Padmanabhan (a visiting assistant professor of law at Yeshive University's Benjamin N. Cardozo School of law). Padmanabhan, 'From Rome to Kampala,' 28. See also, David Kaye, 'The First Review Conference of the Rome Statute of the International Criminal Court,' *The American Society of International Law 14 Issue: 11* (May 14, 2010), <https://www.asil.org> (accessed April 29, 2016).

¹⁴ 34 countries Insisted on withdrawing in the event of approval of the amendments made by the US delegation. Adel Hamzah Othman, 'International Criminal Court between International Legality and American Hegemony,' *Journal of Kufa Legal and Political Science 1, Issue 7* (2010), <http://www.iasj.net/iasj?func=fulltext&ald=61500> (accessed May 3, 2016).

the completion of all aspects of the criminalisation and punishment of the crime of aggression,¹ it contains important protection for the interests of the United States as it is not possible to investigate or prosecute the US officials and military personnel for committing the crime of aggression except with the consent of the United States.²

Conclusion and recommendations

It has become known to all states that the ICC has become a reality. It represents international criminal justice, and opposing it means opposing the rule of law and repudiation of all international obligations to establish justice and punish anyone who commits an international crime.

However, it is noticed that the position of the United States was supportive to the establishment of an ICC before 2002. Nevertheless, its position changed after 2002, especially when the Statute of the ICC entered into force on the 1st of July, 2002, and it became hostile and dismissive to the ICC. In addition, the United States withdrawal of its signature from the Rome Convention establishing the ICC does not justify its opposition to the ICC proceedings according to Article 31 (1) of the Vienna Convention on the Law of Treaties in 1969, which states, '*A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.*'

In addition to that, Article 18 (a) of the same treaty mentioned that the states that signed the treaty should be committed to refraining from actions that disrupt the subject and objective of the treaty. Besides, Security Council resolutions (except Resolution 1497) were violated by Article 16 of the Statute, as it required the delay of the investigation of a certain case threatens international peace and security and for 12 months, as in Resolutions 1422 and 1487 there is no reference to this case.³ In addition, the United States application of American Service Members Protection Act (ASPA) makes it a refuge for criminals accused of committing the most serious crimes against the international community, to the possibility that the protected person is not American but has the nationality of a state that is an ally of the United States if that State requests that or a person enjoys American protection. What happens if the United States does not prosecute them and they were wanted the ICC?⁴

Based on what has been presented, the work of the ICC should be supported and provided protection from attempts of violating it and its work. The US policy against the ICC should be reduced. Given the difficulty of solving the problem of the veto power⁵ used by the United States in the Security Council and so the difficulty of modifying the Charter of the United Nations⁶ at least for the time being,⁷ my suggestions are limited to finding

¹ Shibl Badru Deen, 'The Principles of the Crime of Aggression in the Statute of the International Criminal Court through Kampala Conference in January, 2010,' *Al-Mufakkir Journal*, 2 (March 2015) <http://dspace.univ-biskra.dz:8080/jspui/handle/123456789/6383> (accessed January 15, 2017), 13.

² Harold Hongju Koh, 'The Crimes of Aggression: The United States Perspective,' *Yale Law School Legal Scholarship Repository (2015)*, http://digitalcommons.law.yale.edu/fss_papers (accessed April 30, 2016).

³ Al-Ajami, 'The Security Council and its relationship with the Statute of the International Criminal Court,' 51-53.

⁴ The reports indicate that over 1000 accused perpetrators of serious crimes can go to the United States to escape justice. Indeed, there are 13 individuals the majority of whom are from South American countries currently living in the United States that are accused of committing international crimes. Itani, *International Criminal Court*, 438.

⁵ Veto power: The right to veto any resolution to be submitted to the Security Council, without giving reasons, and enjoyed by the permanent members of the UN Security Council: Russia, China, Britain, France and the United States. The United States used its veto 83 times, it was stopped in a single 61 a draft resolution, and it rested of the member states participated in the UN Security Council to reject 22 another draft resolution. Ahmed Mansour, 'Veto...The right to the practice of international bullying,' *Al Watan newspaper*, October 10, 2016, accessed February 16, 2017, <http://www.alwatan.com/Writer/id/2899>. See also: Article 22 (1) of the UN Charter. See also: Ahmed Al-Sherbini, 'How America used the «veto» of the Security Council to facilitate its interests?,' *Saspost*, <http://www.sasapost.com/us-veto-history/> (accessed February 17, 2017).

⁶ See Article 108 of the UN Charter.

⁷ The veto the price demanded by Britain, France, Russia, China and the United States to join the United Nations. As a result of modifying the way the United Nations Charter, in Article 108, in addition to the positions of the permanent members of the UN Security Council, no one believed that the amendment of the Charter to cancel or curtail the veto power potential is even remote. In 2001 and 2015, Russia and China rejected a proposal by France's reluctance to spend five permanent UN Security Council members, voluntarily use the veto power when dealing with the mass crimes: genocide or crimes against humanity or war crimes. Gareth Evans, 'Scaling the right of veto in the Security Council,' *Aljazeera*, <http://www.aljazeera.net/knowledgegate/opinions/2015/2/12/> (accessed February 16, 2017). See also: Skynewsarabia, 'French efforts 'to reform the' veto Security Council,' *Skynewsarabia*, <http://www.skynewsarabia.com/web/article/736996/>

practical solutions: the activation of Article 87 (5) of the Statute of the ICC, which states: (a) The Court may invite any State not party to this Statute to provide assistance under this Part on the basis of an ad hoc arrangement, an agreement with such State or any other appropriate basis; the commitment of all states, including the United States of America, to interpret the provisions of the Rome Treaty establishing the ICC in accordance with the principle of good faith in Article 31 (1) of the Vienna Convention on the law of Treaties 1969. States, especially the States parties to the ICC, are also urged not to conclude any bilateral agreements with the United States to give its soldiers and nationals immunity from prosecution by the ICC as this is considered a violation of a peremptory norm of the international law.¹ As for the states that signed conventions – whether via disenchantment or intimidation, it is recommended to call the parliaments and legislatures not to ratify such conventions. It is also worth mentioning the necessity for the remaining States to accede to the ICC, which constitutes the support of a policy of impunity by the United States, and such accession constitutes a confirmation of the commitment to the principles of Justice and human rights.

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¹ For more details on this point see Al-Ajmi, The Security Council, 57.

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