

Towards the Establishment of an International Constitutional Court

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Abstract: This article comprehensively examines the 1999 recommendation of the Tunisian government to create an International Constitutional Court that is designed to enhance the principles of democracy and human rights and to strengthen the constitutional doctrine which states that the people are the source of authority in a given country. This proposal, which was strongly advocated by former Tunisian President Mohamed Moncef Marzouki during his term in office, aims to underscore the importance of establishing an international judicial entity and analysing its bylaws with respect to its terms and conditions, formation, jurisdiction and selection of judges. The article traces the trajectory of the movement, from the proposal stage to the latest developments in formally establishing the international judicial entity. Finally, the article identifies various possible difficulties and challenges that are likely to stand in the way of implementing the proposal.

Keywords: International Constitutional Court, Principles of Democracy and Safeguards of Human Rights, Fair and Free Elections, eliminating dictatorships.

I. Introduction

Moncef Marzouki, former President of Tunisia, suggested the creation of an International Constitutional Court (ICC) as a way to overcome the failure of international law to deal with abuses of democracy. Under the dictatorship of Zine al-Abidine Ben Ali, Marzouki witnessed parliamentary elections held in a climate of fraud and terror, so he realised that the major international conventions intended to guarantee public freedoms and democracy could not help to serve the principle of that the nation is the source of powers.¹

The idea of establishing an ICC was launched in a newspaper article written by Mr. Marzouki – when he was a member of the opposition party – and published in the French newspaper *Liberation* in 1999.² In the article, then – President Marzouki emphasised the essence of addressing all case of dictatorship at an international level given the lack of a successful and effective national mechanism for combating authoritarianism and tackling the problems of absolute and exclusive power. The world is not what it once was thirty or forty years ago; dictators now endeavour to preserve their influence, even beyond death,

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1 See Monique Chemillier-Gendreau, The court of democracy, published in *Le Mode Diplomatique*, September 2013, available at <http://mondediplo.com/2013/09/02democracy#nb1>.

2 See Moncef Marzouki Article 'Une structure judiciaire supranationale et indépendante pourrait agir en cas de scrutins truqués et rappeler les Etats au respect des libertés. Une Cour mondiale de la démocratie' published in *Liberation* Newspaper on 8 November 1999.