

The Role of the United Nations Security Council in Activating the Procedures of the International Criminal Court under the Rome Statute

Dr. Nacera Louni*

Bouira University (Algeria), n.louni@univ-bouira.dz

Received: 29/04/2026; Accepted: 29/05/2026; Published: 30/06/2026

Abstract:

In particular, the two procedures of referral under Article 13(b) and deferral under Article 16 of the Rome Statute are crucial in enabling the International Criminal Court's authority. Referring a scenario to the International Criminal Court reflects the Security Council's role in initiating the Court's processes. Even if the state where the crimes were committed is not a signatory to the Rome Statute, the Security Council may submit cases including crimes of genocide, war crimes, and crimes against humanity to the Prosecutor in accordance with Chapter VII of the UN Charter.

Additionally, by circumventing the need that the state be a party, such a referral enables the Court to exercise jurisdiction on a more extensive international basis, as in the cases of Libya and Darfur. Additionally, if the Council believes that a suspension would promote global peace and security, it may request that any investigation or prosecution be put on hold for a renewable term of twelve months. Additionally, the Security Council has a responsibility in compelling governments to assist the Court in carrying out investigations and carrying out arrest warrants, especially when peace is in jeopardy.

Such referral also makes it possible to bypass the prerequisite that the state must be a party, thereby allowing the Court to exercise jurisdiction on a broader international basis, as in the cases of Libya

* Corresponding author.

and Darfur. The Council also has the right to request the suspension of any investigation or prosecution for a renewable period of twelve months if it considers that such suspension serves international peace and security. Furthermore, the Security Council plays a role in obliging states to cooperate with the Court in executing arrest warrants and conducting investigations, particularly when peace is threatened.

Keywords: Security Council; International Criminal Court; Rome Statute; referral; deferral.

INTRODUCTION:

In addition to preserving legal evidence, promoting confidence in the legal system, and defending the administration of justice, the judiciary's mission is to protect the interests of litigants in order to guarantee security, stability, and fairness in society. However, it also aims to change the perpetrator and safeguard the victim's rights. In order to ensure the independence and integrity of the judiciary, modern penal legislation has given special consideration to the judiciary and incorporated criminal protection for the proper administration of justice.

Therefore, the International Criminal Court adopted legal rules that punish anybody who obstructs the administration of justice in order to guarantee the correct conduct of its proceedings and prohibit any influence over them. The Court's relationships with various organizations, such as the Security Council and the States Parties that have accepted the Rome Statute⁽¹⁾, are surely subject to legal restrictions and guidelines. Therefore, the relationship between the Security Council and the International Criminal Court is interesting and deserving of study in order to comprehend its specifics.

Maintaining international peace and security in line with UN principles and goals is one of the Security Council's most significant

(1)- Ndiaye, Sidy Alpha, *The Security Council and International Criminal Jurisdictions*, Thesis, University of Orléans, 2011, p. 29.

responsibilities. It also investigates any conflict or circumstance that might spark one, submits recommendations for resolving international disputes, and develops plans to deal with any threat to peace or act of aggression, along with suggestions for appropriate action. The Council further urges all members to take action against the aggressor and implement economic sanctions and other non-force-based measures to stop or prevent aggression⁽¹⁾.

Based on the foregoing, the following research problem may be raised:

Why was the United Nations Security Council granted the right to refer cases to the International Criminal Court?

To answer this research problem, it was necessary to divide the subject of the study into two sections:

- The capacity of the United Nations Security Council to activate the conduct of proceedings before the International Criminal Court
- The capacity of the United Nations Security Council to obstruct the conduct of proceedings before the International Criminal Court

Section One : The Capacity of the United Nations Security Council to Activate the Conduct of Proceedings before the International Criminal Court

The preparation and regulation of the relationship between the latter and the International Criminal Court within the Court's Statute inevitably reflects the relationship between the preservation of international peace and security and the international criminal repression of individuals⁽²⁾, as established by the practice of the

(1) -Ahmed Selim Abdel Rahman Ataya, *The Relationship between the Security Council and the International Criminal Court*, Journal of Jurisprudential and Legal Research, Faculty of Sharia and Law in Damanhur, Al-Azhar University, Issue 41, Egypt, April 2023, p. 402.

(2) - The expression “crimes against humanity” appeared in 1915 to describe the massacre of Armenians by the Turkish government and was later used in Article 6 of the London Agreement establishing the Charter of the International Military =

United Nations Security Council. The Statute acknowledges that international criminal justice and the preservation of world peace and security are complementary. As a result, the goals of the International Criminal Court and the United Nations Security Council may coincide. As said in the first subsection, this complementarity and consistency are primarily demonstrated by giving the UN Security Council the authority to refer a case to the International Criminal Court in order to preserve world peace and security. As mentioned in the second subsection, this has a favorable impact on how the International Criminal Court's procedures are conducted.

Subsection One: The Power of the United Nations Security Council to Refer a Situation to the International Criminal Court

Article 13 (b) provides that: “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⁽¹⁾.”

This provision allows for the division of this subsection into three main branches: the first branch discusses the reasons for giving the UN Security Council the authority to refer; the second branch discusses the basis for referral; and the third branch discusses the review of the legality of referral.

Branch One: The Reasons for Granting the United Nations Security Council the Power of Referral

The United Nations Security Council has complete political jurisdiction over issues pertaining to the preservation of global peace

Tribunal at Nuremberg of August 8, 1945. As for “genocide,” see Raphael Lemkin, *Axis Rule in Occupied Europe*, Washington, Carnegie Endowment for World Peace, 1944.

(1)- Ali Youssef Al-Shukri, *International Criminal Law*, Itrak Publishing and Distribution, Egypt, 2005, p. 132.

and security, including the creation of special international criminal tribunals, according to Chapter VII of the UN Charter. Because of this, the Statute contained a clause that gave the Council the authority to refer cases as an alternative to creating special international criminal tribunals, as was covered in the first section. It should be noted that this authority was given to the Security Council rather than the other main UN bodies, as was covered in the second section.

The UN Security Council's obligation to uphold international peace and security under the Charter, which seems to give the Council the authority to create special criminal tribunals for this reason⁽¹⁾, actually justifies giving the Council these powers. Given this, it makes sense that the UN Security Council would have the authority to examine the listed offenses in line with the duties and authority granted to it by the Charter⁽²⁾.

It should be mentioned that the question of whether an international criminal court might be established through a United Nations Security Council resolution was brought up during the preliminary process. However, the approach of an international convention was quickly embraced in place of this formula. The main cause of this was that the UN Security Council is not seen as an international legislative with the authority to impose broad, abstract legal regulations. According to Chapter VII of the Charter, it can only take action in dire circumstances and in response to certain facts and occurrences. Furthermore, the international treaty formula allows for the reconciliation of the idea of state sovereignty with the guarantee of the principle of the Court's validity and is principally dependent on the affirmative permission of states⁽³⁾.

(1) - See also: Rome Statute of the International Criminal Court, available on the website of the Office of the United Nations High Commissioner for Human Rights.

(2)- Mousa Alafi, *The International Criminal Court and the Security Council: Justice versus Maintenance of Order*, François Rabelais University of Tours, France, 2013, pp. 53–54.

(3) - Ali Youssef Al-Shukri, Op. Cit, p. 131.

B. The Security Council as the Sole Organ Having the Power of Referral

The concept of giving the UN General Assembly the authority to refer cases was brought up during the Rome Conference talks because the General Assembly is another important UN body. Supporters of this viewpoint contend that the General Assembly is the main UN body that speaks for the whole world community. While it has broad authority over human rights, it also has a secondary duty to uphold world peace and security⁽¹⁾.

Regardless of the relationship between the accused's nationality, the state where the crime was committed, or any other factor, the Security Council is the only body with the authority to activate the jurisdiction of the International Criminal Court⁽²⁾.

Branch two: The Basis of Referral by the United Nations Security Council

It should be mentioned right away that a referral decision is adopted by the UN Security Council in compliance with the protocols outlined in the UN Charter⁽³⁾. How the Security Council refers such judgments to the International Criminal Court after they are taken is not covered by the Charter. Article 13(b) merely specifies that reference occurs in accordance with Chapter VII of the UN Charter⁽⁴⁾.

As one of the UN's organs in charge of upholding global peace and security, the Security Council derives its legal authority to refer a

(1) - Abdel Rahim Al-Khalifi, *International Criminal Law*, Journal of Islamic Unity, Year 2, Issue 16, 2003, p. 10.

(2) - Article 55 of the Charter of the United Nations, available on the United Nations website.

(3) - R. Kherad, *The Question of the Definition of the Crime of Aggression in the Rome Statute between the Political Power of the Security Council and the Legal Competence of the International Criminal Court*, General Review of Public International Law, Vol. 109, 2005, No. 2, p. 343.

(4) - Articles 25 and 41 of the Charter of the United Nations.

case to the International Criminal Court from both the Statute of the International Criminal Court and the provisions of the UN Charter⁽¹⁾.

Article 13(b) grants the United Nations Security Council the power to refer a situation to the Prosecutor by providing that: "...if 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..."

It is commonly recognized that the United Nations Security Council has the authority to enact policies under Chapter VII of the UN Charter. Since referral is a substantive problem from the standpoint of the Charter but may be viewed as a procedural matter from the perspective of the Court's Statute, the veto plays an important role in this situation because its use could prevent any decision from being adopted⁽²⁾. Article 13(b) generally states that referrals must be made in accordance with Chapter VII of the Charter, but it does not specify the format in which they must be made⁽³⁾.

Because of this, the Security Council's decision to send cases involving these offenses to the International Criminal Court may be regarded as an action taken by the body in charge of upholding global peace and security⁽⁴⁾.

Branch Three: Review of the Legality of Referral

In both domestic and international legal systems, judicial review of political organs' actions is a well-established norm⁽⁵⁾. Even in the

(1) - However, the agreement concluded between the International Criminal Court and the United Nations removed the ambiguity by providing in Article 17(1) that referral is transmitted through the Secretary-General of the United Nations.

(2) - Mamdouh Fallah Al-Rashidi, *The Mechanism for Determining and Establishing Jurisdiction in Considering International Crimes under the 1998 Rome Agreement: The United Nations Security Council*, Kuwaiti Journal of Law, Year 27, Issue 2, 2003, p. 18.

(3) - Said Abdel Latif Hassan, *The International Criminal Court: Establishment of the Court and Its Statute*, Arab Renaissance Publishing House, Cairo, 2002, p. 294.

(4) - Belkhir Hassina, *The International Criminal Responsibility of the Head of State*, Master's Thesis, University of Algiers, Faculty of Law, 2005, p. 55.

(5) - N. Zakr, *The Institutional Aspects of the International Criminal Court*, Journal of International Law, No. 2, 2002, p. 70.

absence of an explicit provision, practice tends to recognize the International Court of Justice's authority to review Security Council acts and decisions, for example, even though there are no explicit provisions granting such authority⁽¹⁾.

The Statute of the International Criminal Court does not fundamentally contain specific procedural procedures regulating referrals made by the UN Security Council to the International Criminal Court, with a few notable exceptions⁽²⁾. Similarly, Article 17(1) of the 2004 agreement between the United Nations and the International Criminal Court only specifies that such referrals are sent to the International Criminal Court via the UN Secretary-General.

According to some, a referral made by the UN Security Council to the International Criminal Court's Prosecutor in accordance with Chapter VII of the UN Charter is merely procedural in character and on par with referrals made to the Court by States Parties. Therefore, even though the Court's Statute is silent on the subject and does not specifically provide for it, the International Criminal Court may assess this unique manner of activating the Court's jurisdiction⁽³⁾.

The United Nations Security Council's authority is novel since it is governed by the Statute of the International Criminal Court, which refers to another treaty document, but its actions are principally based on the United Nations Charter.

The Statute's goal to shield the Court's independence from interference from governments and the UN Security Council is reflected in a number of its provisions. Articles 13, 17, 19, and 53 of the Court's Statute amply illustrate this objective through the division of responsibilities between the Security Council and the Prosecutor. Therefore, while referring a matter to the Criminal Court, the UN

(1) - For example, in democratic systems, administrative courts and constitutional courts have the authority to review all decisions and laws issued by the government in order to verify their legality or constitutionality.

(2) - Belkhir Hassina, Op. Cit, p. 22.

(3) - With the exception of Article 18 of the Rome Statute concerning admissibility.

Security Council must adhere to the Statute's rules. Article 13 implies that in all three types of referral⁽¹⁾, the Court must exercise its jurisdiction "in accordance with the provisions of this Statute." As a result, the Court cannot be required to do anything that goes against its Statute by the UN Security Council. The referral must be consistent with the Statute in addition to the Charter's requirements, which bind the Security Council.

Given the aforementioned, the Security Council must respect the boundaries of the Court's temporal⁽²⁾, personal, and subject-matter jurisdiction. The Criminal Court has the authority to declare that it lacks jurisdiction if the UN Security Council refers a case to it that is outside of its purview since the referral is inconsistent with its Statute⁽³⁾.

Subsection two: The Proper Conduct of Proceedings before the International Criminal Court When They Originate from the United Nations Security Council

The United Nations Security Council's referral of any case to the International Criminal Court is expected to have a beneficial effect on the Court's overall activities given the binding nature of its rulings and the status of this body. This starts with the beneficial impact that such a referral has on the Court's jurisdiction, as covered in the first branch, and the complementarity principle, as covered in the second branch.

Branch One: The Positive Effects of Referral on the Court's Jurisdiction

According to Article 12(2) of the Statute⁽⁴⁾, the Court's jurisdiction is only established if the state where the crime was committed or the accused person's nationality is a party to the treaty

(1) - Mahmoud Cherif Bassiouni, *The International Criminal Court: An Introduction to the Study of Its Provisions and National Enforcement Mechanisms*, p. 58.

(2) - See Article 13 of the Statute of the International Criminal Court concerning the exercise of the Court's jurisdiction.

(3) - Article 5 concerning subject-matter jurisdiction, Article 25 concerning personal jurisdiction, and Article 11 concerning temporal jurisdiction.

(4) - See Article 17 of the Statute.

that established the Court, or if a state that is not a party to the treaty has declared its acceptance of the Court's jurisdiction through a special declaration deposited with the Court Registrar. These requirements are applicable whether the Prosecutor starts an inquiry on its own initiative or when the Court receives notification from a state that is not a party to the Statute⁽¹⁾.

Any situation may be referred to the Prosecutor by the UN Security Council, regardless of whether the violation was committed on the territory of a non-State Party, by a citizen of a state that is not a party to the treaty establishing the Court, or even by a state that has rejected the Court's jurisdiction. As a result, even though these states are not parties to the Statute, the Court has jurisdiction over them.

Despite the fact that Sudan and Libya had not signed the Statute, this referral allowed the International Criminal Court to take into account crimes that might have been committed there. The United Nations Security Council's referral eliminated the Statute's prohibition⁽²⁾.

The position of the United Nations Security Council's rulings in the area of international peace and security seems to be the reason for the International Criminal Court's jurisdiction being extended to governments that are not signatories to the Rome Statute. It is also explained by the desire for the United Nations Security Council and the International Criminal Court to collaborate in order to settle disagreements through the legal system.

Branch two: The Effect of Referral on the Principle of Complementarity

According to the Statute, national courts and the International Criminal Court are complementary. The International Criminal Court's

(1) - Article 12 of the Statute, concerning the preconditions for the exercise of jurisdiction.

(2)- Abou El-Kheir Ahmed Attia, *The International Criminal Court*, Arab Renaissance Publishing House, Cairo, Egypt, 1999, p. 54.

jurisdiction is governed by a legal pillar known as the complementarity principle. The United Nations Security Council's referral, however, might actually lessen the significance of this idea.

Both Article 1 and the Preamble to the Statute outline the complementarity principle⁽¹⁾. The controversy surrounding the principle is reflected in this focus. This concept states that the jurisdiction of national criminal courts, which have primacy and priority, is complementary to that of the International Criminal Court. The phrase "principle of complementarity" itself makes this clear. It is a principle that gives states the primary responsibility for prosecuting those who commit international crimes⁽²⁾, but it also gives the International Criminal Court the power to step in when states fail to carry out their obligation—that is, when they do not actually prosecute those who are suspected of committing such crimes. As a result, the International Criminal Court's jurisdiction is subordinate to national criminal jurisdiction. In other words, complementary jurisdiction is a novel concept that sets a precedent in international law⁽³⁾.

Section One: The Capacity of the United Nations Security Council to Obstruct the Conduct of Proceedings before the International Criminal Court

The International Criminal Court is not a United Nations body because it was created by an international treaty. The Statute of the International Criminal Court incorporated the powers and competences of the United Nations Security Council under Chapter VII of the United Nations Charter in order to avoid any overlap between the proceedings of the International Criminal Court in dealing with specific international crimes and the powers of the UN Security Council in maintaining international peace and security.

(1) - Abou El-Kheir Attia, same reference, p. 99.

(2) - Paragraph 10 of the Preamble to the Statute of the International Criminal Court.

(3)- Abou El-Kheir Attia, Op. Cit, p. 122.

According to Article 16⁽¹⁾, the UN Security Council may adopt a resolution under Chapter VII of the UN Charter asking the Court to postpone an investigation or the consideration of a case if carrying out such an investigation or prosecution would make it more difficult for the Security Council to fulfill its responsibilities regarding the upkeep of global peace and security⁽²⁾.

International criminal justice and the preservation of world peace and security seem at first to be incompatible. However, international criminal repression may occasionally have unfavorable effects on the peace process. Because of this, as mentioned in the first subsection, the Statute of the International Criminal Court acknowledges the Security Council's competence or ability to halt the Court's operations. However, as discussed in the second subsection, there may be a conflict between the United Nations Security Council's authority over the crime of aggression and the International Criminal Court's jurisdiction over it.

Subsection One: Deferral as a Mechanism for Obstructing the Activity of the International Criminal Court

During the Rome discussions, there was much discussion about the UN Security Council's power to postpone the International Criminal Court's hearings. This debate took place between the permanent members of the Security Council, who contended that the Court might impede the UN Security Council's efforts to uphold international peace and security, and other states that believed it was unacceptable to subject an international judicial body to a political organ because doing so would compromise its independence and, as a result, create legal inequality among states.

This subsection can be separated into three sections by referring to Article 16 of the Statute: the first branch discusses the conditions of

(1) - Oscar Solera, *Complementary Jurisdiction and International Criminal Justice*, International Review of the Red Cross, Selected Issues, 2002, p. 166.

(2) - See Article 16 of the Statute of the International Criminal Court.

deferral; the second branch discusses the interpretations adopted in practice; and the third branch discusses the extent to which the legality of deferral may be reviewed.

Branch One : Conditions of Deferral

According to Article 16 of the International Criminal Court's Statute, in order for the United Nations Security Council to suspend the International Criminal Court's operations, the request for deferral must be made in accordance with Chapter VII of the Charter⁽¹⁾. Such a deferral has time-limited impacts as well. Additionally, at the time the deferral resolution is adopted, there must be ongoing proceedings before the International Criminal Court⁽²⁾.

The compromise made at the Rome Conference is reflected in Article 16 of the Statute. In order to postpone the International Criminal Court's proceedings, the UN Security Council must specifically request it through a resolution made under Chapter VII of the Charter. When compared to the International Law Commission's draft, this alternative is thought to be advantageous to the International Criminal Court⁽³⁾.

Nonetheless, the United Nations Charter itself may be the source of this authority. Article 16, as it correctly states, just affirms the primacy of the United Nations Charter. In actuality, the situation is still unclear, especially since this item imposes additional requirement—the temporary effect of deferral—in addition to referring to Chapter VII of the Charter.

Branch two: Article 16 of the Rome Statute and Resolutions of the United Nations Security Council

If the UN Security Council determines that a situation or case

(1) - Mousa Alafi, Op. Cit, p. 194.

(2) - Ibid, p. 211.

(3) - For further details, see also: Mohammed Hashem Maqoura, *The Right of the Security Council to Suspend Investigation and Trial Proceedings before the Criminal Court*, article published on the Ministry of Justice website.

before the International Criminal Court could endanger or violate peace and security or amount to an act of aggression, it may ask the Court to postpone its hearings. In other words, the Council may not postpone the International Criminal Court's proceedings under Article 16 of the Statute unless there is a circumstance that could jeopardize global peace and security, in which case it may pass a resolution under Chapter VII of the UN Charter.

This authority was established with the primary and principal goal of achieving international peace and security, even if it means sacrificing international justice. During the Rome talks, this issue was contentious since the Jordanian representative said he didn't see why the Security Council required the Court to become just an extension of the Council. Proposals to shorten the deferral time, including the Sierra Leonean delegation's suggestion to shorten it to six months, also ran against to the wishes of the Security Council's major permanent members, who opposed any limitations on their authority⁽¹⁾.

The United Nations Security Council interpreted Article 16 of the Statute broadly in relation to its resolutions, specifically Resolutions 1422 and 1487. The Security Council filed a preventive or precautionary request⁽²⁾ since Article 1 of Resolution 1422 specifies that there may be a case involving peacekeeping forces in the future⁽³⁾.

Branch three: Review of the Legality of Deferral

While the review by the International Criminal Court of the legality of a referral decision in light of the provisions of the Statute does not raise any difficulty, since a referral decision ultimately activates the conduct of proceedings before the International Criminal

(1) - See Article 23(3) of the Statute of the International Criminal Court.

(2) - Abdelkader Ibrahim Mohammed, *The Role of the Security Council in Activating the Jurisdiction of the International Criminal Court and Its Applications in International Criminal Law*, Libyan Journal of Contemporary Academic Studies, Libyan Association for E-Learning Research, Vol. 3, Issue 1, Libya, 2025, p. 731.

(3) - See Security Council Resolutions 1422 and 1487.

Court by removing the restrictions contained in its Statute, the question of reviewing the legality of a deferral decision arises sharply in this case, because it concerns the freezing of the Court's jurisdiction and activity.

Since a deferral judgment adversely impacts this judicial body's jurisdiction, the International Criminal Court may rely on its international jurisdiction in this case. In this situation, the processes outlined in Article 19 of the Statute regarding challenges to the International Criminal Court's jurisdiction might be helpful⁽¹⁾.

Subsection two: The Jurisdiction of the International Criminal Court over Crimes of Aggression and the Powers of the United Nations Security Council

Prior to its change during the mid-2010 Kampala Conference, Article 5 listed the crimes that fell under the Court's jurisdiction in its second paragraph. Thus, we will try to look at the first branch's discussion of crimes of aggression, the second branch's discussion of the Security Council's decisive role, and the third branch's discussion of the prerequisites for the Court's exercise of jurisdiction over crimes of aggression.

Branch One: The Specific Competences of the United Nations Security Council and the International Criminal Court regarding Crimes of Aggression

As stated in Chapter VII of the United Nations Charter, the crime of aggression is deemed to be within the exclusive jurisdiction of the Security Council⁽²⁾, which means that no other body may deal with it due to its gravity for global peace and security. However, in order to prevent inconsistency among the international organizations operating

(1) - See Article 1 of Resolution 1422 issued in 2002.

(2) - See Article 19 of the Statute of the International Criminal Court.

within the international community⁽¹⁾, it was stipulated at the International Criminal Court's founding conference that the Court could consider crimes of aggression in accordance with the conditions outlined in the United Nations Charter.

Many states, most notably the United States of America⁽²⁾, were taken aback when the crime of aggression was added to the International Criminal Court's jurisdiction. The governments of the Non-Aligned Movement were chastised by the latter for their insistence on adding this crime. However, the International Criminal Court's jurisdiction over the crime of aggression remains symbolic due to the lack of a legally enforceable definition of this crime and the uncertainty surrounding the Security Council's authority over it.

Branch two: The Controversy over the Decisive Role of the United Nations Security Council during the Rome Conference

States taking part in UN peacekeeping missions, especially permanent members of the UN Security Council and members of the North Atlantic Treaty Organization, vigorously demanded during the Rome negotiations that the Security Council have the sole right to declare certain actions to be acts of aggression. Additionally, they insisted that any referral to the International Criminal Court required this kind of categorization. The International Criminal Court may have jurisdiction over this crime and decide whether it has occurred once this requirement is satisfied⁽³⁾.

(1) - Aggression was already prohibited under international law before the Second World War and constituted an unlawful act giving rise to the international responsibility of the aggressor state. However, it was only in 1945, with the adoption of the Charter of the International Military Tribunal at Nuremberg, that aggression was recognized as an international crime capable of engaging the individual criminal responsibility of its perpetrators, as it was classified as a crime against peace. See TRIAL, *Definitions of Crimes*. See also: Charter of the International Military Tribunal at Nuremberg, Article 6.

(2) - Hashem Kazem, *International Relations*, Ministry of Higher Education and Scientific Research, Baghdad, 1917, p. 65.

(3) - See the statement of the head of the American delegation participating in the Rome Conference.

Branch three: Preconditions for the Court's Exercise of Jurisdiction over Crimes of Aggression

Significant progress has been made since the 1998 founding meeting, despite the controversy surrounding the inclusion of the crime of aggression in the Statute of the International Criminal Court. Proposals for defining the crime of aggression and identifying its components were approved by the Working Group on the Crime of Aggression in February 2009. Even though there was a lot of discussion about this issue, disagreements regarding the requirements for the International Criminal Court to have jurisdiction over this crime persisted to the very end of the June 2010 Kampala Conference. In order to ensure the Court's judicial independence in enforcing the law, the debate focused on whether the Court should exercise such jurisdiction in accordance with the United Nations Security Council's decisions or in collaboration with it, and whether any description of an act by an entity outside the Court should be binding on the Court. The Kampala Conference ultimately decided to change the Statute⁽¹⁾.

CONCLUSION:

The role that states can play in this context should not be obscured by the relationship between the United Nations Security Council and the International Criminal Court, particularly since the Security Council's actions in its relationship with the Court may influence these states' willingness and determination. As a result, governments' positions are crucial to the Court's ability to effectively prosecute those who commit crimes that endanger global peace, security, and well-being.

We get at a number of conclusions by examining the interaction between the United Nations Security Council and the International

(1) - Khaled Akkab Al-Obaidi, *The Principle of Complementarity in the International Criminal Court*, Master's Thesis submitted to the Faculty of Law, University of Babylon, 2004, p. 60.

Criminal Court under the parameters of the Rome Statute, which founded the Court:

When one of the crimes falling under the Court's jurisdiction poses a threat to international peace and security, the United Nations Security Council may, in accordance with the provisions of the Court's Statute, refer a case to the International Criminal Court concerning States Parties to the Court's Statute, acting under the powers granted to it by Chapter VII of the United Nations Charter.

For any of the crimes that the International Criminal Court has jurisdiction over, the Security Council may also refer cases involving governments that are not parties to the Court's Statute.

We get at some suggestions and recommendations based on all of the aforementioned, which can be expressed as follows:

Regarding the postponement of an investigation or prosecution, we suggest changing Article 16 of the Rome Statute.

We suggest reorganizing the Security Council's relationship with the International Criminal Court by bringing in a third party, the United Nations General Assembly, to take over the court's role in situations where the Security Council has failed to refer a situation that poses a threat to global peace and security.

List of References

Books

- 1- Abou El-Kheir Ahmed Attia, *The International Criminal Court*, Dar Al-Nahda, Cairo, 1999.
- 2- Abou El-Kheir Attia, *The International Criminal Court*, Dar Al-Nahda, Cairo, 1999.
- 3- Said Abdel Latif Hassan, *The International Criminal Court: Its Establishment and Statute*, Arab Renaissance Publishing House, Cairo, 2002.
- 4- Ali Youssef Al-Shukri, *International Criminal Law*, Itrak Publishing and Distribution, Egypt, 2005.

5- Mahmoud Cherif Bassiouni, *The International Criminal Court: An Introduction to the Study of Its Provisions and National Enforcement Mechanisms*.

6- Hashem Kazem, *International Relations*, Ministry of Higher Education and Scientific Research, Baghdad, 1917.

Theses and Dissertations

1- Belkhiri Hassina, *The International Criminal Responsibility of the Head of State*, Master's Thesis, University of Algiers, Faculty of Law, 2005.

2- Khaled Akkab Al-Obaidi, *The Principle of Complementarity in the International Criminal Court*, Master's Thesis submitted to the Faculty of Law, University of Babylon, 2004.

3- Qassim Khudair Abbas, *The Islamic Perspective on Public International Law*, Master's Thesis submitted to the Faculty of Law, International University of Islamic Sciences, London, 2002.

4- ALAFI Mousa, *La cour pénale internationale et le conseil de sécurité: justice versus maintien de l'ordre*, Université François Rabelais de Tours, France, 2013.

5- NDIAYE Sidy Alpha, *Le Conseil de sécurité et les juridictions pénales internationales*, Thesis, University of Orléans, 2011.

Articles

1- Oscar Solera, *Complementary Jurisdiction and International Criminal Justice*, International Review of the Red Cross, Selected Issues, 2002.

2- Abdel Rahim Al-Khalifi, *International Criminal Law*, Journal of Islamic Unity, Year 2, Issue 16, 2003.

3- Mamdouh Fallah Al-Rashidi, *The Mechanism for Determining and Establishing Jurisdiction in Considering International Crimes under the 1998 Rome Agreement: The United Nations Security Council*, Kuwaiti Journal of Law, Year 27, Issue 2, 2003.

4- Ahmed Selim Abdel Rahman Ataya, *The Relationship between the Security Council and the International Criminal Court*, Journal of Jurisprudential and Legal Research, issued by the Faculty of Sharia and Law in Damanhur, Al-Azhar University, Issue 41, Egypt, April 2023.

5- Abdelkader Ibrahim Mohammed, *The Role of the Security Council in Activating the Jurisdiction of the International Criminal Court and*

Its Applications in International Criminal Law, Libyan Journal of Contemporary Academic Studies, Libyan Association for E-Learning Research, Vol. 3, Issue 1, Libya, 2025.

6- Kherad (R.), *La question de la définition du crime d'agression dans le Statut de Rome entre pouvoir politique du Conseil de sécurité et compétence juridique de la Cour pénale internationale*, RGDIP, 109/2005, No. 2.

7- Zakr (N.), *Les aspects institutionnels de la Cour pénale internationale*, JDI, No. 2, 2002.

Electronic Documents

1- Mohammed Hashem Maqoura, *The Right of the Security Council to Suspend Investigation and Trial Proceedings before the Criminal Court*, article published on the website: <https://aladel.gov.ly/home/>

2- Charter of the United Nations, available on the website: <https://www.un.org/ar/about-us/un-charter/full-text>

3- Rome Statute of the International Criminal Court, available on the website: <https://www.ohchr.org/ar/instruments-mechanisms/instruments/rome-statute-international-criminal-court>

4- TRIAL (Track Impunity Always), *Définitions des crimes*, article available at: <http://www.trial-ch.org/fr/ressources/droit-international/definition-des-crimes.html>, page consulted on January 12, 2011. See also: *The Charter of the International Military Tribunal at Nuremberg*, Article 6.