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		Title of research article	
		The Security Council's Authority to Refer International Crimes to the International Criminal Court: Legal Foundations, Jurisdictional Boundaries, and Political Implications	
Bendjeried Djilali		University of Ghardaia Algeria E-mail: Bendjeriad0698@gmail.com	
Souilem Mohammed		University of Ghardaia Algeria E-mail: souilem.mohammed@univ-ghardaia.dz	
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Abstract The establishment of the International Criminal Court (ICC) under the 1998 Rome Statute marked a critical milestone in the evolution of international criminal justice. As a permanent judicial institution, the ICC exercises jurisdiction over the gravest international crimes—genocide, crimes against humanity, war crimes, and the crime of aggression. Within this framework, Article 13(b) of the Rome Statute empowers the United Nations Security Council (UNSC) to refer cases to the ICC under Chapter VII of the UN Charter when international peace and security are threatened. This unique intersection of political authority and judicial independence has generated extensive debate regarding the limits of the Security Council's powers, the impartiality of the ICC, and the implications for state sovereignty and international justice. This study critically examines the legal foundations of the Security Council's authority to refer international crimes to the ICC, the procedural and substantive conditions governing such referrals, and the tensions that arise between political considerations and the judicial independence of the Court. By analysing key case studies—including the referrals of the Darfur (Sudan) and Libya situations—the research highlights the selective nature of Security Council action and the ensuing criticisms of double standards and politicization. Ultimately, this paper argues that while the referral mechanism under Article 13(b) is essential for ensuring accountability in situations beyond the ICC's territorial or personal jurisdiction, its implementation must be accompanied by reforms that enhance transparency, equity, and respect for international legal norms.			
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Introduction:

Throughout history, the international community has suffered numerous international crimes. If we were to open the book of humanity, it would reveal the many tribulations endured by society over the centuries, particularly the devastation of the two World Wars, and the destruction and victims they left in their wake. Humanity is in dire

need of guidance towards peace, the punishment of those responsible for crimes against humanity and the eradication of a culture of impunity.

In response to this need, the international community has established several tribunals, including the Nuremberg and Tokyo Tribunals, which were temporary, and the Tribunals for Yugoslavia and Rwanda, which were special. These culminated in the creation of a permanent International Criminal Court through a multilateral treaty that emphasises the independence of this judicial body. The International Criminal Court is naturally related to the United Nations, with the Security Council serving as the UN's executive body and bearing primary responsibility for maintaining international peace and security. This leads us to pose the following question:

What provisions exist regarding the Security Council's authority to refer a situation to the International Criminal Court?

The main issue branches into several sub-questions, as follows:

1. What is the legal basis for the Security Council's authority to refer a case to the International Criminal Court?
2. What conditions must be met for the Security Council to refer a case to the ICC?
3. To what extent is the ICC independent of the Security Council's referral authority?
4. What are the International Criminal Court's substantive and temporal jurisdictions?

Importance of the study:

Studying the topic of the Security Council's authority to refer international crimes to the International Criminal Court is important because it is relevant to contemporary issues that have captured the attention of the international community. The study elucidates the relationship between the Security Council, a political body, and the International Criminal Court, a judicial entity. It also sheds light on the referrals made by the Security Council to the ICC, particularly given that the Security Council is considered one of the most effective and primary organs of the United Nations.

Objectives of the study:

This study aims to clarify the relationship between the Security Council and the ICC regarding crime referrals, and to identify the reasons behind granting the Security Council this role, despite it falling within the ICC's competencies.

Hypothesis of the study:

The Security Council is the executive arm of the United Nations, responsible for maintaining international peace and security. The relationship between international criminal justice and the maintenance of international peace and security is significant, given that the Security Council has been granted the authority to notify the International Court of Justice of any crimes within its jurisdiction.

Furthermore, this study will examine how political considerations impact the Security Council's ability to notify the ICC.

Methodology of the study

For this study, we will use a legal methodology involving the analysis of various legal texts and documents, particularly the United Nations Charter and the Rome Statute of the International Criminal Court. This will help us to determine the foundations and conditions for the Security Council to refer crimes to the International Criminal Court. We will also use a precise, descriptive analytical approach to analyse and define the conditions for the Security Council to refer crimes to the ICC, as well as the limitations on the Security Council's authority in this regard.

According to the following outline, we will attempt to answer this main issue and some sub-questions:

Chapter One: The Legal Framework for the Security Council's Authority to Refer a Case to the International Criminal Court

Section One: The legal basis for the Security Council's authority to refer a case to the International Criminal Court

Section Two: Conditions for Referring a Case by the Security Council to the International Criminal Court

Chapter Two: Limitations on the Security Council's Authority to Refer a Case to the International Criminal Court

Section One: The Independence of the International Criminal Court as a Limitation on the Security Council's Authority in Referrals

- Section Two: The Security Council's constraints in its referrals based on the substantive and temporal jurisdiction of the International Criminal Court

Chapter Three: Some Applications of the Security Council's Referrals of International Crimes to the International Criminal Court

Section One: The Security Council's referral of the situation in Darfur to the International Criminal Court

- Section Two: The Security Council's referral of the situation in Libya to the International Criminal Court

Conclusion

Chapter One: The Legal Framework for the Security Council's Authority to Refer a Situation to the International Criminal Court

The Rome Statute recognises the Security Council's authority to notify the International Criminal Court (ICC). In this context, the Security Council plays a positive role in initiating the Court's proceedings and exercising its jurisdiction. The Council refers specific situations to the ICC based on legal foundations (Section One) and follows the necessary conditions for such referrals (Section Two).

Section One: The Legal Basis for the Security Council's Authority to Refer a Situation to the International Criminal Court

The Security Council derives its authority to refer a situation to the ICC from the United Nations Charter, which authorises the Council to maintain international peace and security, and from the Rome Statute of the ICC¹.

Article 13(b) of the Rome Statute acknowledges the Security Council's ability to refer a situation to the Prosecutor of the International Criminal Court, stating: 'The Court may exercise its jurisdiction with respect to the crimes referred to in Article 5 in the following cases: [...] (b) if the Security Council refers a situation to the Prosecutor, having determined under Chapter VII of the United Nations Charter that one or more of these crimes appear to have been committed [...]'

According to this article, the Security Council is one of the authorised bodies that can initiate proceedings at the International Criminal Court, alongside states and the Prosecutor².

When the Security Council initiates a case at the ICC, it is acting in accordance with Chapter VII of the UN Charter in response to a threat to international peace and security³. According to Article 39 of the Charter, the Council "shall determine the existence of any threat to the peace, breach of the peace, or act of aggression". "The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression, and shall make recommendations or decide what measures shall be taken in accordance with Articles 41 and 42 to maintain or restore international peace and security."

It is important to note that, when intervening under Article 39, the Security Council often describes situations as threats to international peace and security. This description has been particularly emphasised in discussions regarding threats to peace – the term most appropriate for linking the maintenance of international peace and security with international criminal justice. Previously, the Security Council has established special tribunals based on the existence of a threat to peace¹.

Section Two: Conditions for Referral of a Case by the Security Council to the International Criminal Court

In light of the Security Council's broad referral powers and concerns about their potential misuse, the Rome Statute of the International Criminal Court has established a set of conditions to ensure that referrals are made legally and appropriately⁵. These conditions are as follows:

Condition One: The crime subject to referral must fall within the crimes specified in Article 5 of the Rome Statute of the International Criminal Court. These include war crimes, genocide, crimes against humanity and aggression, as stated in Article 13(b) of the Rome Statute⁶.

It follows from this condition that, while the Security Council has absolute authority to include crimes deemed necessary in the temporary criminal tribunals it has established, the same does not apply to the International Criminal Court. This means that the Security Council cannot expand the Court's jurisdiction⁷.

Condition Two: The Security Council must adhere to the correct voting procedures when making a referral to the International Criminal Court. According to Article 27 of the UN Charter, the Security Council's decisions on procedural matters require an affirmative vote of nine of its fifteen members, without the votes of the permanent members being required⁸.

For substantive matters, however, the drafters of the UN Charter combined the rules of consensus and majority. This means that a decision must be made by a majority of nine votes, including those of the five permanent members. Therefore, if any one of the five permanent members (the US, France, the UK, China and Russia) objects, the proposed resolution is vetoed. This veto power was established by the major powers at the Malta Conference in 1945⁹.

Condition Three: The referral decision must be adopted under Chapter VII of the UN Charter. It is not sufficient for the Security Council to follow the correct voting procedures; the decision must also be made in accordance with Chapter VII of the UN Charter. Chapter VII is activated through Article 39 of the UN Charter¹⁰, which grants the Security Council the authority to determine the measures to be taken under Articles 41 and 42 to maintain or restore international peace and security¹¹.

It is noteworthy that cases can be referred to the International Criminal Court by the Security Council, by state parties under Article 14 of the Rome Statute, or by the Court's Prosecutor under Article 15 of the Rome Statute¹².

Chapter Two: Limitations on the Security Council's Authority to Refer a Case to the International Criminal Court

The Rome Statute of the International Criminal Court establishes the Security Council's authority to exercise this power, given that the major powers dominate the Council. No decision to refer a case to the International Criminal Court can be made by the Security Council without the approval of these countries. However, to prevent the Court from becoming a judicial body at the mercy of the Security Council – the effective political body within the United Nations – there are limitations on the Security Council's right to refer cases. The Security Council must exercise this right while preserving the Court's independence (Section One), and it is also bound by the International Criminal Court's temporal and territorial jurisdiction (Section Two).

Section One: The Independence of the International Criminal Court as a Limitation on the Security Council's Authority in Referrals

In order to prevent the Security Council's exercise of its referral rights from undermining the independence of the International Criminal Court, the Rome Statute includes two main limitations.

Firstly, the Security Council is only permitted to refer "situations" to the International Criminal Court.

According to Article 13(b) of the Statute, the Court may exercise its jurisdiction over crimes referred to in Article 5 in the following circumstances: ‘... (b) if the Security Council, acting under Chapter VII of the UN Charter, refers a situation to the Prosecutor in which one or more of these crimes appears to have been committed’¹³.

Our analysis of this article makes it clear that the term ‘situation’ is used. At the Rome Conference, it was agreed that the Council could notify the International Criminal Court of a ‘situation’ rather than a ‘case’ or ‘incident’. The U.S. proposed this, and also worked on this issue at the preparatory committee regarding the purpose of referral by a state. The rationale for this is that the term ‘situation’ encompasses broader and more general dimensions than the term ‘case’¹⁴.

Secondly, the Security Council’s referral is subject to acceptance by the International Criminal Court.

The Rome Statute defines the International Criminal Court’s jurisdictional rules to preserve its independence in achieving international justice, due to concerns about a major power dominating the Security Council’s decisions. Among its jurisdictions are the following:

A. The Court’s Authority to Review the Council’s Referral Decision

The judicial or legal review of political bodies’ actions is a well-established principle in both domestic and international law. In domestic law, for example, administrative courts and constitutional councils can review the government’s actions to ensure they are legal and constitutional¹⁵.

Regarding the decisions of the Security Council, the prevailing opinion in international law supports the notion that the International Court of Justice (ICJ) should have the authority to take provisional measures, although some argue otherwise. According to Article 92 of the UN Charter, the ICJ is the UN’s primary judicial body, and all UN member states are parties to this Court’s statute under Article 92 of the Charter. This represents a mechanism for overseeing the Security Council’s action¹⁶.

Consequently, international practice tends to grant the ICJ authority to review Security Council decisions, even in the absence of explicit text. Given the seriousness of its jurisdiction over international crimes, the International Criminal Court (ICC) cannot be denied such authority, albeit limited. According to the Vienna Convention on the Law of Treaties, the interpretation of a treaty determines the meaning of its provisions and the scope of their application. This is not always straightforward, particularly in the absence of dedicated bodies for interpretation, thereby granting this right to the Court¹⁷.

B. The Court’s Authority to Accept the Security Council’s Referral

The Rome Statute sets out the rules regarding the jurisdiction of the International Criminal Court (ICC) and the acceptance of cases before it. This means that the Security Council cannot determine the ICC’s jurisdiction or accept cases in its referral decision, and the Court is bound by this decision. This enhances the Court’s independence and prevents any attempts at domination¹⁸.

The Rome Statute establishes a formal referral procedure for the Security Council, involving notification of the Prosecutor of situations in which one or more crimes appear to have been committed. This confirms the validity of the information. The Council alerts the Court to significant facts for investigation. The referral decision does not oblige the ICC to initiate trial proceedings, which provides a safeguard against any attempts by the Security Council to dominate the ICC. The Prosecutor has the authority to decide whether to initiate an investigation¹⁹. If the Prosecutor decides not to commence an investigation, the Security Council may request that the Pre-Trial Chamber of the ICC refer the matter back to the Prosecutor for a review of their decision. Even in this case, however, the Pre-Trial Chamber’s request is not binding on the Prosecutor²⁰.

When the Security Council refers a situation to the ICC under Chapter VII of the UN Charter, and the Court then decides that it lacks jurisdiction or does not accept the case in accordance with its Statute, the Security Council may request the Court to reconsider its decision in accordance with the proper procedures. This request will keep the case open, not based on the Court’s decision to lack jurisdiction or to not accept the case, but on other grounds for resolving international disputes peacefully, as set out in Article 119(2) of the ICC Statute. ‘Any dispute between two or more States Parties regarding the interpretation or application of this Statute, which is not resolved by

negotiation within three months of its initiation, shall be referred to the Assembly of States Parties, which may seek to settle the dispute itself or make recommendations regarding any other means of settling the dispute, including referral to the International Court of Justice under the statute of that Court.²¹

Section Two: The Security Council's Constraints in Its Referrals Based on the Subjective and Temporal Jurisdiction of the International Criminal Court

The Rome Statute of the International Criminal Court (ICC) regulates the ICC's subjective and temporal jurisdiction. This means that when the Security Council exercises its referral authority, it must consider the ICC's jurisdiction.

First: The Subjective Jurisdiction of the International Criminal Court as a Limitation on the Security Council's Referral Authority

During discussions in the preparatory committee tasked with drafting the Rome Statute, several delegations proposed various suggestions to define the Court's subjective jurisdiction, specifically identifying certain types of serious international crimes that are of concern to the international community. The reasons for this include:

- Encouraging as many states as possible to join the Court, thereby enhancing its effectiveness.
- Avoiding overburdening the Court with cases that could be handled by national courts.
- Enhancing the Court's credibility and moral authority²².

One of the proposals was to grant the Court jurisdiction over all crimes regulated by international treaties. However, this proposal was rejected. At the Rome Conference, the Court's jurisdiction was defined as including four categories: genocide, crimes against humanity, war crimes and the crime of aggression²³.

Article 5 of the Rome Statute states:

'The jurisdiction of the Court shall be limited to the most serious crimes of concern to the international community as a whole. The Court shall have jurisdiction, in accordance with this Statute, with respect to the following crimes:

Genocide.

- Crimes against humanity.
- War crimes.

The crime of aggression.'

2. The Court shall exercise jurisdiction over the crime of aggression once a provision has been adopted in accordance with Articles 121 and 123, which define the crime of aggression and set out the conditions under which the Court shall exercise its jurisdiction in relation to that crime. This provision must be consistent with the relevant provisions of the United Nations Charter²⁴.

The crimes under the jurisdiction of the International Criminal Court can be defined as follows:

A. Definition of genocide

Professor Lemkin defines genocide as 'the destruction of a nation or an ethnic group', adding that 'genocide does not generally mean the direct destruction of a nation unless it is accompanied by the killing of all members of that nation'. He further adds that 'genocide is directed against the national group as an entity, and the acts included in this crime are directed against individuals as members of the group and not as individuals'²⁵.

Article 6 of the Rome Statute of the International Criminal Court defines genocide as ‘any of the following acts committed with intent to destroy, in whole or in part, a national, ethnic, racial or religious group, as such:

- Killing members of the group;

causing serious bodily or mental harm to members of the group;

- deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;

- Imposing measures intended to prevent births within the group;

Forcibly transferring children of the group to another group²⁶.

B. Definition of crimes against humanity

International legal scholars have defined crimes against humanity in various ways. Professor Orongnu Oginé defines them as ‘an international crime under public law whereby a state is obliged to ensure that if it harms a person or group of innocent people based on gender, race, nationalistic zeal or religious reasons, the harm caused exceeds the stipulated punishment for the crime committed’.

Professor Raphael Lemkin views it as ‘an organised plan of numerous acts aimed at destroying the social foundations of national groups with the intention of eliminating them. The purpose of this plan is to dismantle the political, social, cultural and linguistic systems of national groups, as well as their national sentiments, religion and social and economic fabric, while also destroying the personal safety, freedom, health and dignity of individuals belonging to these groups, and even their lives.’²⁷

Article 6(c) of the Nuremberg Charter states that crimes against humanity include ‘murder, extermination, enslavement, deportation, and all other inhuman acts committed against any civilian population, whether before or during a war, or the persecution of a group or collectivity on political, racial or religious grounds, in connection with any crime within the Court’s jurisdiction’. This clause links the commission of crimes against humanity with the existence of an aggressive war, meaning that crimes against humanity cannot exist independently of crimes against peace and war crimes²⁸.

Article 7 of the Rome Statute of the International Criminal Court specifies acts that constitute crimes against humanity, including murder, extermination, enslavement, forced displacement, torture and rape²⁹.

C. Definition of War Crimes

Article 6(b) of the Nuremberg Charter defines war crimes as ‘acts that constitute violations of the laws and customs of war’. During the Nuremberg Trials, it was agreed that war crimes are ‘actions committed by the accused that violate the laws and customs of war, international treaties, domestic criminal laws and the general principles of criminal law recognised in all civilised nations’³⁰.

According to Article 8 of the Rome Statute of the International Criminal Court, war crimes are defined as follows:

- grave breaches of the 1949 Geneva Conventions;

Other serious violations of the laws and customs applicable in armed conflict within the established framework of international law.

In the case of a non-international armed conflict, grave breaches of Article 3 common to the four Geneva Conventions of 1949;

Other serious violations of the laws and customs applicable in non-international armed conflicts within the established framework of international law³¹.

D. Definition of the Crime of Aggression

Article 5 of the Rome Statute of the International Criminal Court includes a specific provision regarding the crime of aggression. This provision suspends the Court's jurisdiction concerning the crime of aggression until a provision is adopted in accordance with Articles 121 and 123. These articles involve defining the crime of aggression, establishing the necessary conditions and elements for the Court to exercise its jurisdiction in this matter and ensuring consistency with the relevant United Nations provisions.

After two weeks of discussions, the Review Conference of the International Criminal Court in Kampala, Uganda, concluded its work on 11 June 2010, resulting in several amendments to the Court's Statute. Article 8 bis of the Rome Statute states: 'The term "act of aggression" applies to any of the following acts, whether or not a declaration of war has been issued, in accordance with United Nations General Assembly Resolution 3314 (XXIX) of 14 December 1974:

The invasion of the territory of one State by the armed forces of another State, or an attack on it;

- Any military occupation resulting from such an invasion or attack, even if temporary;
- Any annexation of the territory of another State or part thereof by the use of force.

Bombardment of the territory of another State by the armed forces of one State, or use of weapons by one State against the territory of another State;

Attacks on the ports or coasts of one State by the armed forces of another State;

- the armed forces of one State attacking the land, sea or air forces of another State;
- the use of its armed forces by one State, located within the territory of another State with the consent of the host State, in a manner that contravenes the conditions stipulated by the agreement, or any threat to their presence in the aforementioned territory beyond the end of the agreement;
- A state allowing its territory to be used by another state to commit an act of aggression against a third state;

The sending by one state of armed bands, irregular forces, or mercenaries to carry out acts of armed force against another state, or substantial involvement by a state in such acts³².

Second: The Temporal Jurisdiction of the International Criminal Court as a Limitation on the Security Council's Referral Authority.

Article 11, paragraph 1, of the Rome Statute of the International Criminal Court states: 'The Court shall have jurisdiction only with respect to crimes committed after the entry into force of this Statute.'

This means that the Court has jurisdiction over crimes committed after the Statute comes into effect; thus, it does not have jurisdiction over crimes committed before the Statute's entry into force³³. Paragraph 2 of the same article states: 'If a State becomes a party to this Statute after its entry into force, the Court may exercise its jurisdiction only with respect to crimes committed after the Statute's entry into force for that State, unless that State has made a declaration under paragraph 3 of Article 12.'

The Statute adopts the general legal principle that criminal laws cannot be applied retroactively. This means that laws take immediate effect and do not apply to crimes committed before the Statute's entry into force. All of this is intended to encourage states to join the Statute of the Court and indicates that the International Criminal Court's jurisdiction is solely prospective³⁴.

Chapter Three: Some applications of the Security Council's referral of international crimes to the International Criminal Court

The Security Council's authority to notify the International Criminal Court (ICC) pursuant to Article 13 of the Rome Statute has been demonstrated in two notable cases. In 2005, the Council referred the situation in Darfur to the Court (see Section One), and in 2011, it did the same for the situation in Libya (see Section Two).

Section One: The Security Council's referral of the situation in Darfur to the International Criminal Court.

In response to the serious violations observed in the Darfur region of Sudan, the Security Council took action by asking the then Secretary-General, Kofi Annan, to set up an international commission to investigate the situation and determine whether genocide had occurred in the region. This commission was formed through Security Council Resolution 1564, issued on 18 September 2004³⁵.

The commission, consisting of five individuals appointed by the Secretary-General, commenced its work on 24 October 2004. It was mandated to submit its report to the Secretary-General within three months³⁶.

The Commission completed its tasks within the specified timeframe, submitting a report to the Secretary-General of the United Nations that included fact-finding, a detailed legal analysis and the classification of criminal acts. The report presented the commission's investigation results and made several recommendations³⁷.

Among the findings was the conclusion that, while some individuals in government positions might have committed acts with genocidal intent in certain cases, the Sudanese government did not follow a policy based on genocide. The report also stated that the crimes against humanity and war crimes committed in Darfur were no less serious or horrific than genocide³⁸.

Regarding recommendations for holding those responsible for crimes in Darfur accountable, the commission concluded that the Sudanese criminal justice system was deficient and needed to be fair, impartial and independent. The commission emphasised that solutions must be international and therefore recommended that the Council refer the Darfur situation to the International Criminal Court in accordance with Article 13(b) of the Rome Statute, as the Court is the only body capable of prosecuting individuals responsible for serious violations of international humanitarian law and human rights treaties³⁹.

The commission's recommendations were in line with France's proposal to exert pressure within the Security Council to refer the Darfur case to the International Criminal Court. This came to fruition on 31 March 2005 with the issuance of Resolution 1593, which referred the Darfur situation to the ICC⁴⁰.

In 2009, the ICC issued an arrest warrant for Sudanese President Omar al-Bashir, who subsequently expelled all humanitarian organisations from Sudan. He further threatened to commit crimes in southern Sudan and launched a campaign within the African Union and elsewhere to garner political support⁴¹.

Section Two: The Security Council's referral of the situation in Libya to the International Criminal Court

The Libyan crisis began with the protests and demonstrations that took place across the Arab world in February 2011. Security forces attacked peaceful protesters in the city of Benghazi⁴², where these demonstrations initially began. Many civilians were killed in the ensuing protests, and the situation escalated into a civil war. The Human Rights Council adopted a resolution titled 'The situation of human rights in the Libyan Jamahiriya' during its 15th session on 25 February 2011. The resolution urged the formation of an international commission of inquiry into alleged human rights violations in Libya. The commission's purpose was to uncover the facts and circumstances leading to such violations, identify those responsible, and make recommendations regarding accountability measures to ensure that those responsible were held to account⁴³.

The commission reached several findings and conclusions concerning the numerous grave violations of international human rights and humanitarian law. These included the excessive use of force against protesters, resulting in a significant number of deaths and injuries. This constitutes a serious violation of various human rights principles and rules. Government forces also arbitrarily detained a large number of individuals, implemented a policy of enforced disappearances, committed various forms of torture and inflicted cruel, inhuman or degrading treatment. They also carried out indiscriminate attacks against civilians and failed to take preventive measures to protect them, thus violating international humanitarian law⁴⁴.

On 26 February 2011, the United Nations Security Council unanimously adopted Resolution 1970, referring the situation in Libya to the Prosecutor of the International Criminal Court. The Council deemed the widespread attacks on unarmed civilians in Libya to amount to crimes against humanity, and referred the situation to the ICC, despite the fact that it was not a party to the Rome Statute⁴⁵.

The Security Council based its decision on the provisions of Chapter VII of the United Nations Charter, as well as the report of the international commission of inquiry into the Libyan Jamahiriya⁴⁶. This decision was also supported by condemnation from the Arab League, the African Union, and the Secretary-General of the Organisation of Islamic Cooperation, all of whom denounced human rights violations in Libya against the Libyan people. The resulting proceedings led to the prosecution of a significant number of defendants, including former President Muammar Gaddafi, his son Saif al-Islam Gaddafi and Abdullah Senussi, director of military intelligence⁴⁷.

The Security Council's referral of the situation in Libya to the ICC is considered an important way in which the international community can hold non-party states accountable before the Court⁴⁸.

Conclusion:

The Rome Statute of the International Criminal Court prioritised humanitarian considerations over political ones, acknowledging the important role of the Security Council in the relationship between the United Nations and the International Criminal Court. This recognition stems from the link between international criminal justice and the maintenance of international peace and security, for which the Security Council is primarily responsible.

However, the anticipated role of the Security Council in notifying the Court may be influenced by political considerations, which could hinder the primary objective of granting the Security Council authority to notify the International Criminal Court in all instances.

One practical issue is that referral of any case to the ICC by the Security Council depends on the will of its permanent members, particularly the United States, which has considerable influence over the Council. This is particularly pertinent with regard to substantive matters, in addition to the privileges associated with the exercise of veto power. Therefore, no decision can be made that contradicts the interests of any member state, even if the matter pertains to the maintenance of international peace and security. Furthermore, the Security Council may adopt a policy of double standards when handling international events. While it has referred the conflicts in Darfur (Sudan) and Libya to the Court, it has remained inactive regarding the situation in Palestine and the violations committed by the Israeli army against the Palestinian people. This undermines all international charters, laws and customs.

Findings:

Activating the Security Council's authority to refer international crimes to the International Criminal Court enables the Court to extend its jurisdiction to non-party states and combat impunity.

The Security Council's referral authority does not compromise the Court's independence, since the Court retains the right to accept or reject cases.

Furthermore, the Security Council's referral authority does not affect or compromise the Court's complementary jurisdiction, which is fundamental to its functioning.

Recommendations:

1. Addressing deficiencies in the Rome Statute: It is essential to address the shortcomings and flaws in the Statute of the International Criminal Court in order to avoid issues arising at both theoretical and practical levels.
2. Creating a supportive international environment: The International Criminal Court must operate in an international climate that is free from external pressures and has the backing of various international governmental and non-governmental organisations.

3. Avoiding political considerations: The Security Council should avoid basing its referral procedures to the International Criminal Court on political considerations.

4. Amending Article 13 of the Rome Statute: Article 13 of the Rome Statute should be amended by adding a new paragraph obligating the Security Council to make referrals in cases threatening international peace and security. This would limit its reluctance and delays in making referrals.

5. Eliminating the dominance of permanent members: The dominance of the permanent members of the Security Council should be curtailed by expanding the Council's membership and amending the Council's voting system, with the ultimate goal of eliminating the veto power as stipulated in the United Nations Charter.

6. Restricting the Security Council's authority: The Security Council's power to classify cases and its authority to make referrals should be limited to prevent abuse of its referral power to the International Criminal Court, or freezing of investigations or prosecutions.

Throughout history, humanity has witnessed repeated atrocities that have shocked the conscience of the world.

From the devastation of the two World Wars to more recent conflicts marked by systematic violence against civilian populations, the pursuit of justice for victims of international crimes has remained a central concern of the global community. The establishment of ad hoc tribunals—such as those for Nuremberg, Tokyo, Yugoslavia, and Rwanda—paved the way for the creation of the ICC as a permanent and independent court dedicated to combating impunity. However, the ICC's relationship with the Security Council introduces a complex dynamic in which political discretion intersects with judicial responsibility. This paper explores the legal, procedural, and ethical dimensions of this relationship.

Methodology

The research employs a legal-descriptive and analytical methodology, grounded in the examination of primary legal instruments such as the United Nations Charter and the Rome Statute of the International Criminal Court. Secondary sources include scholarly commentary, case law, and Security Council resolutions relating to ICC referrals. The study systematically analyses the legal basis for referral under Article 13(b), evaluates the conditions for referral as outlined in Chapter VII of the UN Charter, and investigates the jurisdictional independence of the ICC in the face of Security Council involvement. Comparative analysis of past referrals (Sudan, Libya) and non-referrals (Syria, Myanmar) provides insight into the political selectivity and legal inconsistencies shaping contemporary international criminal justice.

Ethical Considerations

This study adheres to academic integrity and ethical research principles. All legal texts and academic sources have been accurately cited and interpreted in accordance with scholarly standards. The analysis avoids any political bias or advocacy, focusing solely on the legal and institutional dimensions of the topic. No human participants, confidential data, or personally identifiable information were used in this research.

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