

MANIFESTATIONS OF THE BALANCE BETWEEN THE WORK OF THE SECURITY COUNCIL AND THE ACHIEVEMENT OF INTERNATIONAL CRIMINAL JUSTICE

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ABSTRACT

International courts, despite their differences, such as the International Court of Justice, the International Criminal Court, or the European Court of Human Rights, achieve international justice, but in the internal systems and mechanisms of these international courts, they resort to other means to achieve their goal, and this is done through the United Nations Security Council, This means freezing the political judicial mechanisms of international courts in order to maintain international peace and security, and this is what was stipulated in Articles 13 and 16 of the International Criminal Court. By that, we mean the entitlement of the Security Council to freeze the jurisdiction of courts for the purpose of achieving international peace and security, that is, the achievement of peace prevails over the achievement of international justice.

INTRODUCTION

The pages of history have recorded the suffering of previous generations from the horrors and tragedies of war, leaving a deep impact on humanity. This moved the international community to seek ways to limit the escalation of conflicts and their horrors, which was achieved by establishing the United Nations. The UN took upon itself the mission of safeguarding and protecting international peace and security through a number of organs, the most important of which is the executive body known as the Security Council. International disputes, despite their differences, may be of a legal or political nature, and this is inevitable as the resolution of disputes is one of the main objectives of any law at any level. Disputes are settled either through judicial means by establishing courts and prosecuting international crimes to achieve international justice, or through the Security Council, which has the priority and broad powers entrusted to it to apply political procedures and mechanisms and to take deterrent measures to achieve international peace and security.

First: Mechanisms for Achieving International Justice

Judicial means related to legal matters are considered among the most important methods used to achieve justice, and they are carried out through international judiciary. The resolution of disputes is done either by an arbitration body chosen by the disputing parties or by a specialized body established by agreement among states to address international disputes. There are many courts with varying degrees of association with the United Nations. These judicial bodies range from the International Court of Justice to the International Criminal Court, as well as specialized criminal tribunals and regional courts. We will discuss the

International Court of Justice, being the main body of the organization, and the International Criminal Court.

The International Court of Justice:

The International Court of Justice is the principal judicial organ of the United Nations. The Court adjudicates legal disputes between states and provides advisory opinions on legal matters referred to it by UN organs and specialized agencies. It consists of 15 judges elected by the United Nations General Assembly and the Security Council for nine-year terms, with the possibility of re-election. One-third of the judges are elected every three years. No two judges may be from the same nationality, and seats are allocated according to geographic regions: five seats for Western states, three for African states, two for Eastern European states, three for Asian states, and two for Latin American and Caribbean states.

The ICJ's work involves adjudicating disputes between states, and only states can bring cases against each other to the Court. The Court's jurisdiction includes all disputes involving legal elements, such as the interpretation of treaties and any point of international law. In exercising its judgments, the Court applies existing international law, including international treaties and customary law¹.

The ICJ's jurisdiction covers all matters presented to it by litigants, including legal and political issues, as well as other matters stipulated in the UN Charter and applicable international agreements, according to the provisions of the Court's Statute. This jurisdiction applies to states only, and not to other entities of international law. Thus, the ICJ has jurisdiction over disputes between states, referred to as personal jurisdiction, as well as optional and mandatory jurisdiction².

In accordance with its mandatory jurisdiction, the State of Palestine recently deposited a unilateral declaration accepting the compulsory jurisdiction of the ICJ on July 4, 2018. The text of the declaration was as follows: "The State of Palestine hereby declares that it accepts, with immediate effect, the jurisdiction of the International Court of Justice over all current and future disputes covered by Article 1 of the Optional Protocol to the Vienna Convention on Diplomatic Relations concerning the compulsory settlement of disputes 1961, to which the State of Palestine acceded on March 22, 2018."

The decisions of the ICJ are binding and final concerning states, and appeals can be made against them. The Security Council has the authority, upon the request of the affected state, to take specific measures to enforce the ICJ's ruling³.

1) The International Criminal Court:

The idea of establishing an international criminal court emerged after the end of World War II by the United Nations, which created two special tribunals in 1993 and 1994 to prosecute the former Yugoslavia and Rwanda for their violations of international humanitarian law. The actual legal establishment of the International Criminal Court (ICC) took place on July 1, 2002.

The ICC is described as an independent body based in The Hague, Netherlands. It has jurisdiction over individuals accused of committing war crimes, genocide, and crimes against humanity. The Court's jurisdiction over war crimes is based on Article 8 of the Rome Statute, which includes most serious violations of international humanitarian law as outlined in the 1949 Geneva Conventions and their Additional Protocols of 1977. The Statute also contains provisions related to specific weapons banned under various existing treaties, such as asphyxiating, poisonous, or other gases, and all analogous liquids, materials, or devices⁴.

¹ International Court of Justice, **Peace Palace**, The Netherlands, https://www.icjci.org/home?fbclid=IwAR26Zkh_5IvhWCEjaIpTdw_4Kt8z_KRK_Gd_18qxx7wzV4CFTf4Hv4tt-sso

² International Committee of the Red Cross, Switzerland, May 17, 2018 <https://www.icrc.org/en>

³ nited Nations, General Assembly, 73rd Session, Supplement No. 4, Document No. A/73/4, **International Court of Justice** Report August 1, 2017 – July 31, 2018, p. 13.

⁴ [Dag Hammarskjöld Library](#), **UN Documentation: International Court of Justice**, May 2, 2023

Additionally, the Court exercises jurisdiction over the crime of genocide under Article 6 of the Rome Statute, which uses the same terminology as the 1948 Convention on the Prevention and Punishment of the Crime of Genocide.

The ICC's authority begins in a state as soon as it becomes a member. According to Article 25 of the Rome Statute, the ICC exercises its jurisdiction over individuals, not states. The Court can exercise its jurisdiction upon referral by the Prosecutor, provided that the state is a party to the Statute. This includes the state where the crime was committed, or a non-party state that has lodged a declaration accepting the Court's jurisdiction, or the state of nationality of the accused person.

Additionally, the ICC has jurisdiction over crimes of aggression committed on the territory of a state or by a national of a state party after one year from the ratification or acceptance of the relevant amendments, except in cases where the crimes are committed by nationals of, or on the territory of, a non-party state that has declared it does not accept the Court's jurisdiction. The Court's jurisdiction over war crimes can also be limited under Article 12 of the Rome Statute, which allows a state to opt out of the Court's jurisdiction over war crimes for a period of seven years⁵.

Second: Mechanisms for Achieving International Peace and Security

It is well known that the Security Council is the executive organ of the United Nations, entrusted by the Charter, particularly in Article 24, with the primary responsibility and central role in maintaining international peace and security. The Security Council is distinguished by its powers that enable it to achieve its objectives, and the active participation of its members has played a significant role in fulfilling its purposes. The composition of the Council, the nature of its work, and its voting procedures have had a considerable impact on achieving these goals through its committees, which have played an important role and yielded positive results in realizing the desired objectives.

Regarding the Legal Structure of the Security Council, the Security Council consists of fifteen seats, divided into two groups of members: the permanent members, who are five in number—namely, the United States, the United Kingdom, France, China, and the Soviet Union. After the dissolution of the Soviet Union, the Russian Federation took its place by virtue of the principle of state succession. The non-permanent members are ten countries elected by the UN General Assembly for a term of two years, and the member whose term has ended may not be re-elected immediately. When electing non-permanent members, the General Assembly must consider two factors: the contribution of UN member states to the maintenance of international peace and security and the achievement of UN purposes, as well as equitable geographical distribution⁶.

The United Nations Charter emphasizes the special importance of the Security Council in several of its provisions. Article 24 states, "In order to ensure prompt and effective action by the United Nations, its Members confer on the Security Council primary responsibility for the maintenance of international peace and security, and agree that in carrying out its duties under this responsibility, the Security Council acts on their behalf"⁷.

According to Article 39 of the United Nations Charter, the Security Council determines the existence of any threat to the peace, breach of the peace, or act of aggression, and for the purpose of maintaining international peace and security and preventing threats to it, a series of means and

<https://research.un.org/en/docs/icj>

⁵Amnesty International

https://www.amnesty.org/ar/?fbclid=IwAR2hgcjDahQvDktNiqW1Gh2hBqVzI-OL1ogDpI_Jc0-fljxKQtRR1ohhiyk

⁶ Abdul Karim Alwan Khudair, **Mediator in International Law**, Volume Four (International Organizations), 1st ed., Dar Al-Thaqafa for Publishing and Distribution, Amman, 1997, p. 105.

⁷ Mohamed Sami Abdulhamid, **Law of International Organizations**, Alexandria University, Egypt, 1972, p. 217.

mechanisms are set forth in Chapters VI and VII.

In this context, Chapter VI of the Charter, which deals with the peaceful settlement of disputes, is of particular importance. Article 33, paragraph 1, states: "The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, arbitration, judicial settlement, or resort to regional agencies or arrangements, or other peaceful means of their own choice."

For example, according to Resolution 2235 dated August 7, 2015, at the request of the UN Secretary-General and in collaboration with the Director-General of the Organization for the Prohibition of Chemical Weapons, the Security Council was authorized to expedite the establishment and functioning of the Joint Investigative Mechanism and to fully commence its tasks of identifying individuals, groups, or governments responsible for using chemical substances or any toxic material as weapons in the Syrian Arab Republic.

According to Article 33 of the United Nations Charter, it is clear that this article enumerates the means and mechanisms used by the UN to reduce international disputes through peaceful methods. The means listed in Chapter VI are peaceful methods that member states can choose voluntarily, with complete freedom to select any method they deem appropriate for resolving disputes that may threaten international peace and security. Occasionally, the Security Council may intervene under this chapter and call upon the parties to follow a method it considers suitable for resolving the dispute. However, in this case, its decision is not binding but takes the form of a recommendation⁸. On the other hand, the measures and means outlined in Chapter VII of the Charter are entirely different from those in Chapter VI. These measures are designed to address situations that pose a serious threat to international peace and security and may, in some cases, involve the use of force. Therefore, they are

described in the Charter as coercive measures. The Council may find itself compelled to impose solutions on the disputing parties through non-military means as an initial stage before resorting to military measures if necessary. These measures may vary in terms of methodology, approach, and the entity responsible for their implementation. They are aimed at restoring and maintaining international peace and security. The Arab region has witnessed a series of forceful and harsh actions taken by the Security Council against the Republic of Iraq following the Iraqi invasion of Kuwait on August 2, 1990, which later became known as the Second Gulf War.

Additionally, the Security Council has recently adopted what is known as "smart sanctions," which aim to apply pressure on the ruling regime of the concerned state or states while activating humanitarian conditions. Examples of smart sanctions include freezing assets and financial holdings, blocking financial transactions of the targeted individuals, economic sanctions, and restricting trade⁹. The relationship between the Security Council and the International Criminal Court (ICC) is of special significance due to their differing natures. The Security Council is a political body within the United Nations, while the ICC is an independent judicial body whose independence is established by its Statute, aimed at achieving international justice and maintaining transparency, neutrality, and equality¹⁰.

It is evident that there is an overlap between political activity and judicial function. The boundaries between them in the Court's Statute have been blurred, leading to a complex and intertwined relationship between peace and criminal justice, making it difficult to distinguish the dividing lines between these aspects.

⁸A bdul Rahim Maatouq, A Look at the Successes and Failures of the United Nations in Maintaining International Peace and Security, *Journal of Legal and Sharia Sciences*, Issue Eight, 2011.

⁹ Ben Amer Tunisian, **The Relationship Between the International Criminal Court and the Security Council**, *Journal of Public Law and Political Science*, Issue 4, University Publications for Studies and Distribution, Beirut, 2006, p. 1161.

¹⁰ Hamata Al-Haqq website, Mansour Ahmed, February 2021. <https://jordan-lawyer.com/>

Despite these challenges to the ICC's independence, the drafters of the Statute have sought to balance international peace and security with international criminal justice. For example, the preamble of the Court's Statute states that the goal of the Court is to address serious crimes that threaten peace, security, and well-being worldwide. At the same time, the preamble also emphasizes that the Court is committed to ensuring the continued respect for international justice.

Furthermore, a review of the Court's Statute reveals that efforts were made to balance political motivations with the necessities of international criminal justice. The drafters of the Statute endeavored to satisfy the demands of major states while also protecting the rights of smaller states, which has impacted the balance itself. Achieving such balance amid these contradictions is virtually impossible. We are faced with a powerful political body (the Security Council) against a judicial body (the ICC), which implies a predominance of political influence over judicial authority¹¹.

The authority of the Security Council to refer cases to the International Criminal Court

No one can deny the crucial role played by the International Criminal Court (ICC) in addressing international crimes that harm states and innocent individuals. The concept of referral is clearly articulated in Article 13 of the Rome Statute of the ICC, which states: "The Court may exercise its jurisdiction with respect to a crime referred to in Article 5 in accordance with the provisions of this Statute"¹².

The Rome Statute grants the Security Council extensive and significant powers, which it has used to dominate the work of the Court and impede its

actions. The powers given to the Security Council under this statute have taken the following forms:

- **First:** Article 13 of the Rome Statute grants the Security Council the authority to refer a case to the Court, acting under Chapter VII of the United Nations Charter. These cases involve one or more crimes that constitute a threat to international peace and security.
- **Second:** Article 16 of the Rome Statute empowers the Security Council to intervene in the Court's proceedings and suspend its actions concerning any case before it, at any stage of the proceedings.
- **Third:** Article 87 of the Rome Statute allows the ICC to request the Security Council's intervention if a State Party, or a non-party state that has entered into a special arrangement or agreement with the Court, fails to comply with requests made by the Security Council.

This is established in Article 13 of the Rome Statute, which states:

"The Court may exercise its jurisdiction with respect to a crime referred to in Article 5 in accordance with the provisions of this Statute under the following conditions:

1. If a situation in which one or more of such crimes appears to have been committed is referred to the Prosecutor by a State Party in accordance with Article 14;
2. 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;

¹¹ Ataya Ahmed Salim, **The Relationship Between the Security Council and the International Criminal Court According to the Rome Statute**, *Journal of Jurisprudence and Legal Research*, Issue Forty-One, Egypt, Zagazig University, April 2023.

¹² Lnoufli Ahmed, **The Relationship Between the Security Council and the International Criminal Court**, *Al-Roya* website, 2020.

<https://alroya.om/p/270510>

3. If the Prosecutor has initiated an investigation in respect of such a crime in accordance with Article 15¹³.

It is notable that the term "referral" is used in both paragraphs (a) and (b). Referral means assigning the matter to those with the appropriate jurisdiction. In this context, it can be defined as a legal action taken by the Security Council concerning acts that constitute crimes within the jurisdiction of the Court.

Also, it is generally accepted that a referral by the Security Council is essentially a way of drawing the Court's attention to a situation that involves a serious crime within its jurisdiction, as outlined in Article 5 of the Rome Statute¹⁴.

According to paragraph (b) of Article 13 of the Rome Statute, the Security Council has the authority to refer a case involving one or more crimes within the Court's jurisdiction, as specified in Article 5 of the Statute. In other words, the crimes that the Security Council may refer to the Court include the crime of aggression, genocide, war crimes, and crimes against humanity¹⁵.

Thus, the Security Council may refer any case to the Prosecutor of the ICC that involves one of the aforementioned crimes without specifying the party that committed the crime, as long as the crime constitutes a threat to international peace and security. The exception to this is the crime of aggression, where the Security Council can determine the party responsible for the crime, as it exercises its authority under Article 39 of the UN Charter¹⁶.

It is important to note that when a situation is referred by the Security Council, all states are obligated to cooperate with the Court, regardless of whether they are parties to the Rome Statute or not. However, the Prosecutor retains the discretion to accept or reject the case. The Prosecutor is not obliged to initiate investigations

and may choose not to proceed if convinced that the referral from the Security Council lacks conclusive evidence of an international crime within the Court's jurisdiction¹⁷.

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

The Security Council has used its referral authority twice since the establishment of the International Criminal Court (ICC): first, through Resolution 1593 in 2005 concerning the Darfur region of Sudan, and then through Resolution 1970 in 2011 regarding the referral of the situation in Libya to the ICC. However, the Council failed to refer the situation in Syria twice due to vetoes by Russia and China. Additionally, regarding Sudan, it is noteworthy that Sudan is not a party to the Rome Statute of the Court, yet it is still obligated to implement the Security Council's decision. The preamble of this resolution states¹⁸:

"The Security Council,

-Acknowledges the report of the International Commission of Inquiry on violations of international

¹³ Joe Stork, International Criminal Court, Interhemispheric Resource Center and Institute for Policy Studies, April, 1998, Vol. 3, N4
<https://fpif.org/authors/joe-stork/>

¹⁴ Dr. Dary Khalil Mahmoud and Basel Youssef, **The International Criminal Court: The Dominance of Law or the Law of Dominance**, House of Wisdom, Baghdad, 2003, p. 195

¹⁵ Human Rights Watch, **UN Security Council refers to the ICC**, New York City, March 31, 2005.

¹⁶ The statements are derived from the Security Council meeting record No. (5158) held on March 31, 2005, pages 1-16, and issued under document symbol (S/PV.5158).

¹⁷ Mechanism seeking the support of the African Union for referring the situation in Sudan to the International Criminal Court, document issued by Amnesty International, symbol AFR 2005/020/54, February 11, 2005.

¹⁸ Report of the International Commission of Inquiry on all alleged violations of international law in the Libyan Arab Jamahiriya, Human Rights Council, Seventeenth Session, Agenda Item 4, Human Rights Situations that Require the Council's Attention, document A/HRC/17/44/extract, issued on June 1, 2019.

humanitarian law and human rights in Darfur.

- Refers to Article 16 of the Rome Statute, which stipulates that the ICC cannot start or proceed with an investigation or prosecution for twelve months after the Security Council has made a request to that effect.
- Acknowledges the existence of agreements mentioned in Article 98(2) of the Rome Statute.
- Decides that the situation in Sudan continues to pose a threat to international peace and security.
- Acts under Chapter VII of the UN Charter..."

The referral of the Darfur situation to the ICC by the Security Council has generated significant discussions and opinions among Security Council members, particularly as it involves a state that is not a party to the Rome Statute.

The representative of the United States stated: "The United States continues to fundamentally object to the view that the International Criminal Court (ICC) should have the jurisdiction to prosecute nationals of non-State Parties to the Rome Statute, including government officials. This undermines the principle of sovereignty and its essence. Due to our concerns in this regard, we do not agree with the Security Council's referral of the situation in Darfur to the ICC. We abstained from voting on today's resolution and decided not to object because the international community needs to work together to end the prevailing culture of impunity in Sudan. The resolution provides protection from investigation or prosecution for U.S. nationals and armed forces personnel of non-State Parties."

Similarly, the representative of China stated: "We do not support the referral of the Darfur issue to the ICC without the approval of the Sudanese government because we fear that this will not only severely complicate the efforts to achieve an early resolution of the Darfur issue but will also have unpredictable consequences for the peace process between North and South Sudan. It should be noted that China is not a party to the Rome Statute and has significant reservations about certain provisions of it. We cannot accept any exercise of the Court's jurisdiction against the will of non-State Parties"¹⁹.

In contrast, other Security Council members supported the referral of the Darfur situation to the ICC as a means of addressing impunity. The representative of the United Kingdom stated:

"The United Kingdom welcomes the Council's decision to refer this situation to the ICC, which we consider to be the most effective and efficient means available for addressing impunity and ensuring justice for the people of Darfur"²⁰.

Regarding the situation in Libya, the Libyan crisis dates back to the protests and demonstrations that swept the Arab world in February 2011. Security forces attacked peaceful protesters, with the initial demonstrations occurring in Benghazi. These protests resulted in numerous civilian deaths in a short period and escalated into a civil war. This led the Human Rights Council, in session 15/1 on February 25, 2011, to issue a resolution titled "Human Rights Situation in the Libyan Arab Jamahiriya," calling for the formation of an international commission of inquiry into the alleged human rights violations in Libya. The goal was to ascertain the facts and circumstances leading to such violations, identify those responsible, and make recommendations regarding accountability measures to ensure that perpetrators are held accountable.

The commission reached several conclusions about severe violations of international human rights law and international humanitarian law. Among these findings were the excessive use of force against protesters, resulting in numerous deaths and injuries, which constitutes a grave violation of various human rights principles and rules. Government forces also arbitrarily detained many individuals, practiced enforced disappearances, committed various forms of torture and other cruel, inhuman, or degrading treatment, and carried out indiscriminate attacks against civilians, while the Libyan government failed to take preventive measures to protect civilians, contrary to international

¹⁹ Youssef Mouloud, **The International Criminal Court: Between the Law of Power and the Power of Law**, Dar Al-Amal for Printing, Publishing, and Distribution, New City, Tizi Ouzou, Algeria, 2013, p. 224.

²⁰ Article 13 of the International Criminal Court Statute of 1998.

humanitarian law.

This led the United Nations Security Council on February 26, 2011, to adopt Resolution 1970 by unanimous decision, which referred the situation in Libya to the Prosecutor of the International Criminal Court (ICC). The resolution considered that the widespread attacks in Libya against unarmed civilians amounted to crimes against humanity and referred the situation to the ICC, despite Libya not being a party to the Rome Statute. The Security Council based its decision on Chapter VII of the United Nations Charter, as well as on the report of the International Commission of Inquiry into the Libyan Arab Jamahiriya. The resolution also reflected the condemnation of human rights violations by the Libyan government by the Arab League, the African Union, and the Secretary-General of the Organization of Islamic Cooperation, all of whom denounced the Libyan government's human rights abuses against the Libyan people. The trials that followed involved a large number of accused, including the former President Muammar Gaddafi, his son Saif al-Islam Gaddafi, and Abdullah Senussi, the head of military intelligence. The referral of the Libyan situation by the Security Council to the ICC is considered one of the significant practices that allowed the international community to hold non-State Parties accountable before the ICC²¹.

In contrast, serious humanitarian crimes committed by the Israeli entity in Palestine, as well as those committed by the United States in Iraq, Afghanistan, Guantanamo, and elsewhere, have been overlooked. The Council has remained inactive on these issues, as countries like Sudan and other African nations are weaker but rich in natural resources, while Israel is considered above the law, operating under American and European protection²².

Authority of the Court to Review Security Council Referral Decisions

The Rome Statute of the International Criminal Court (ICC) grants the Security Council significant authority in utilizing this power, especially since major powers dominate the Security Council, and no decision to refer a situation to the ICC can be made without the approval of these countries. To prevent the ICC from becoming a judicial body at the mercy of the Security Council, which is a political body within the United Nations, there are restrictions placed on the Security Council's referral power. The Security Council must exercise this power while maintaining the Court's independence.

Article 13(b) of the Rome Statute states that the Court may exercise its jurisdiction over crimes referred to in Article 5 of the Statute under the following conditions: "...if the Security Council refers a situation to the Prosecutor under Chapter VII of the United Nations Charter where it appears that one or more of these crimes have been committed".

From our examination of this article, it is evident that the term "situation" is used. At the Rome Conference, it was agreed that the Council has the option to notify the International Criminal Court (ICC) of a "situation" rather than a "case" or "incident." This proposal came from the United States, which also prepared work at the preparatory committee level regarding the referral by a state. The reason for this is that the term "situation" has broader and more general connotations compared to "case"²³.

The prevailing opinion in international law, particularly in the context of Security Council resolutions, suggests that while there are some arguments to the contrary, the International Court of Justice (ICJ) can take interim measures. According to Article 92

²¹ Abdel Salam Hamani, **Current Challenges to the International Criminal Court in Light of the Dominance of the UN Security Council**, Ph.D. dissertation in Law, Faculty of Law and Political Science, Mouloud Mammeri University, Tizi Ouzou, Algeria, 2012, p. 237.

²² Sharon Wehata, **The International Criminal Court, published research in Disarmament, Arms Control, and International Security**, Annual Book of the Stockholm International Peace Research Institute, 2003.

²³ Dr. Ben Amer Tunisian, **The Relationship Between the International Criminal Court and the Security Council**, *Journal of Law and Political Science*, Issue (4), University Publications for Studies, Publishing, and Distribution, Beirut, 2006, p. 1161.

of the United Nations Charter, the ICJ is the principal judicial organ of the United Nations, and all member states of the UN are parties to the Statute of this Court. This means it acts as a supervisory tool over the actions of the Security Council.

Therefore, international practices tend to grant the ICJ the authority to review Security Council decisions even in the absence of explicit text, and the ICC cannot be deprived of such authority, even if it is limited due to the serious nature of the court's jurisdiction over international crimes. Referring to the Vienna Convention on the Law of Treaties, the interpretation of a treaty involves determining the meaning of its provisions and their scope of application and interpretation, which is not always straightforward. Additionally, there are bodies specifically designated for interpretation, which supports granting the ICC this right²⁴.

The Security Council's Authority to Undermine the Work of the International Criminal Court

Suspension of the Court's Work: By adopting Singapore's proposal during the Rome Conference, the final version of the Statute granted the Security Council the authority to delay investigations or trials, a measure referred to as "the Singapore solution." This was an attempt to appease the five permanent members of the Security Council who wanted the ICC to be under the complete control of the Security Council, in contrast to the group with aligned interests that wanted the ICC to maintain judicial independence²⁵.

Accordingly, the Statute grants the Security Council the authority to refer a case to the Court concerning one of the crimes under its jurisdiction, guaranteeing the Security Council the right to prosecute before the Court alongside state parties and the Prosecutor.

The Security Council only exercises its authority to halt an investigation or prosecution if the ICC has already commenced it. Thus, the Security Council's authority to stop an investigation or prosecution depends on two conditions²⁶:

- **The first condition:** The crime must have actually occurred, and the Prosecutor must have begun the investigation either directly or based on a referral.
- **The second condition:** There must be compelling reasons to delay the prosecution or investigation, and these reasons must arise from the Security Council performing its duties under Chapter VII of the Charter. If a crime described in Article 5 of the Statute, which threatens or disrupts peace or constitutes an act of aggression according to Article 39 of the UN Charter, occurs, the Security Council may request the ICC to postpone the investigation and prosecution of a specific crime for a renewable period of one year.

It is noted that the Statute does not only grant the Security Council the power to refer a case to the Court but also grants it the power to suspend the Court's activities for a period of twelve months, which is renewable. Article 16 of the Statute stipulates: "No investigation or prosecution may commence or proceed under this Statute for a period of twelve months upon the request of the Security Council to the Court, which shall be included in a decision issued by the Council under Chapter VII of the Charter of the United Nations. The Council may renew this request under the same conditions²⁷".

²⁴ Ahmed Aziz Shoukri, **International Humanitarian Law and the International Criminal Court**, research presented at the Annual Scientific Conference of the Faculty of Law, Beirut Arab University, titled "International Humanitarian Law: Horizons and Challenges," vol. 3, 1st ed., Halabi Legal Publications, Beirut, 2005, p. 144.

²⁵ Nesma Magdy, **The Effectiveness of the International Court of Justice**, Humat Al-Watan website, February 2021.
<https://jordan-lawyer.com/2021/02/15>

²⁶ Introduction to the completion requirements for obtaining a Master's degree in Law, Faculty of Jurisprudence and Legal Studies, 2005, p. 1.

²⁷ Abdullah Al-Ashaal, **The International Court of Justice in Light of Its Handling of Some International**

From this, it can be observed that the Security Council can suspend the Court's activities for twelve months, renewable, based on a decision issued under Chapter VII of the UN Charter. This naturally impacts all legal procedures followed by the Court during the trial phase, which includes hearing witness statements, interrogating the accused, and hearing victim testimonies. All these procedures are disregarded, as the Court is obliged to suspend the trial based on the Security Council's decision for twelve months, renewable, which negatively affects the judicial process and the proper functioning of the Court²⁸.

An example of the Security Council's influence over the International Criminal Court's (ICC) operations is the resolution adopted by the Security Council, Resolution 1422, during Session 4572 on July 12, 2002. This resolution granted immunity to American soldiers in accordance with their government's demands. The United States insisted on the issuance of this resolution and conditioned its acceptance on a decision regarding the funding of the United Nations peacekeeping forces in Bosnia and Herzegovina. The decision was to grant Americans immunity from the ICC's jurisdiction. Indeed, the other states yielded to its demands, and the resolution was adopted and later renewed by Resolution 1487 during Session 4772 on June 12, 2003.

In confirming the Security Council's refusal to contain the Court's work and politicizing its judicial functions in favor of major powers, specifically the United States, the Subcommittee on the Promotion and Protection of Human Rights condemned the Security Council's Resolution 1422 during its 18th session held on August 12, 2002. The resolution granted automatic immunity to nationals of states, whether parties or non-parties to the Rome Statute, who participate in operations authorized by or approved by the Security Council for the maintenance or restoration of international peace and security²⁹.

CONCLUSION

We can conclude that despite the intertwining of justice and peace, to ensure justice, political tools must often be prioritized over judicial ones. This is because the latter is free from all pressures and biases.

The relationship between the Security Council and international courts is legally defined according to the Rome Statute. This relationship is established through clear legal texts. However, the Security Council, which holds extensive powers under Chapter VII of the UN Charter, always intervenes in the work of an independent international judicial body. It exercises these powers as outlined by both the Charter and the Rome Statute, without any supervisory body to oversee its actions and check its powers if it acts abusively.

One practical problem that may arise is that the referral of any case to the International Criminal Court (ICC) by the Security Council depends on the will of the permanent members of the Council, notably the United States, which controls the Council. This is particularly relevant in substantive matters, given their privilege to use the veto power. Consequently, no decision can be made if it conflicts with the interests of any Council member, even if the decision concerns the maintenance of international peace and security.

Furthermore, the Security Council may apply a double standard in its handling of international events. While it has referred the Darfur conflict (Sudan) and Libya to the ICC, it remains passive concerning the situation in Palestine and the violations committed by the Israeli military against the Palestinian people, thus disregarding all international treaties, laws, and norms.

Disputes, Social Sciences Journal, Vol. 2, No. 3, Kuwait, 1979, p. 1.

²⁸ Tareq Ahmed Tareq Al-Zawi, **Emergency Jurisdiction of the International Court of Justice – Procedures and Provisional Measures: A Theoretical and Applied Study on Major International Cases**, Dar Al-Nahda Al-Arabiya, Cairo, 2013, p. 234.

²⁹ Ghadban Soumaya, **The Authority of the Security Council in Enforcing International Judicial Rulings**, Dar Balkis, Algeria, 2012, p. 42.