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Selective State Immunity on The Relationship Between The Icc and The un Security Council

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Abstract

The relationship between the International Criminal Court (ICC) and the UN Security Council is a major issue that sparked much debate, by delegates taking part in the Rome Conference to discuss the Statute of the Court, through the international criminal lawmakers after the adoption of the Statute to the present time. The objective of this study is to deal with the relationship between the jurisdiction of the ICC and the role of the Security Council as a guardian for international peace and security. We shall examine the most pivotal topics related to the Court, namely its relationship and relevance to the Security Council as one of the key organs in the United Nations system, particularly those with respect to the granting of immunity to States. It is noteworthy that we live in a world of interconnected States; it is even more so with the establishment of the International Criminal Court, in particular after the Security Council has given new power to refer or suspend a proceeding before the International Criminal Court. That would suggest a violation of the principle of equal sovereignty and increased divergence on issues of international relations and policies among States, between a State and the court and a State and the United Nations.

1. Introduction

An age has passed since humanity had no idea what an international crime might be. There was a time when the key concern was defining what the domestic crime was, holding the perpetrators accountable and preventing their impunity. However, with the development of societies and the intertwining and overlapping of relations, organized and systematic crimes that transcend the borders of a single state have emerged, and all humanity has suffered from its scourge. After the international community had decided in its conscience the need to find a solution to those crimes that threaten international peace and security, it began to strive towards defining international crime and establishing an international criminal justice whose mission is to prevent the impunity of criminals and those accused of committing those crimes from international justice.

The international first attempts and efforts to establish such type of international justice that concern the entire international community continued, until a glimmer of hope appeared on the horizon that suggested that the conscience of the international community had awakened from its slumber. It had put the international community on the right path in order to achieve the dream of international justice, represented by a conference Rome, known as the Statute of the International Criminal Court in 1998. This international gain did not come out of nowhere. The previous attempts and efforts to find a way to international justice were the nucleus and seed for laying the foundations of international criminal justice. With the endorsement of the international community, the rules of international criminal justice found the fertile soil until the seed sprouted and harvested its fruits at the Rome Conference in 1998.

However, the UN Security Council has granted selective and prior immunity to some countries of non-compliance with the International Criminal Court under Article (16) of its Statute. The Security Council can suspend the initiation or continuation of investigation or prosecution proceedings for any of the countries for a period of twelve months, based on the powers granted to it under Chapter VII of the Charter of the United Nations.

In case of proceedings referred by member states, or in case that the Prosecutor was the one who initiates the investigation, the Security Council can issue a decision requesting the Prosecutor to stop the commencement or to continue the investigation procedures, or to request that the court stop initiating the trial procedures under consideration.

As part of our research, we shall address the extent of the Security Council's power to grant prior immunity in the International Criminal Court, in line with Article (16) of the Statute. The UNSC Resolution 1422 at its 4572nd session was the first resolution adopted under Article (16) of the Statute of the Court on 12 July 2002. Under the resolution, a prior immunity granted in the International Criminal Court for a period of twelve months in the event of any case against current or former officials or personnel of contributing country not a Party to the Rome Statute over acts or omissions relating to a UN established or authorized operation. The Security Council subsequently issued Resolution (1487) on June 12, 2003 that modifies the previous Resolution (1422) for twelve more months.

In the light of the above, we will discuss in this research the assessment of Security Council resolutions granting selective immunity to states through two sections, the first one is the contradiction between the resolutions and the Rome statute, and the second is the issue of the security council's refusal to determine the responsibility of states.

1.1 Research Significance

There is no denying that the importance of strengthening links between States and the International Criminal Court has been a well-received and supported target of the majority of the international community for achieving and disseminating the ideals of goodness, peace and justice. Even though a category of countries have not ratified such ideals on the grounds of their ambitions, political tendencies, outdated conspiratorial theories and narcissistic ideas towards the International Criminal Court, putting the comprehensiveness and universality of its rules in question.

Surprisingly enough, the United States of America and Israel were the first to welcome the birth of this court, considering it the savior against all forms of violence, and then interfere after that blatantly in formulating some of its rules in a way that act in their best ambitions and interests. This is evident in the texts that clarify the relationship between the International Criminal Court and the Security Council. Then, as soon as it achieved its goal and what it aspired to, the hidden intentions of not ratifying it, and even slandering, and questioning it, as stated by George Bush Jr. the former US President through the countries that recently withdrew from the Rome Statute, such as the Russian Federation.

The path of fulfilling the dream of international justice is still long and fraught with difficulties and risks. It requires the solidarity of all countries alike, their cooperation and integration away from political affiliations and personal convictions. If the law has the ability to change the behavior of individuals, it cannot change hearts, feelings and personal convictions. Achieving international justice requires a change in hearts, feelings and personal convictions, a change that will not take place by law alone.

Thus, States must put aside the idea of sovereignty and not overuse this term in order to avoid their international obligations, foremost of which is achieving international justice. They must also bridge the gap between their various political tendencies toward the good of humanity. Sovereignty is no longer that solid, ossified concept, but rather it has undergone a degree of evolution in the modern era, like other things. Therefore, States must dismantle their narcissistic tendencies, clear their consciences and intentions, seek and come together in one whole to achieve the values of goodness, peace and justice, and to give up in principle the obscurantist ideas, such as sovereignty and leadership. They must take the lead in spreading values that society likes and fighting crimes that society rejects. No doubt, the international community will be a witness over time to the good intentions of leading countries in the humanitarian fields.

1.2 The Scope of the Research

The research focuses on the politics and international relations resulting from resolutions adopted by the Security Council in which it uses its authority in accordance with the Rome Statute, according to which it can either activate or stop the judicial case before this court. Beyond the scope of this research will therefore be the legal issues related to how the case is considered before the court; the research is rather bounded to the policies of the new authorities granted to the Security Council, and the relationship of states to those selective immunities and their evaluation.

1.3 Research Problem

The most important problem of research lies in the double standards of the UN Security Council's dealings with States if they commit a crime falling within the jurisdiction of the International Criminal Court, especially those States that have not ratified the Rome Statute despite violating the international public order. Albeit considered grave violations of the international public order, they are not referred to the jurisdiction of International Criminal Court, which suggests that the reason for this is nothing but the political whims of a group that controls the international community.

Among the problems raised by the research is also the text of Article (16) of the Statute of the International Criminal Court, which gives the Security Council the authority to suspend investigation and procedures for a certain period, and its right to extend such period thereafter. This leads to tampering with evidence of the crime and witnesses, in contravention of the right of the accused to a fair trial before a neutral and impartial court that guarantee the right to defense.

Perhaps among the problems of the research is also to show the extent of the influence of the Security Council on the role and function of the Court, with an attempt to shed light on the need of limiting the role of the Security Council and not to exceed its jurisdiction or infringe upon the jurisdiction by the Court.

1.4 Research Methodology

The study proceeds to analyze the policy positions embraced by the Security Council towards various States through its authority granted by the Rome Statute to refer or suspend pending cases before the International Criminal Court. The study aims as well to assess the role that the Security Council plays in the International Criminal Court, and hence the methodology adopted in this study is the analytical descriptive method.

1.5 Research Plan

Section 1: The contradiction between the resolutions and the Rome statute

Section 2: The issue of the security council's refusal to determine the responsibility of states.

2. Assessing the Security Council Immunity Resolutions

2.1 Introduction

As we have already observed, the US proposals calling for selective immunity for UN peacekeeping forces for a contributing country not a party to the Rome Statute were formulated in UN Security Council Resolutions No. 1422/2002 and (1487/2003). However, this did not automatically mean acceptance of international community, but quite the opposite, as it has met with strong opposition and widespread condemnation from various international circles and institutions.

For example, on July 3, 2002, the Secretary-General of the United Nations sent a Letter to the US Secretary of State, expressing his strong rejection of the US proposals calling for exempting US citizens from appearing before the International Criminal Court, and the danger these proposals pose to the peacekeeping system of the entire United Nations.

The European Parliament issued as well on September 26, 2002 Resolution No. (0449/2002) expressing its regret that the Security Council on July 12, 2002 adopted Resolution 1422/2002, stressing the need not to allow any agreement with immunity for the purpose of evading anyone from punishment.

2.2 The Inconsistency between the Security Council Resolutions, the UN Charter and the Rome Statute

In view of the above and when looking into the extent of compatibility between two Security Council resolutions on immunity with the rules of international law, the aforementioned two resolutions would arguably contradict the Statute of the Court, that is, the Rome Statute, on the one hand, and the Charter of the United Nations, on the other hand.

In terms of the contradiction with the Statute of the International Criminal Court, we find it clear when examining and analyzing the provisions of Articles (16) and (27) of the Statute of the Court. As far as Article (16) is concerned, we hold that the ground behind the formulation of this Article and the intent of the drafters of the Statute is to allow the Security Council, according to special conditions, to request the Court to grant a temporary postponement of investigation and prosecution in a case subject to exceptional circumstances. This is evident in the negotiating history of the formulation of that Article.

Article (16) required the Security Council to study the matter of submitting a request for postponement on a case-by-case basis, deciding on each case that the request for postponement is necessary to help restore or maintain international peace and security. However, resolutions (1422) and (1487) have not passed on a case-by-case basis, but instead we find that they provided for a general exception for an entire class of persons before any case arises, and without specifying that exceptional circumstances calling for such a postponement have arisen in order to restore or maintain international peace and security.

As to the contradiction with Article (27) of the Statute of the Court, we find that one of

the main components of the purpose and purpose of the Rome Statute is that Article (27) includes the basic principle that no one enjoys immunity from crimes that international law considers as well, such as genocide, crimes against humanity and war crimes. Article (27), Paragraph (1) states,

This Statute shall apply equally to all persons without any distinction based on official capacity. In particular, official capacity as a Head of State or Government, a member of a Government or parliament, an elected representative or a government official in no way absolves a person from criminal responsibility under this Statute, nor shall it, in and of itself, constitute a ground for reduction of sentence.

Especially considering that the immunity by the Security Council Resolutions (1422/2002) and (1487/2003) are not granted only to citizens of non-party States; they also include citizens of states parties to the Rome Statute. Therefore it suffices to be one of the States participating in a United Nations operation from non-party states, regardless of whether those subject to its orders are nationals of states parties or not, so that all current and former employees working for them enjoy immunity from the jurisdiction of the International Criminal Court. A state party to participate in a United Nations peacekeeping operation in the Democratic Republic of the Congo, which is a state party, and that British citizen has committed a crime within the jurisdiction of the International Criminal Court, this person will automatically enjoy immunity.

Finally, let us conclude that the immunity established in the two Security Council resolutions is contradictory to the basic principle contained in Article (27) of the Statute and the preceding provisions of Article (16) of the same Statute.

As for the contradiction of the two Security Council resolutions on immunity with the Charter of the United Nations, it seems clear that the Security Council, when issuing the two resolutions based on Chapter VII of the Charter of the United Nations, did not identify any threat to international peace and security. This implicitly means that in the absence of any a threat to international peace and security, the International Criminal Court is the one that poses that threat. This is on the one hand, and on the other hand, we believe that the Security Council's failure to determine a threat to international peace and security or an act of aggression which constitutes the basis for the Council's recourse Security to Chapter VII of the Charter, constitutes a clear contradiction with the Charter of the United Nations.

Apparently, the international policies, armed forces, and diplomatic tools throughout human history have not been able to stop the massacres, atrocities, acts of cruelty and wars witnessed by human societies, including wars of extermination. For "wars have accompanied human societies since their formation, and we regret to say that they are almost the origin in international relations; perhaps until recently. (Al-Bayati 2002, 1).

For a long time, and despite the urgent need to prosecute the perpetrators and the war-wounded, the international community did not know an international criminal judicial body that has the force of law in terms of resolutions and their implementation, all in order to preserve and protect human rights in security and peace. Such international criminal cases have long been abandoned. (Al-Khulaifi. 2003.)

Due to the commission of many crimes, especially during wars or the rule of authoritarian regimes, we find that human societies are seeking to establish international criminal justice and international courts specialized in criminal trials against the perpetrators

of international crimes.

Soon after the Second World War, and the resulting war crimes and crimes against humanity and the atrocities committed, there were calls for the establishment of an international criminal court to punish war criminals, but the political environment in which the world was divided into two international poles have prevented from this to happen.(Mahmoud & Youssef)

After the Special Committee submitted its draft to the General Assembly, the draft has been discussed at the 7th session of the United Nations General Assembly in 1952, and member States submitted their suggestions and observations on this project, as opinions about the idea of establishing the Court were divided into two camps:(Younis, 1969,p 150-155)

The first camp stood against the establishment of an international criminal court based on a number of arguments, perhaps the most prominent of which are:

i. The national criminal jurisdiction is the most important feature of sovereignty in the state, and the establishment of an international criminal judiciary means a violation of the national sovereignty of states.
ii. The establishment of a court under the current international conditions is not feasible and is not of international interest.
iii. The existence of such a court is related to the outbreak of wars; that that its continued existence is unjustified. The courts arising out of specific circumstances for a specific purpose are usually more decisive in matters and more prestigious.

The second camp upheld the establishment of an international criminal court based on the following arguments:

The concept of sovereignty in the traditional sense is meaningless in light of the network of international relations that has resulted in the emergence of regional blocs that have an impact on the concept of sovereignty, such as the European Union and the League of Arab States. Additionally, the fact that joining the United Nations Organization means in itself a waiver of the idea of absolute sovereignty of the state, so that the elements of sovereignty diminished.(Sarhan. 1969.p 383).

i. The trial of a criminal before a pre-existing court to a crime is more just and better than his trial before a court existed after the crime. The prior establishment of the court is far from the revenge and vengeance mentality, as was the case in the Nuremberg and Tokyo courts, and on the other hand, the prior existence of the court is considered a deterrent factor to prevent crimes from being committed or contemplated.

Attributable to competing views on the draft of the International Criminal Court, the General Assembly adopted its resolution (687) on 5/12/1952, according to which it established a new committee in 1953 consisting of representatives of (17) States(Al-Azzawi ; Al-Khulaifi, & Mahmoud .pp 38-39.)، to perform the following tasks:

a. To study the consequences of establishing an international criminal court and look for ways in which such the Court could be established;
b. To study the relationship between the United Nations and the proposed court; and
c. Reconsider the draft statute of the proposed court.

Based on the tasks bestowed upon the committee, it started its work from 27 July to 20 August 1953 and developed a new statute for the court, suggesting several ways to establish an international criminal court.(Al-Khulaifi, p 3-4) The committee submitted its draft to the

General Assembly for deliberation, but it noted that despite the tangible response of many member States to the establishment of an international criminal court, there were some countries questioning the feasibility of establishing such a court unless the States agreed on the definition of the word 'aggression'.(Al-Azzawi; Mahmoud &Youssef . 148- 9)

On that basis, the General Assembly issued Resolution No. (989) on 12/14/1954, in which it stated that the issue of an international criminal court is related and pertaining to the problem of defining 'aggression' on the one hand, and to the problem of agreeing on a draft law on crimes against peace and security in the world, on the other hand. The General Assembly proposed postponing the decision on the issue of establishing an international criminal court until agreement is reached on the definition of 'aggression' and the draft law on crimes against peace and security in the world.

Although the term 'aggression' was defined in the General Assembly under its Resolution 3314 of 12/14/1974, the issue of establishing the International Criminal Court has not been considered and remained suspended and until the mid-eighties of the last century. This was the case after the issue of the International Criminal Court raised anew in times when the International Law Committee was discussing the draft law on crimes against the peace of humanity over the years 1986-1989.(Al-Khulaifi, p 3)

However, the proposal put forward by the delegation of Trinidad and Tobago in 1989 to the United Nations General Assembly regarding the establishment of an international criminal court for combating what the delegation considered one of the newly recognized international crimes, namely drug trafficking, constituted an important turning point in the way of establishing that court. Even though the mentioned proposal was never new to the United Nations, it represented a clear response to the work of the two Special Committees established by the General Assembly to draft a Statute for International Criminal Courts in 1953 and 1951.(Oscar. 2002, 146.)

However, the UN General Assembly response to the proposal, its referred Resolution to the International Law Committee and the request to discuss the issue of establishing an international criminal court to look into crimes of illegal drug trafficking across states and other future international crimes(Mahmoud; Youssef &Al-Khulaifi, ,p 3-4) represented a starting point for beginning anew the project to establish the International Criminal Court.

Accordingly, and in response to the General Assembly's resolution, the International Law Commission took advantage of the General Assembly's mandate to establish an International Criminal Court from its forty-second session in 1990 to its forty-sixth session in 1994. The Commission reached a draft statute for the court and submitted it to the General Assembly.(Yazigi. 2009)

As a result, the General Assembly issued on December 9, 1994 a resolution welcoming the draft of the International Commission on the International Criminal Court. It decided to establish specialized committees open to the Member States of the United Nations, with the task of reviewing the main, technical and administrative issues arising out of the draft statute prepared by the International Law Commission. In its decision, it specified that the Specialized Committee would meet in two sessions, the first from 3-13 April 1995, and the second from 14-25 August 1995.(Mahmoud and Youssef,p 47)

After that specialized committee completed its work and put forward its report to the General Assembly, the latter issued its resolution No. (50/46) on 11/12/1995, which provided

for the formation of a preparatory committee for the establishment of an international criminal court that would be open to all member states of the United Nations, with responsibility for drawing up the broadest possible draft text consensus to be presented before the United Nations Diplomatic Conference. The resolution stipulated that the Preparatory Committee would meet in two periods from March 25 to April 12 1996 and the second period from 12-30 1996 to prepare for the consolidated draft text.

Subsequently, on December 17, 1996, the General Assembly passed a resolution stipulating that the Preparatory Committee would meet in the years 1997/1998. According to that resolution, the Preparatory Committee met in the period of 11-21/February 1997 and 4-15 August and 1-12 December 1997, in order to finalize a consolidated and widely accepted draft of the Convention for submission to a Diplomatic Conference of delegates.

Meanwhile the General Assembly passed on December 15, 1997 a resolution under the heading, 'Establishment of an International Criminal Court' by which it determined to accept the offer from the Government of Italy to host the United Nations Diplomatic Conference on the Establishment of an International Criminal Court, for the period from 15 June to 17 July 1998. In this resolution, the General Assembly also requested the Preparatory Committee for the Establishment of an International Criminal Court to continue its implementation based on the General Assembly Resolution No. 51/207 in 1996 and to refer to the Conference the text of a draft convention on the establishment of an international criminal court. The Preparatory Committee afterwards met in the period of March 16 to April 3 1998 to finalize the draft convention.

2.3 The Security Council's Abdication on State Responsibilities

There is an established assumption that the UN Security Council is likely to play a role in determining the crime of aggression through its jurisdiction to determine whether a State to which the individual accused before the Court belongs has committed an act of aggression. Even though this issue has yet to be settled, so that the role of the Security Council in determining the occurrence of aggression is finally recognized as a prerequisite for raising individual criminal responsibility for the crime of aggression.

However, if it can be assumed that the Security Council will have an overwhelming role in determining the crime of aggression. That is to say the Court could not exercise its jurisdiction and hold perpetrators responsible for the crime of aggression until after the Security Council decides that the State to which this individual belongs has committed an act of aggression. This assumption would raise the following question: What is the action, if any, that could be taken when the Security Council does not decide that an act of aggression has occurred, or when it refrains from deciding so in any other way?

In fact, the assumption stems from the basic fact that if the jurisdiction of the Court over a crime of aggression is associated with the Security Council resolution adopted to establish responsibility of a State. Whether or not State has committed an act of aggression, the Security Council may not be able to determine whether or not that State to which the individual belongs has committed an act of aggression. This inability may be due to the use of the veto by one of the permanent members of the Security Council, or the council has been unable to reach a decision as to whether the State to which the individual belongs accused of having committed an act of aggression.(Cohn. 1973)

In the face of this legal problem, the positions of States on this issue varied, as the United States of America went so far as to view that in the event that the Security Council does

not reach a resolution to define the aggression, the case comes to a close and the court dismisses the case.

It is not, perhaps, too much to say that this view is arbitrary from the side of Security Council. It affects the work of the court and denies justice if the court dismissed a referred case pertaining to a crime of aggression because the Security Council did not decide whether a State to which the accused individuals belongs had committed an act of aggression.

As to the positions of other States, Cameroon has argued that the International Criminal Court, in such a circumstance and within a reasonable period, can initiate an investigation into the crime of aggression if the Security Council does not respond within a reasonable time.

However, the Arab States and Non-Aligned States put forward several proposals in the event that the Security Council fails to issue a resolution on a crime of aggression, for whatever reason. Among these proposals are as follows:

i. Referring the matter to the General Assembly to determine as to whether the crime of aggression occurred, or to the International Criminal Court
ii. Referring the matter to the International Court of Justice at the request of the General Assembly to issue an advisory opinion on whether the crime of aggression has occurred, and then to the International Criminal Court.
iii. Referring the matter to the International Criminal Court to determine based on its jurisdiction over the crime of aggression and determine individual responsibility and to prosecute the perpetrators.(Mahmoud & Youssef, p 118)

Nevertheless, despite all suggestions and opinions proposed by countries, especially the proposals submitted by Arab States, it was noticeable that the United States of America maintained an implacable opposition towards all those efforts. It insisted that the Security Council should remain the entity determining the occurrence of the crime of aggression and that the Court does not have the jurisdiction to consider the crime of aggression and prosecute only after the Security Council adopts a resolution specifying that the country to which the accused individual belongs has committed an act of aggression.

Indeed, assuming that the Security Council has not reached a resolution establishing whether a State to which the accused individual belongs has committed an act of aggression. In order to put an end to impunity and punish the perpetrators of the most heinous international crimes, namely a crime of aggression, it entails enabling the court to exercise its jurisdiction over the crime of aggression. This is so in the event the Security Council fails to reach a decision determining as to whether the concerned State has committed an act of aggression, adopting one of the following solutions:

i. The UN Security Council, within a reasonable period from the date of the Court's request to the Security Council to determine whether the country to which the concerned citizen belongs has committed an act of aggression, such as that this period is (6) or (12) months. If the Security Council is unable to take a decision during this period, the court may proceed with the case before the Court.

According to this suggestion, the Court has to take into consideration any decision taken by the Security Council in accordance with Article 39 of the Charter of the United Nations that a State has committed an act of aggression against another state. However, if there is no Security Council decision, the Court, when presented with a case involving aggression, must ensure that the Security Council did not issue its decision regarding the determination of

aggression, and that the Security Council does not request the Court to postpone the investigation or proceeding in accordance with Article (16) of the Statute. If these steps do not lead up to any result, the Court may proceed with an investigation on the ground that nothing in the Charter of the United Nations prevents the Court from doing so.(Ferencz, p 3)

ii. The UN Security Council, within a reasonable period of (6) or (12) months, from the date of the court's request, should take a decision on whether a State to which the accused individual belongs has committed an act of aggression. Otherwise, the Court may request, in accordance with Articles 12, 14 and 24 of the Charter of the United Nations the General Assembly, to make a recommendation on whether the State in question has committed an act of aggression.

iii. Within a reasonable period of (6) or (12) months from the date of the request to the General Assembly, if the General Assembly does not make that recommendation, the Court may proceed with the case. Such a solution is based on the fact that in the event that the Security Council is unable, for whatever reason, to take a decision, the Charter of the United Nations provides for an internal mechanism to address the issue.

This mechanism permitted by the Charter of the United Nations consists in a "Uniting for Peace" Resolution on 3 November 1950.(Cohn, p 3) The Resolution refers to a situation where the Security Council could not exert its key responsibilities for maintaining international peace and security, in cases in which there is a threat to or violation of international peace and security. The General Assembly will give prompt consideration on the matter promptly, make appropriate recommendations to the Members and call upon them to take collective measures, including the use of armed force when necessary, with a view to maintaining and establishing international peace and security.

3. Conclusion

States have differed on the reasons for the establishment a permanent international criminal judicial system; sometimes supported, and sometimes objected to it. Perhaps this difference was clearer with respect to the selective immunities of the state as granted by the Security Council for the failure of states to appear before that court. Accordingly, throughout the study, we reached a set of results as follows:

(1) The International Criminal Court was not only born out of the Rome Statute; it was the result of long pre-existing international efforts, be they from within the United Nations or from without. This was based on the impact of the development of a collective sense of the danger of leaving some acts committed during armed conflicts without prohibiting, prosecuting and punishing their perpetrators.

(2) The UN Security Council, in accordance with the provisions of the Statute of the Court, can refer cases to the International Criminal Court, in accordance with its jurisdiction under Chapter VII of the Charter of the United Nations, whenever a crime within the jurisdiction of the Court constitutes a threat to international peace and security. Noting that when the Security Council refers a case relating to a state party to the Court, it is not constrained by the preliminary procedures related to the admissibility of cases before the Court.

(3) The Security Council can refer cases to the International Criminal Court that relate to States not party to the Court's statute for one of the crimes over which the Court have jurisdiction, as it was the case by the United Nations Security Council Resolution No. (1593) in 2005, which provides for referring the case of violations of the law

International Humanitarian and Human Rights in Darfur region of Sudan to the International Criminal Court.

(4) The Security Council, in accordance with the Statute of the Court, may pass a Resolution stopping the investigation or proceedings by the Court and deferring it for a (12) months period, renewable for an indefinite period, by a Resolution issued based on its jurisdiction granted under Chapter VII of the Charter of the United Nations. This constitutes a strict restriction on the jurisdiction of the Court and an objective interference of a political authority in the work of the Court as a judicial body intended to be independent of political interference and influence.

(5) In the event of non-cooperation of States parties or non-States parties, though the latter was not a signatory of a cooperation agreement, the Security Council can take all measures available by the provisions of Chapter VII of the Charter of the United Nations whenever non-cooperation of States parties or non-States parties poses a threat to international peace and security.

4. Recommendations and Suggestions

The following measures need to be part of any effort to establish a balanced relationship between States and the International Criminal Court:

(1) To adopt new international policies limiting the authority of the Security Council towards a State, be it initiating or stopping a case.

(2) To function internationally to maximize the role of the International Criminal Court in confronting the violations faced by Sates that have or have not ratified its charter to activate the policies of international organizations for the promotion of peace.

(3) To amend the Rome Statute of the International Criminal Court in a manner that ensures stability and balance between the sovereign equality for all States.

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