February 1, 2015

Statute of the International Criminal Court is Complementary to National Criminal Laws

Mamoun Mohammad Abuzeitoun, Dr.

Available at: https://works.bepress.com/mamoun_abuzeitoun/1/
Abstract

The Charter of the International Criminal Court supplements national laws in respect of serious criminal crimes. This is underlined by articles 1 and 17 of the Charter. Yet, the practice of the ICC shows that international crimes may be prosecuted in certain cases while other cases are excluded on the ground that the conditions for legal prosecution under the Charter are not satisfied. Hence, a question arises as to whether the Charter constitutes an objective and actual supplement to national laws or a possible supplement depending on international economic and political relations.

Keywords

Perpetrator, Referral, Deferral, Arrest Warrant, Complementarity, Interrogation, Extradition, Perpetrators, Judicial Immunity, Contracting Member, Admissibility.

1 Introduction

2 Research problem

3 Legal obstacle

3.1 Legal Obstacles Related to the Referral

3.1.1 Legal Obstacles of Deferral

3.1.2 Legal Obstacles Originating from the Powers Granted to the Prosecutor

4 Deciding not to Initiate Investigation

4.1 Initiation of the Investigation and Stopping it

5 Procedural Obstacles
5.1 Procedural Obstacles in the Preliminary Investigation Stage

5.2 Procedural Obstacles of Arrest and Detention

5.3 Procedural Obstacles of Interrogation

5.4 Procedural Obstacles in the final stage of the Investigation

7 Extradition Request

7 Prosecution of Crimes of Aggression and Possession of Nuclear Weapons

8 Recommendations

1 Introduction

Perpetrators of serious international crimes against the security and stability of the international community shall be responsible for the acts attributed to them. This is what the international community in all its sects seek to achieve, especially in the light of the increase and seriousness of this type of crimes, where perpetrators of these crimes enjoy international or judicial immunity provided by the international law.

To achieve this, the international criminal justice has developed significantly through the creation of military Courts statute after the first and second world wars, and the temporary Courts created by the Security Council, and finally the creation of the Permanent International Criminal Court. This court conducts investigation with individuals responsible for genocide war crimes, crimes against humanity, and crimes of torture and aggression committed since the first of July, 2002 in the absence of prosecution by the national competent state.

Despite the existence of this court, the issue of the implementation of prosecution and punishment on perpetrators of such crimes have been questionable in terms of credibility and objectivity as a result of overlap between the power of international criminal justice and the national criminal Justice because of political attitudes of some powerful countries and their influence on the Security Council which is one of the important entities of the International Criminal Court. Depending on the above, the researcher decides that this paper be devoted to addressing this


issue, and he will try to see whether the Statute of The International Criminal Court (ICC) is a real supplement to the national laws, or whether there are other parties influencing it.

1 Research problem

Articles 1 and 17 and the tenth paragraph of the preamble to the statute stipulate that the statute is a complementary law of the national laws with respect to international serious crimes, and if the competent national States refrains from prosecution, the International Criminal Court (ICC) plays its role. The statutes gives the Security Council the right to refer crimes against international peace and security crimes and crimes of aggression to the International Criminal Court (ICC) even if a competent national state is willing to prosecute. Likewise, Under the Statute, the Security Council may request the deferral of investigation or prosecution of the accused for a period of 12 months, renewable for similar periods without limitations, under the pretext of peaceful settlement of the conflict and the maintenance of international peace and security and not hindering its peaceful work. This is contrary to the principle of complementarity. In addition, the statute gives the Prosecutor the power not to initiate investigation, and to stop the investigation proceedings without legal guarantees that ensure the principle of complementarity and achieve its goals. Moreover, the statute does not take into account the principle of complementarity in legal proceedings related to legal prosecution, whether related to primary, or final investigation because of legal procedural obstacles that constitute an obstacle to the principle of complementarity and limit it.

3.1 Part I Legal Obstacles

This part comprises two sections. The first section addresses the legal obstacles originating from the powers granted to the Security Council, and the second section deals with the legal obstacles originating from the powers granted to the prosecutor.

3.1.1 Section I legal obstacles originating from the powers granted to the Security Council.

This part is sub-divided into two sections, namely the legal obstacles related to the referral, and legal obstacles related to deferral.

3.1.2 Section I legal obstacles related to the referral.
The Statute gives the Security Council the right to refer crimes of aggression against international peace and security to the International Criminal Court, even though a competent national state wishes to prosecute the crimes, and even if the state in which the crimes were committed is not a member state in the Statute, or if it is not satisfied with the competence of the court, or even if the perpetrator is a citizen of a State which is not a member state in the statute or a citizen of a state that is not satisfied with the competence of the court. This is confirmed in Article (13 b) in conjunction with the meaning contrary to article (12/2) of the Statute, and in conjunction with Article 41 and chapters VI and VII of the Charter of the United Nations.

The observer of the statute finds that the statute is contrary to the principle of complementarity, and to Article 34 of Vienna Convention on the Law of Treaties of 1969 which states that ‘the treaty does not impose any obligations or rights on a third State without its consent because it allows Security Council to refer those crimes, even if there is a competent national state wishing to prosecute the crimes and even if those crimes were committed in the territory of a State that is not a party to the statute.’

The value of the criticism regarding the violation of Security Council Statute to the principle of Complementarity, which gives the right of referral of crimes of aggression and crimes against international peace and security to the International Criminal Court, is not detracted by the argumentation that this authority ensures the prosecution of those crimes which are dangerous to the international community. This is because the Security Council was not objective in dealing with this type of crimes.

This criticism is supported by the position of the Security Council on the crimes committed in Palestine, Iraq and Syria. The observer of the security council finds that the Security Council refused to refer those crimes to the International Criminal Court for non-objective considerations, although Human Rights Council of the United Nations considered those crimes as crimes of aggression or against international peace and security.

---

12. In (15) in February 1983, America used the right of "veto" against the decision to denounce the massacres committed in 'Sabra and Shatila' Camps. Also, on September 13, 1985 and on 30, 1985, USA used the right of "veto" against the two draft resolutions of the Security Council, the first one demanded the condemnation of the repressive Israeli practices against the Palestinians, and the second demanded condemnation of Israeli violations of Al-Aqsa Mosque and rejected Israeli claims that Jerusalem is its legitimate capital. In addition, America used on January, 1988, the right of "veto" against a draft resolution
As for the situation in Darfur, the Security Council, under Chapter VII of the Charter of the United Nations, referred the case to the International Criminal Court, under Resolution No. (1593) of 31 March 2005, although the crimes committed in Darfur are less dangerous than the crimes committed in Palestine and Iraq.

Depending on the above facts, it can be argued that the statute does not stipulate the legal rules that ensure objectivity of the Security Council. This criticism is enhanced by the fact that the Security Council is a political body of the United Nations, whereas the International Criminal Court (ICC) is a judicial system, and they should be independent from each other. Moreover, this criticism is also strengthened by the fact that the Security Council is the competent body that determines whether the act is an aggression crime or a crime against international peace and security, and whether the act is complete, and unsolvable peacefully, and whether it is included in the jurisdiction of the International Criminal Court (ICC) without no control to ensure the objectivity of its decision. This is confirmed by Article (13b) of the statute, and chapters VI and VII of the Charter of the United Nations.

The value of this criticism is not detracted by Article 25 of the Charter of the United Nations since this article obliges members of the United Nations to accept the Security Council resolutions related to international peace and security, and aggression and to implement them even if they are contrary to the statute of the International Criminal Court. This is because the Security Council was not objective as mentioned previously, and because the White House administration prevented the Security Council to refer crimes of aggression and crimes against international peace and security committed by its military personnel to International Criminal Court by passing a law to the Congress that granted immunity to American military personnel condemning Israeli attacks on southern Lebanon, and the demand to stop all acts of infringement on Lebanese territory and all actions against civilians. It also used the right “veto” on March 21, 1997 against a draft resolution condemning Israel's construction of Jewish settlements in East Jerusalem, with the beginning of 2006, the prosecutor received about 240 reports concerning the situation in Iraq, the crimes and human losses caused by launching military operations there. After analyzing the information available to him, he concluded that there are serious international crimes included in the jurisdiction of the International Criminal Court (ICC) were committed, specifically murder and inhumane treatment, but the Security Council did not consider crimes against international peace and security. On February of the same year, the prosecutor decided that he was not able to start investigation because they were not referred to him by the Security Council, and because Iraq was not a state party to Rome Statute, and it did not hand in a declaration accepting the jurisdiction of the International Criminal Court pursuant to Article 12(3) of the statute. In the Syrian affairs, Commissioner for Human Rights of the United Nations, Navi Pillay criticized the Security Council for not refer the human rights violations committed in Syria to the International Criminal Court until now, despite the fact that the Human Rights Council of the United Nations decided that the Syrian government forces had committed crimes against humanity represented murder, torture, rape, and kidnapping civilians systematically.

---


involved in any operations outside the United States\textsuperscript{18}. The value of this criticism is not also detracted by the argument that the Security Council will be objective with respect to the referral of crimes since its resolution shall be subject to the control of International Criminal Court, and the Charter of the United Nations, which require, in procedural matters, the approval of nine members out of the fifteen members of the Security Council provided that the five permanent members are among the nine members, and in substantive matters it also requires the approval of nine members provided that the five permanent members are among the nine members. This is because the Charter of the United Nations did not put clear criteria to distinguish between procedural and substantive matters, and because these countries are often from countries involved in these crimes.

3.1.3 Section II Legal obstacles of deferral

Under article 16 of the Statute, in conjunction with articles (24, 39 - 42) of the United Nations Charter, the Security Council, acting under Chapter VII of the Charter of the United Nations, may request to defer investigation at any stage for a period of twelve months in order to settle the conflict peacefully, and that the period is renewable for similar periods without limitation. This may lead to the loss of legal evidence and witnesses or that witnesses refrain from testifying. Observers of this article finds that it is an obstacle to the principle of complementarity\textsuperscript{19}, because it allows the Security Council to defer the investigation for a long time, a period of twelve months, and allows it to renew the deferral for similar periods without limitation and without specifying the beginning of the twelve-month period\textsuperscript{20}, and without the restriction of this authority in time or by other means, and without the development of legal guarantees to ensure objectivity of the Security Council, Such as a requirement, for example, of seeking the opinion of the General Assembly of States Parties, whose jurisdiction, pursuant to Article (112) of the Statute, is to monitor the proper functioning of international criminal justice, and establish subsidiary bodies and independent mechanism for inspection, evaluation and investigation of the Court affairs\textsuperscript{21}. The value of this criticism is not detracted by the argument that this is an inherent right, pursuant to Chapter VII of the Security Council, and it saves time, effort and armed conflict, and aims at a peaceful solution. This criticism is based on the ground that the


\textsuperscript{20} It is unclear whether it is the date of submission of the application by the Security Council, or the date at which the International Criminal Court is informed about it?

Security Council was not objective in dealing with all crimes, as stated previously. Moreover, the weight of this criticism is not also devalued by the argument that this authority is constrained by the consent of all the permanent members of the Security Council, because not all these countries are member states to Rome Statute, and that they do not and will not envisage legal justice in dealing with all international crimes, especially if the crime is linked with it or with a friend state of it. Likewise, the relationship of the Unipolar State (USA), which is economically influential on the members of the Security Council, and it may have negative impact on their political opinion due to economic considerations. What makes the criticism stronger is that article (16) in conjunction with the Charter of the United Nations obliges the International Criminal Court (ICC) to agree on the deferral, and this article does not allow the court to be eclectic. So, that crimes violating international peace and security fall under the jurisdiction of the Security Council in the first place. Moreover, the International Criminal Court may not take any procedure hindering the security council function.

3.1.4 Part II legal obstacles originating from the powers granted to the prosecutor

The Statute gives the Prosecutor the power not to initiate and stop investigation procedures without legal guarantees that ensure the principle of complementarity.

4. Section I Deciding not to initiate investigation

Under article (156) of the Statute, the Prosecutor may collect information by his own way and study them without waiting for the referral from States Parties or the Security Council. If he finds out that no crime was committed, or that the crime is not acceptable according to article (17) of the statue, or not included in the jurisdiction of the court, or the investigation does not serve the interests of justice, in this case, he may decides that there is no reasonable ground to start investigation without effective control on it that ensures the objectivity of his decision and the principle of complementarity. Furthermore, according to article (124), the statute also prevents the Prosecutor to initiate investigation on war crimes for seven years, even though the investigation serves the interests of justice, if the State party declares its non-

---


acceptance of the jurisdiction of the International Criminal Court. Although the statute intends, through this jurisdiction, to reduce the burden on the International Criminal Court, through the liquidation of the issues before the final trial, this jurisdiction constitutes an obstacle to the principle of complementarity, especially if the prosecutor is not objective in his decision, or if his decision is due to international dictates. This is supported by the position of the Prosecutor on serious international crimes that occurred in Iraq, Sabra and Shatila camps, Jerusalem, and in Gaza as well. Although these are serious international crimes, and included in the jurisdiction of the International Criminal Court, and accepted for consideration before the International Criminal Court, and investigating them serves the interests of justice, the Prosecutor, like the Security Council, decided not to open an investigation into these crimes for special illegal considerations, leading to the impunity of perpetrators. This also applies on the separation barrier in the West Bank. Although the International Court of Justice issued on 9 July, 2004 an advisory opinion stipulating the illegality of that separation barrier, and it was voted by 150 countries, including all members of the European Union, the prosecutor did not take any move on this issue because the opposition by USA, Australia and Israel to that resolution.

The value of this criticism is not also detracted by the argument that the Prosecutor will be objective in his decision because he is obliged to report his decision to providers of information according to Article (15\6) of the Statute. The reason for this is that the statute does not give information providers, in this case, any authority to appeal against the decision of the prosecutor, or oppose it, but it authorizes this party the opportunity to provide new information to the prosecutor, who may again consider the matter once again and decide to initiate an investigation.

The observer of the statute finds that it also gives the Prosecutor, pursuant to Article (53\1), the authority not to initiate an investigation in this case, without legal guarantees ensuring the principle of complementarity.

The value of this criticism is not detracted by the argument that articles (53\1,3\b) obliges the Prosecutor, in this case, to report his decision to the Pre-Trial Chamber for review, and these articles may allow the Pre-Trial Chamber on its own initiative, to review his decision, which does not become effective unless approved by the Pre-Trial Chamber. The reason for this is that the statute does not oblige the

---

26. We can’t say that this is because of contracting states may have reservation on ratification because the allowed reservation in international treaties is the one that is not inconsistent with the purpose and issue of the treaty, and this is confirmed by the text of Article (19\c) of the Vienna Convention on the Law of Treaties.


28. The prosecutor reasoned his decision by saying, “only member states can make a complaint to the International Criminal Court, but the status of Palestine in the United Nations is only an observer state, and is not a member state”.

29. The Statute authorizes the prosecutor to study the crime and investigate it directly by himself and also authorize States Parties and the Security Council to refer the crimes to the prosecutor for consideration and investigation.
Prosecutor to report his decision to the Pre-Trial, and does not allow the Pre-Trial Chamber to review the decision on its own initiative, unless related to the fact that investigation does not serve the interests of justice. However, if the decision is based on ground that there was no crime perpetrated or will be perpetrated within the jurisdiction of the International Criminal Court (ICC)\textsuperscript{30}, or that the crime is not acceptable for consideration before the International Criminal Court, in this case, the statute does not oblige the prosecutor to report his decision to the Pre-Trial Chamber, but rather it allows the Pre-Trial Chamber, pursuant to Article (53\(2\)\(a\)), to review the decision of Prosecutor, and request him to reconsider it. This does not amount to legal control that guarantees the principle of Complementarity, because it does not oblige the prosecutor of reconsidering his decision. What increases the strength of the criticism is that the statute does not oblige the Pre-Trial Chamber of monitoring but lets it choose, and it leaves the matter to the request of the member state that carried out the referral, which might be refused because the state did not settle its political and economic relations, or due to the Security Council request which also might refuse this if the case is linked to one of the Permanent Members of the Security Council or a friend of it\textsuperscript{31}. In case the Pre-Trial Chamber responds to this matter and requests the Prosecutor to review or reconsider his decision, the statute does not show how the review should be done and what the procedures that the Pre-Trial Chamber can follow are, and what the legal situation is if the Pre-Trial Chamber finds out that the prosecutor decision is inappropriate. Does it have the right to oblige the prosecutor to cancel his decision, and take legal prosecution, and whether it may force the International Criminal Court (ICC) of prosecution in case the prosecutor insists on his decision and does not cancel it. Furthermore, the criticism of this issue does not stop at this limit, but rather goes farther to Article 24 of the Statute, which does not allow the prosecutor to initiate investigation if the act was committed before the statute became effective. This criticism is not detracted by the argument that the statute intends by this legal rule to keep up with the principle of legality, which stipulates that there is no crime or punishment except by law, and that the statute does not create new crimes, but rather it discovers serious international criminal crimes that have strong impact on the international community, as mentioned earlier. What also supports this is that international norms criminalize the acts included within the jurisdiction of International Criminal Court before the issuance of international conventions relating to this matter. Moreover, legal practice is considered one of the sources of the International Criminal law. This criticism is also supported by the fact that crimes included in the jurisdiction of International Criminal Court are confirmed and clear and subject to criminalization and punishment, but the prosecution of these crimes at the international level is not


\textsuperscript{31} As for the other countries which did not make referral, or the non-party state which accepted the jurisdiction of The International Criminal Court (ICC) to hear the case, the State where the act occurred or the state of the perpetrator, so, it may not request that from the Pre-Trial Chamber, and this is confirmed by the meaning of violation of provisions of Article (12\(2\)) in conjunction with Article (53\(3\)\(a\)) of the Statute.
possible for the lack of international legal rule. This is also supported by the fact that the principle of legality in national law can not be compared to the principle of legality in international criminal law, because the national criminal law requires a text for the criminalization and punishment, whereas international criminal law requires a criminalization rule, and that the legal practice mentioned earlier is one of criminalization rules

4.1.2 Section II: Initiation and Stopping Investigation

The Statute authorizes the prosecutor not to notify the concerned national State which is not a party state to the statute, and allows him to initiate investigation. This also applies on nationally concerned member States to the statute, where the statute allows the Prosecutor to start investigation without notifying these states about prosecution, on the condition that the Pre-Trial Chamber approves this incase the referral was issued by the Prosecutor himself, or by one of the member state to the statute. However, If the referral is issued by the Security Council, the approval of Pre-Trial Chamber is not required, and this is confirmed by the meaning of violation of Article (18\2) and paragraphs (13 \ A, B, C, 15,17 \ 1,2\18 3\20) of the Statute.

Observers of the statute finds that through these powers, the statute runs counter to the principle of complementarity since it requires that the prosecutor of the International Criminal Court (ICC) shall not prosecute serious crimes, except in the case the concerned national State abstains or is unable of prosecution. When this criticism is related to the Security Council, the value of this criticism is not detracted by the argument that the Security Council refer serious cases regarding international peace and security or acts of aggression to the prosecutor because the Security Council lacks objectivity and biased to some countries, as stated earlier, and because Chapter VII of the Charter of the United Nations gives the power to the Security Council to determine whether the act is breach of international security and peace, or act of aggression to the Security Council without supervision to ensure objectivity. In addition, the statute authorizes the prosecutor to initiate investigation even if the act was prosecuted before, and if it was proved to the Court that the prosecution legal procedures taken by the national courts were not independent and impartial, or were carried out in circumstances not indicating the intention of the prosecution, or were not serious and true, but rather were taken on purpose of protecting the accused from criminal responsibility. Depending on the above, it can be argued that through these powers, the statute violates the principle of complementarity, and the legal rule stipulating that it is not permissible to prosecute

the same offense more than once, and violates the goal of the establishment of the International Criminal Court.\textsuperscript{35}

The value of this criticism is not devalued by the argument that the concerned national state, according to articles (18 \(1\), 82 \(2\)), may challenge and appeal the aforesaid decision of the Pre-Trial Chamber because Article (82\(2\)) confines this matter to the States Parties in the first place, and does not allow this only upon the approval of the Pre-Trial Chamber, but if the Pre-Trial Chamber does not agree, then these states may not challenge its decision. As for the non-party states which are nationally concerned of prosecution, they may not challenge the decision of the Pre-Trial Chamber based on the meaning of violation.\textsuperscript{36}

In the case the prosecutor waives investigation to the concerned national State party, the statute authorizes him to reconsider his decision and follows-up investigation after six months from the date of waiver, or at any time if significant change in circumstances occurs. This indicates that the state really became unwilling to carry out investigation or unable to do so, and without legal controls to ensure objectivity and the principle of complementarity as well as confirmed in Article (18 \(3\), 5).\textsuperscript{37}

The Statute also authorizes the Prosecutor, in the case of waiver of investigation, to oblige these countries to report to him regularly and without delay the progress of investigation they are conducting and any subsequent prosecutions. If the state does comply, or delays it, or if it is proved that it is not achieving progress in the investigation, or unwilling or unable to prosecute, or if it was proved to the Court that the prosecution procedures taken by the national judiciary were not independent and impartial, or they were not serious and unreal but they were taken for the purpose of protecting the accused from criminal liability, or conducted in conditions not indicating real intention of prosecution. In this case, the statute authorizes the prosecutor to initiate investigations and take the jurisdiction of the concerned national state,\textsuperscript{38} ignoring the principle of complementarity without legal controls to ensure the objectivity of Prosecutor’s decision, and this is confirmed in the paragraphs (17, 18 \(3\), 20 \(3\)) of the Statute.\textsuperscript{39} Although this legal text ensures the prosecution of serious international crimes in the absence of prosecution by the concerned national State, or in the case of the complicity of these countries with the accused.\textsuperscript{40} Nevertheless, this text is criticized because it gives the International Criminal Court (ICC) the right to assess whether the relevant national state has prosecuted or delayed prosecution, or whether the relevant national state is not making progress, or unwilling or unable to prosecute, which means that the International Criminal Court may misuse this right.


\textsuperscript{37} Der Intern, Nüsche, Strafgerichtshof, S. 117 f; Werle, Völkertrafrecht, S. 96.

\textsuperscript{38} Der Intern, Nüsche, Strafgerichtshof, S. 117 f; Werle, Völkertrafrecht, S. 96.

\textsuperscript{39} Mahmoud, Dhari Khalil and Yousef, Basil, The International Criminal Court, dominance of law or the law of dominance (Baghdad: Dar Alhekmeh, (2003) , the first edition, pp. 190-191.

\textsuperscript{40} Satzger, Intern. und Europ. Strafrecht, S. 218.
and gives itself the right of prosecution. In addition, the expressions used in the statute that determine whether the state is unwilling or unable to prosecute are loose and have no a clear boundaries. The criticism related to initiation of investigation do not stop at this point, but goes further to include the issue of stopping the investigation procedures after initiation of it. This is confirmed by Article (53/2) of the Statute, where this article permits the prosecutor to issue an order indicating that there are no sufficient basis for prosecution if it appears to the prosecutor that there is no legal or actual ground justifying the arrest warrant or summons pursuant to Article (58), or if it appears to him that the case is inadmissible under article (17), or if it appears to him, depending on the seriousness of the crime, the victim's interests and the offender’s age and health, that the prosecution does not serve the interests of justice. This also violates the principle of complementarity because it prevents the prosecution of the accused without legal guarantees to ensure the objectivity of the decision of the Prosecutor.

The value of this criticism is not detracted by the argument that the prosecutor will be objective in his decision, because he is obliged, under Article (53/2) of the statute, to report his decision to the party that referred the case, and to the Pre-Trial Chamber, which may review the decision of the prosecutor, and request him to reconsider that decision, either by its own motion or at the request of the party that referred the case.

The reason for this is that the Pre-Trial Chamber may not practice the control by its own motion, unless the decision of the prosecutor is based on the argument that prosecution does not serve the interests of justice as confirmed in Article (53/3/b) of the Statute. But if the Prosecutor's decision is due lack of justification for the issuance of a warrant of arrest or summons, or because the case is inadmissible for consideration before the International Criminal Court, the pre-trial Court in these cases has no right of control by its own, except at the request of the party that referred the case, which might refuse the considerations mentioned above.

In the context of talking about this issue, we draw attention that in case the party that did the referral requests the Pre-Trial Chamber to review the prosecutor's decision and asks him to reconsider it, the statute does not oblige the Pre-Trial Chamber to assume control, but rather allows it to comply or not, and this is confirmed in Article (53/3/a) of the Statute.

5 Topic II Procedural Obstacles

Procedural obstacles are divided into sections, namely procedural obstacles in the preliminary investigation stage, and the other obstacles at the trial stage.

5.1 Section I procedural obstacles in the preliminary investigation stage

Obstacles of the preliminary procedural stage are divided into two sub-sections; the first sub-section is allocated to the preliminary procedural stage relating to arrest
and detention, and the other sub-section is related to procedural obstacles relating to interrogation.

5.1.2. The first sub-section: procedural obstacles related to the arrest and detention

The statute authorizes the Pre-Trial Chamber, at the request of the Prosecutor\textsuperscript{41} to issue a warrant of arrest against the accused, if it is satisfied that the accused committed a crime within the jurisdiction of the International Criminal Court, or satisfied that the arrest is necessary to ensure the appearance of the accused before the court, or to ensure that investigation or trial proceedings are not obstructed or exposed to danger, or to prevent the defendant from the continuation of committing the crime or committing a relevant crime within the jurisdiction of the Court, and this is confirmed by articles (54.58\textsuperscript{1}) of the Statute. The question arising now is, does the statute take into account the principle of complementarity in the legal provisions governing the procedures of arrest and detention?

Observers of the statute finds that the assessment of whether the issue requires the issuance of an arrest warrant or not is related to the Pre-Trial Chamber at the request of the prosecutor without control over these legal entities to ensure the objectivity of their decision. Similarly, the observer of this article, especially the fourth paragraph of the same article, also finds that the statute does not put limitation on the arrest warrant, but keeps it into force until the court orders otherwise, and this violates the principle of complementarity. The question arising now is what the legal status of the arrest warrant is if a national competent state issued an arrest warrant along with the arrest warrant issued by the court? By the same token, what is the legal status of the procedures of arrest and detention if the defendant is less than 18 years old, or if he is enjoying international immunity or a refugee? Depending on the content of article (17\textsuperscript{1},\textsuperscript{a},\textsuperscript{3}), it can be argued that the statute obliges states where the accused resides to give priority to the arrest warrant issued by the International Criminal Court (ICC) over the arrest warrant issued by the national competent State, and this also violates the principle of complementarity. This criticism is not devalued by arguing that this issue is conditioned by the inability of the competent national State of prosecution. The reason for this is that The International Criminal Court (ICC) is the party that decides when the national competent state is considered unable to prosecute, and it is the International Criminal Court (ICC) that decides whether the case is acceptable to it or not. This means that the Court is the judge and the opponent at the same time. The criticism is supported by the loose terminology used in the third paragraph of Article 17, which shows when the national competent state is unable of prosecution. According to this paragraph, it is stipulated that the national competent state is unable of prosecution if its national judicial system collapses

\textsuperscript{41} The Pre-Trial Chamber functions shall be assumed by either three judges of the Pre-Trial Division or by a single judge of this department, pursuant to Article (39 \textsuperscript{2} \textsuperscript{b} \textsuperscript{3}) of the statute.
entirely or substantially, or unable to collect evidence or obtain testimony, or carry out the subsequent legal proceedings regarding the arrest.

As for the second issue related to the arrest of persons under the age of 18, Article 26 of Rome Statute should be considered. The observer of this article, finds that it does not allow the International Criminal Court (ICC) to issue an arrest warrant for persons under the age of 18 at the time the crime he is accused of was committed. This violates the principle of complementarity, and destroys the purpose for which the International Criminal Court (ICC) was established, especially if a given state exploits those people to commit a crime included in the jurisdiction of the International Criminal Court. As for the issue of international immunity and asylum, we must review articles 27 and 98 of the statute to determine whether these texts constitute an obstacle to the principle of complementarity? These two articles allow the International Criminal Court (ICC) to prosecute crimes within its jurisdiction, even if the defendant is enjoying international immunity, provided that the State which the perpetrator holds its citizenship waives immunity, and this is subject to the approval of the state where the perpetrator resides, and extradites him. In other words, it can be argued that the prosecutor may not arrest the accused and keep him under detention, if he is enjoying international immunity, unless his state waives that immunity.

Depending on the meaning of the breach, it could be argued that if the state does not waive immunity, or agree to extradite the accused, the prosecutor may not arrest the accused and keep him under detention and accordingly, the Court may not prosecute him, and this violates the complementarity principle and the aim behind the establishment of the International Criminal Court.

---

42. Amnesty International, the International Criminal Court, making the right choices part I issued by Amnesty international in January, 1997, p. 69.
44. The first paragraph of Article (3) of the Vienna Convention on Diplomatic Relations of 1961 stipulates that “A diplomatic agent shall enjoy immunity from the criminal jurisdiction of the receiving State. He shall also enjoy immunity from its civil and administrative jurisdiction.” The report of the Ad Hoc Committee for the establishment of the International Criminal Court (ICC) (the General Assembly Official documents, Session 50, Supplement No. (9 \ 50 \ 22).
This criticism is not detracted by the argument that if the state of the accused refuses to cooperate with the prosecutor and waives immunity, the Security Council, in this case, intervenes, and international sanctions shall be imposed on that country according to article (93) of the statute. The reason for this is that the sanctions that shall be imposed on the State of the accused are simple and not deterrent, and because the Security Council may not intervene in specific cases for political considerations. The problem might be complicated, if the defendant has the nationality of two states, one of which grants him immunity, whereas and the other does not, and he resides in the state that does not grant him immunity. In this case, the question arising is can the state on its territory he resides cooperate with the International Criminal Court (ICC) and extradite the accused despite the rejection of the other state to waive immunity on him? The cooperation intended under Article 98 of the Statute of the International Criminal Court (ICC) is the cooperation of the state which the accused holds its nationality, but not the state in which the accused resides. So, if the state of his citizenship refrains from waiving the immunity, we believe that the accused may not be arrested and prosecuted by the International Criminal Court (ICC) even if the state in which he resides extradites him, so the principle of complementarity will collapse.

As for asylum, Article (33\1) of the Status of Refugees of 1951 United Nations Convention states that states shall not expel the refugee legally living in it for national security or public order, and in case the expulsion decision is made, legal procedures shall be considered. Likewise, the same article stipulates that contracting states shall not ‘expel any refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion’. Despite the above mentioned legal texts it should be noted, however, that the principle of the inadmissibility of extradition of the refugee applies only on those specific crimes specified under international treaties or national laws, serious crimes that threaten the security and stability of the international community are not included in these rules. This is confirmed in Article I-a of the Status of the UN Refugee Convention, which stipulates that this Convention shall not apply to ‘any person who is accused of committing a crime against peace, a war crime, or a crime against humanity’, as stipulated in objective international documents.

Depending on the above, it can be argued that the statute does not prevent the arrest and prosecution of the accused refugee before the International Criminal Court.
(ICC) if the concerned national state declines prosecution, and if the committed act was among the crimes included in the jurisdiction of the International Criminal Court. Depending on this, the Austrian authorities rejected the request made by the Bosnian Serb Duske Crjetkouic on May 31, 1995 for asylum in Austria, because he wanted by this request to repudiate from the accusation that the criminal Court in Salzburg made against him, for committing genocide against Bosnian Muslims. The Supreme Court in Austria refused to grant him asylum, and requested a quick trial against him\textsuperscript{50}.

5.1.3 Section II procedural obstacles relating to interrogation

Article 54 of the Statute authorizes the prosecutor to start interrogation, and investigation of facts and pieces of evidence, criminality and exonerating circumstances, taking into account the interests of victims and witnesses in terms of their rights and their personal circumstances, such as age, sex and health. If the accused to be interrogated is in the territory of a State Party and this State does not comply or cooperate with the International Criminal Court (ICC) regarding his extradition, the prosecutor may interrogate with the accused in territory of that State, and based on the consent of the Pre-Trial Chamber, and he may also, according to article (57), Seek the cooperation of any State or intergovernmental organization or any intergovernmental arrangement, and sign agreements with them. The question arising here is that whether the Statute takes into account the principle of complementarity at this stage? Articles (17,19 \ 3) allow the prosecutor to initiate investigation and interrogation if the Court decided, at the request of the prosecutor, that the case is admissible even if the national judiciary is still hearing the case, or even finished the hearing and concluded the case with innocence or conviction, if it finds out that the competent national state is unwilling to investigate or prosecute or unable to do so, or that it colludes with the accused\textsuperscript{51}.

This criticism is not devalued by the argument that this power is favorable since it ensures the prosecution of serious international crimes, because the Court lacks objectivity, and due to the loose terms used in statute that determine that the state is unwilling or unable to prosecute. The competent national state, according to the same article, is unwilling or unable to prosecute if it does not initiate prosecution proceedings, or if it is not independent or impartial, or if it conducts the proceedings in a manner not indicating the intention to prosecute and bring the concerned person to justice, or if unjustified delay occurs in the proceedings, or if its national judicial system entirely or substantially collapses, so it becomes unable to bring the accused to justice, or obtain the necessary evidence and testimony, or unable to carry out proceedings. Despite the good quality of this legal text which ensures that, as we said earlier, the prosecution of crimes within the jurisdiction of the International Criminal

\textsuperscript{50} Mohamed Abdelfattah, Seraj, The principle of Complementarity in International Criminal Justice, An Original Analytical Study (Cairo: Dar Alnahda Alarabia, 2001) the first edition, p. 97.

Court (ICC) and prevents impunity for the perpetrators, it is criticized on the ground
that it gives the power of assessment of these things to the International Criminal
Court (ICC) itself, which may not be objective in this.\textsuperscript{52}

In case we accept this right, and in order that the legal rule must be true and it at
justice, the statute must give the competent national states the right to prove the
opposite of what the Court concluded, and that there must be an independent
arbitrator in the event of a dispute between the Court and the competent national state
regarding the legal issues mentioned above. This is supported by the great controversy
that took place amongst the representatives of the States in Rome regarding the issue
of lack of desire or ability. Some states believed that these two terms were
inappropriate because they were loose, and because the issue of willingness was
related to intention and was difficult to prove. On the other hand, some participating
states proposed that the terms must be replaced by clear ones like "unavailable" or
"ineffective" because they provide an objective criterion for the evaluation of
national courts performance and they are relevant to the judicial system and
procedures.\textsuperscript{53}

The value of this criticism is not detracted by the argument that the defendant or
the State, which initiated preliminary investigative proceedings, and the state that
accepted the jurisdiction of International Criminal Court, may challenge the
admissibility of the case, pursuant to Article (19.2), because these challenges may not
be presented more than one time,\textsuperscript{54} pursuant to paragraph 4 of the article.
These challenges are referred to the Pre-Trial Chamber or the Trial Chamber or the Chamber
of Appeal, all of which belong to the International Criminal Court.\textsuperscript{55}

\textbf{5.1.4 Topic II procedural obstacles in the final stage of the investigation}

This topic is divided into two sections. The first section is allocated to the
extradition request, and the second to prosecution of the crimes of aggression, and
the possession of nuclear weapons.

\textbf{6. I The extradition request}

The Statute authorizes the International Criminal Court, in the case of an initial
investigation in absentia, to request extradition of the accused from the state where the

\textsuperscript{52} Some participating states demanded that the burden of proving unwillingness and inability should be
the right of national authorities because they are more familiar with this matter. The state must prove that it had undertaken prosecution in good faith and not on the purpose to elude jurisdiction of the International Criminal Court.

216-217.

\textsuperscript{54} The court, in exceptional circumstances, may allow the appeal more than once, even after the trial
had begun. The Appeal shall be transmitted to the Pre-Trial Chamber in case the charges have not yet
been adopted, but if they had been adopted, they shall be referred to the Trial Chamber.

\textsuperscript{55} Appeals shall be referred to the Pre-Trial Chamber if the charges have not yet been adopted, but if
they had been adopted, they shall be referred to the Trial Chamber.
accused resides so as to make legal fair trial, and this is confirmed in Article (89\1) of the Statute

The question arising now is what the legal status is if a contracting state of the statute submits another request for extradition, and what the legal act of the requested State is. Observers of Article (90\2 and 4) of the Statute finds that they oblige the requested state to give priority to the request for extradition issued by the International Criminal Court (ICC) over the extradition request issued by the State party of the statute, thereby ignoring the principle of complementarity, if the Court decided, pursuant to articles (18.19) that the case is admissible. Similarly, if the state requesting extradition is not a contracting state of the Statute, this violates the principle of complementarity. Article (90\6) does not detract the value of this criticism because it requires requested State to extradite the accused and requests it should take into account the date of each request, and the interests of the requesting State, whether the requesting state is nationally or personally concerned, because this article obliges the requested State to extradite the suspect at the end to the International Criminal Court, and does not give it the choice, unless it is under international obligation requiring it to extradite the person to the requesting State. What also supports this criticism is that Article (90\6) differentiates between the competent national state in respect of being regional, or personally concerned, and it does not differentiate between the International Criminal Court (ICC) and the competent national state.

The question arising here is what the legal status of the extradition request issued by the International Criminal Court (ICC) is, if the accused is prosecuted in the state requested to extradite him for the same act or for another act or if he was serving a sentence for the same act or another act, or was trailed for the same act?

Article 89 of the Statute of the International Criminal Court (ICC) states that the court may request extradition of the accused and he may be trialed again, even if his trial for the same act is still going on, or even if his trial concluded that he was not guilty or convicted, or even if he was being trialed for another act, or serving sentence for another act. This, according to the article (3/20) of the Statute, violates the principle of complementarity, and the legal rule which states that is not permissible to prosecute the same offense more than once.

The value of this criticism is not detracted by the argument that this issue is not perceived according to article (20\3) of the statute, unless the Court finds that the prosecution procedures taken by the national judiciary were not independent and impartial, or were not serious and authentic, but rather they were taken to protect the accused from criminal responsibility, or conducted in conditions not indicating a real intention of prosecution, because the statute gives the authority of assessment of these matters to the Court itself, and not to another party independent from the Court so as to ensure objectivity.
This criticism is supported by the fact that that this article contains loose terminology, and it does not put controlling and regulating legal rules that showing when the actions taken by the national judiciary was aimed at the protection of the accused from international criminal responsibility, or when they were taken in a manner lacking independence or integrity, or when they were taken in circumstances not indicating the intention of bringing the accused to justice.\footnote{Ahmed Fatahi Sorour, \textit{Constitutional Criminal Law} (Cairo: Dar Alshrouq, 2001) the first edition, p. 456; Mahmoud, Yousef, ‘International Criminal Court, the Dominance of the Law or the Law of Domination’, \textit{Arab future Magazine, Arab Unity Studies Center, Beirut} (2008) No. 355, p. 105.}

The value of this criticism is not detracted by the argument that article (89/2) allows the accused to appeal to the National court of the State where the accused lives according to the principle of the inadmissibility of the trial for the same offense twice, because this article allows the requested state only to consult immediately with the Criminal Court to decide whether the decision is relevant to admissibility. If the International Criminal Court (ICC) issued a decision stating that the case is admissible before it, then the state shall comply with this order and extradite the accused. However, if the International Criminal Court (ICC) has not yet decided whether or not the case is admissible, the Statute allows the requested State only to defer the execution of the request regarding bringing the person to the Court until the Court makes a decision on admissibility.

On the contrary, there is a jurisprudential opinion supports the text of Article (20), and do not see that the article runs counter to the principle of complementarity on the ground that it is a controlling legal text and it guarantees the probability of impunity, especially if the competent national state actually colludes with the accused.\footnote{Mohammad Yousuf, Alwan, \textit{International criminal trial, publication of international humanitarian law: reality and ambition} (Damascus: Daoudi Press 2001) the International Committee of the Red Cross publications, p. 221.}

7. **prosecution of crimes of aggression and possession of nuclear weapons**

In the context of talking about procedural obstacles in the final stage of investigation, we draw attention to a very important issue, namely the question of nuclear weapons and crimes of aggression. The observer of the statute finds that the statute ignores the issue of nuclear weapons, destroying the principle of complementarity as it does not include governing and regulating legal rules, despite severity and adverse effects of nuclear weapons on international peace and security, not to mention that it is one the worst actions that constitute a significant violation of international laws and norms.\footnote{Differences between countries Intensified over the inclusion of nuclear weapons or not, and so four options were developed for this issue. The Arab countries opted for the fourth option, which includes a list, for example, of certain weapons and materials the use of which constitutes a war crime. In this list, nuclear weapons were listed, Iraq submitted a proposal to add depleted uranium to this list, but it was not listed. The Western countries and the United States supported the first option, which includes a lengthy list of the weapons, but it did not include nuclear weapons. Some other countries, such as Turkey, Belgium, Australia, and Mexico, supported the third option, which is a general text without details or a list of weapons. Thus, countries were divided into two groups on nuclear weapons, the supporting group which supports the inclusion of nuclear weapons because they are more deadly and dangerous, and the opposing group of the inclusion of these weapons because they are not included in mass destruction weapons, and thus nuclear weapons were not included in the list of weapons that have been adopted. As a
As for article (8\b, items 17-19), they do not address nuclear weapons explicitly. Some attribute the reason of this to the lack of a rule in the current international law that ban nuclear weapons.

The lack of a rule in the current international law banning nuclear weapons does not justify the decriminalization of this act because some of the major states that possess and keep nuclear weapons do not want to criminalize this, fearing that their citizens will be vulnerable to prosecution. What supports this criticism is that major countries seek to obtain the opinion from the International Court of Justice. This opinion states that the International Court of Justice is unable to confirm that the use of nuclear weapons is internationally prohibited, and that there is no rule in the international law that prohibits the use of nuclear weapons. Although international law lacks a rule prohibiting the possession and keeping nuclear weapons, this issue must not remain without control supervision of the international community. What supports this is that major countries conduct nuclear tests, affecting international community to a great extent, and threatening its security and stability. This is also supported by the prohibition of nuclear weapons by many international norms. There are many examples of this, including the preamble to the San Petersburg Declaration of 1868, which requires that weapons that render inevitable death are considered beyond the necessities of war. Similarly, Article (36) of the ‘Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977’ confirms this, and it stipulates that ‘In the study, development, acquisition or adoption of a new weapon, means or method of warfare, a High Contracting Party is under an obligation to determine whether its employment would, in some or all circumstances, be prohibited by this Protocol or by any other rule of international law applicable to the High Contracting Party.’

The same applies on crimes of aggression. The observer of the statute finds that it is unable of prosecution of this type of crimes, even if the referral comes from the Security Council, because the statute does not define the crime of aggression until (2010), and does not also take the definition put forward by the Assembly General of the United Nations for aggression in 1974, possibly leaving the matter to the Review Conference that allows the contracting States, pursuant to Article (123) of the statute,
to hold the conference and modify some elements of the statute, such as the
definition of aggression.\footnote{United Nations General Assembly defined, on December 14, 1974 aggression in the plenary session number 2319 as ‘the use of armed force, whether in time of war or not, by a State against the sovereignty of another state, or its territorial integrity, political independence, or any other manner inconsistent with the Charter of the United Nations, and this is confirmed by Article (1) of the General Assembly meeting. Nevertheless, the third article of the decision reported a provision stating that the status of an act of aggression applies whether in case of declaration of war or without on the acts specified. Article 5 stipulated that is not permissible to accept any justification for aggression, either politically, economically or militarily.}

Depending on the foregoing, it can be argued that the statute until (2010), the
date of the Review Conference, did not authorize the International Criminal Court
(ICC) to prosecute crimes of aggression, so the (ICC) was not a complement to
the national jurisdiction with respect to crimes of aggression, whether the referral came
from the prosecutor, or the states parties, or even from the Security Council itself.\footnote{Mohammed Aziz, Shukri , ‘Definition of Aggression in accordance with the Provisions of the Statute of International Criminal Court Establishment’ in the Proceedings of Arab specialized training workshop on The International Criminal Court (ICC) (Amman, Jordan, 2003) 17 – 19/05(2003) , p. 2.}

The reason for the lack of consensus of the States Parties on the definition of the
crime of aggression is not because of the difficulty of the term, but rather because of
disagreement of different countries about the role that Security Council should enjoy
in this definition. The observer of the United States and some Western countries,
including Israel, finds that they are united and allied with each other to reject the
definition of aggression, which came from the General Assembly of the United
Nations (14) December 1974, in resolution No. (3314) held at plenary session No.
(2319)\footnote{The assembly defined aggression as the use of armed force, whether in war time or not by a certain state against the sovereignty of another state, or its territorial integrity, or political independence, or in any other manner inconsistent with the Charter of the United Nations. This is confirmed in Article (1) of the General Assembly meeting.} because they were willing to give the Security Council the final authority to
decide whether the act constitutes a crime of aggression or not, unlike other States
parties who ask that this right be given to The International Criminal Court (ICC) and
not the Security Council.

The reason for the insistence of the United States not to take the definition of
aggression of the General Assembly, and give the Security Council the final authority
to decide whether the aggression occurred or not, in order to save some acts
committed by its citizens, which are crimes of aggression, from the power of the
International Criminal Court. What supports this criticism is that in 2001, the United
States issued a law (American Service-Members' Protection, 2001), forbidding
cooperation with the International Criminal Court (ICC) regarding the Extradition of
US nationals to the International Criminal Court (ICC) and at the same time it gives
US the right to free any of its nationals when detained by an order issued by the
court. Similarly, USA has bilateral agreements with many countries, requiring the
non-extradition of its nationals to the Court\footnote{Altahir Mukhtar Ali, Saad , International Criminal law, International Sanctions (Beirut: Dar Alkitab Aljadedd Almutahedh (2000) the first edition, pp.212-213}. Moreover, after nearly eleven years of

\begin{itemize}
  \item \footnote{Hans-Peter, Kaul, Der Aufbau des Internationalen Strafgerichtshofs, Schwierigkeiten und Fortschritte, in Vereinte Nationen, 6(2001) p. 218.}
\end{itemize}
the issuance of the Statute, on June 11 in (2010) the Review Conference was held for two weeks to discuss certain topics, including the definition of the crime of aggression, and the definition of aggression contained in United Nations General Assembly resolution mentioned earlier, but the right of the International Criminal Court (ICC) in the prosecution of this type of crime was suspended for 2017, by which the States Parties may make a decision that permits it. In other words, we can argue that although the crime of aggression were defined, the International Criminal Court may not prosecute it before January 1, 2017 after the approval of the majority of States Parties. This violates the principle of complementarity, and destroys the purpose of the establishment of the International criminal Court.

8. Recommendations

1. Setting legal mechanism to ensure the objectivity of the Security Council in dealing with the issue of referral of crimes of aggression and crimes against international peace and security to the International Criminal Court, and ensure objectivity of the Prosecutor in his decision which states that there is no reasonable ground to initiate investigation.

2. Limiting the authority given to the Security Council under Article (16) of the statute, which allows it to request the International Criminal Court (ICC) to defer the investigation or prosecution of the accused for a period of twelve months renewable for similar periods and without limit. In the case of insistence of the statute on this authority, it is suggested that this period should be restricted in time or substance, and that legal guarantees shall be put to ensure objective of the Security Council, for example, seeking the opinion of the General Assembly of States Parties.

3. Obliging the Prosecutor to notify the Pre-Trial Chamber about his decision which states that there was no reasonable ground to proceed with investigation, even if the reason for this decision is based on the ground that the crime is not included in the jurisdiction of the International Criminal Court, whether committed or not, or that the crime is not acceptable for consideration before the International Criminal Court, and obliging the Pre-Trial Chamber to review that decision and not giving it the choice about this, or deferring it on the request of the State which made the referral.

4. Showing how the prosecutor Review or reconsider his decision and what the mechanism for that is, and what the procedures that the Pre-Trial Chamber can follow are if it finds that the prosecutor's decision is inappropriate. Can the chamber oblige the prosecutor to reverse his decision, and oblige him to initiate legal prosecution in case the prosecutor insists on decision and does not agree to reverse his decision.

5. Amendment of Article (24) of the statute which prohibits the Prosecutor to initiate investigation if the act was committed before the statute enters into
force, because the statute does not come up with new crimes, but it
discovered serious international criminal crimes of strong impact on the
international community. What also supports this is that the international
norms criminalized acts within the jurisdiction of the International Criminal
Court (ICC) before the issuance of the international conventions on this, and
the norms is one of the legal sources.

6. Not allowing the prosecutor to initiate investigation, if a state party to the
system declares its intention to prosecute, even if the Pre-Trial Chamber
agrees at the request of the Prosecutor to do so. In the case of the possibility
of collusion of the national state with the accused and prosecutor’s insistence
on prosecution, an independent body must be established to indicate whether
the national state colludes with the accused, or unable or unwilling to
prosecute.

7. Not allowing the International Criminal Court to prosecute an act that has
been previously prosecuted by a State Party on the ground that the
prosecution procedures taken by the national judicial system are not
independent and impartial, or have not been conducted in circumstances
indicating the intention of prosecution, or are not serious and true due to
the absence of a legal mechanism to ensure the objectivity of the
International Criminal Court in determining these exceptions.

8. Obliging the Prosecutor to notify the competent national state of his
intention for prosecution even if the state is not a contracting party in the
system and not limiting this to the States Parties, or countries that used to
exercise its jurisdiction over the crime. Furthermore, obliging the Prosecutor
to notify the competent national States of prosecution even if the referral is
made by the Security Council.

9. Development of legal controls to ensure objectivity of the Prosecutor with
respect to his decision which states that there are no sufficient basis for
prosecution, and not to leave the question of determining whether the case
is admissible or not, or requiring warrant arrest or not, or whether the
prosecution serves the interests of justice or not.

10. Establishment of limitation for the arrest warrant, and not giving priority the
to the arrest warrant issued by the International Criminal Court (ICC) over
the arrest warrant issued by the competent state and national.

11. Allowing the prosecution of people under the age of 18, and creation of
especial rules and legal action regarding their prosecution punishment, so as
they are not exploited by some countries.

12. No restrictions on the prosecution of a person enjoying international
immunity provided that his state waives immunity, and the states where the
accused lives agrees and extradites him, because this is against the principle complementarity and the game.

13. Not allowing the International Criminal Court (ICC) to prosecute the accused, who is prosecuted before a national court for the same act or whose prosecution procedures are still in progress, or creation of a legal mechanism to ensure the justification of this power after independence, integrity or seriousness of legal prosecution by the competent national state.

14. Paying attention to the issue of nuclear weapons, testing them and rationing them directly and explicitly in the Statute of the International Criminal Court. The same applies on crimes of aggression. So. It is suggested that the prosecution of such crimes should not be suspended until 2017, because this procedure is contrary to the principle of Complementarity.

**Arabic References**


legal obligations and legislation in Arab countries, the Arab League (Cairo:3 to 4, 2002) p. 11-12.

7. Abdullah, Alashaal, *Egypt and Refugee law* (Cairo: Egyptian international political magazine, 1992) issue No. 107, p. 67. 27.


**English References**


**Specialized Journals in international criminal law and transitional justice**

1. *Journal of International Criminal Justice*


5. *Human Rights Quarterly*. 