

The Limitations of Security Council Power on deferring the Investigation and Prosecution before the International Criminal Court

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Abstract

The study aimed to define the power of the Security Council to defer the investigation and prosecution before the International Criminal Court. In order to achieve the objective, the integrated approach has been used, considering that the study needs more than one approach such as the historical and analytical approach.

The study consisted of three chapters, the first one addressed the International Criminal Court and the importance of its existence, as it defines the court, and that it has a permanent criminal nature. The chapter also investigates the jurisdiction of the International Criminal Court, the investigation procedures, the guarantees of justice and the protection of the rights of the accused. The second chapter addressed the justice Considerations in the relation between the International Criminal Court (ICC) and the United Nations Security Council in deferring the investigation or prosecution before the International Criminal Court (ICC) and the role of the UN in the establishment of the International Criminal Court (ICC). Chapter three tackled the extent to which Palestine has benefited from acceding to the Statute of the International Criminal Court In the trial of Israeli war criminals.

The study concluded that the importance of the Security Council comes from the fact that it is one of the United Nations organs that functions and power are dedicated to the maintenance of international peace and security. Therefore, Security Council has been given a lot of powers to achieve this, in which the work on resolving conflicts needs to create an atmosphere without regarding the intervention of the Security Council binding, however, it is often neutral.

The study found that the power of the Security Council to defer and prosecute is only a kind of implicit power given to the Security Council, as the general powers and functions of this organization that authorized it to acquire that implicit power by which it was able to defer the investigation and prosecution of cases before the International Criminal Court . Article 16 of the Security Council has the ability to defer and prosecute, which in itself

does not guarantee a balance in the relationship between the Security Council and the Court.

The powers of the Security Council in the International Criminal Court are used as legal instruments for the intervention of the major powers in the affairs of the countries that oppose them in their foreign policy. These powers have been used in relation to the crimes committed in Darfur and Libya, while they are not used against Israel for crimes against Palestinian people.

The study recommended working on activating the reform of the Security Council by considering its eligibility to consider the membership of states, revoking the right of veto, which is an unfair right used by permanent members. The study also recommends to strengthen the judicial control of the International Criminal Court and working to determine non-interference in its powers by making differing the investigation and prosecution one of the powers and functions of the court only. Also, the need to limit the competence of the Security Council with respect to the renewal of the request for deferral, by demanding the Security Council to terminate its work within its maximum limit of 24 months upon request for renewal, in order to prevent procrastination that leads to terminate the work of the court.