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# ROLE OF UN SECURITY COUNCIL IN INTERNATIONAL CRIMINAL JUSTICE

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## ABSTRACT:

The United Nations Security Council (UNSC), initially designed as a peacekeeping body under the UN Charter, has gradually transformed into a significant player in the field of international criminal justice. This study explores the diverse function of the UNSC in fostering accountability for serious international offenses, like genocide, war crimes, crimes against humanity, and aggression—via mechanisms of referrals, deferrals, and enforcement as permitted by Chapter VII of the UN Charter and the Rome Statute of the ICC.

## Methodology

The research utilizes a doctrinal and qualitative approach, based on an analysis of primary sources such as the UN Charter, Rome Statute, Security Council Resolutions, and pertinent case law. It additionally includes secondary legal writings and organizational reports to bolster interpretive analysis. The two case studies—the Darfur (2005) and Libya (2011) referrals—provide empirical examples of the Council’s role in expanding ICC jurisdiction to non-State Parties, examining its effectiveness and constraints.

## Findings

The study emphasizes that although the UNSC is crucial for maintaining global accountability, its efficiency is often limited by politicization, the P5’s veto power, selective justice, and shortcomings in enforcement. These obstacles frequently weaken the Council’s credibility and the unbiased operation of international criminal systems.

## **Research Gap**

Although there is a vast amount of literature on the institutional powers of the UNSC, there is still a lack of targeted research evaluating the relationship between the political dynamics of the UNSC and the actual implementation of international criminal justice. This document examines this issue by assessing how the Council's discretionary power affects judicial autonomy and the universality of international criminal law.

## **INTRODUCTION**

The United Nations is an international organization which was established in 1945, after the end of World War II with the main objective of maintaining international peace and security, promote cooperation amongst nations and for the development of friendly relations between nations. The organization has total of 193 Nations as their member states and it works through various organs and bodies which includes 6 principal organs and various other agencies and funds etc. Out of these 6 principal organs, the United Nations Security Council holds significance importance in maintaining international peace and security.

International criminal justice has emerged as a pivotal element in global order meant to deal with the international grave offences such as genocide, war crimes, crime against humanity, crime of aggression etc. The UNSC has fundamental jurisdiction in shaping the mechanism for international accountability and prevention of mass atrocities. This article delves into the role, functions, and challenges of UNSC in regards to international criminal justice.

## **EVOLUTION OF UNSC**

To quote the UN, “the Security Council has primary responsibility for the maintenance of international peace and security.” It includes identification of emerging threats to peace and security and calling for peaceful settlement between the parties involved. Further, in cases of escalation, the council may impose restrictions on nations or may sometimes use force to maintain or restore peace.<sup>1</sup>

Security Council is made up of total of 15 members state wherein 5 members including, USA,

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<sup>1</sup> A History and Overview of the United Nations Security Council, Univ. of Notre Dame, (April 13, 2023) <https://ondisc.nd.edu/news-media/news/a-history-and-overview-of-the-united-nations-security-council>.

Russia, China, France and UK are the permanent members and other 10 are non-permanent members holding post for 2 years and elected by General Assembly.<sup>2</sup> While traditionally this organ was considered as diplomatic and peace keeping body, its role has changed overtime to that of causing judicial intervention which has led to implications for international justice.

It has number of powers enshrined in its charter giving it immense edge in the creation of international courts and tribunals, which includes the creation of ICTR and ICTY. It can also make referrals to ICC as provided under Chapter VII of the UN Charter under Articles 13 and 16 of the ICC Statute.<sup>3</sup> The Security Council has evolved from the earlier hesitant beginnings to today's pivotal actor in the maintenance of international criminal justice.

## ROLE OF UNSC IN MAINTAINING INTERNATIONAL CRIMINAL JUSTICE

The United Nation's Security Council plays a multifaceted role in the maintenance of International Criminal Justice. It has its roots in the UN Charter, Rome Convention etc. enabling him to identify and act to prevent international crimes such as genocides, crime of aggression etc. which threatens global order. Following are the major functions performed by United Nation's Security Council in order to maintain international criminal justice:

1. **Power of referrals:** The United Nations Security Council has the power of referral to the International Court of Justice of any case involving serious international crime. The referral is one of the three ways which is known as triggers through which the jurisdiction of ICC can be activated alongside State Party referral or an initiation by the Prosecutor proprio motu.<sup>4</sup> This power can also be exercised even when the case involves the country which is not the member of ICC. This referral power empowers ICC to deal with all the four crimes mentioned in the Rome Statute. This has helped in the resolution of high profile international cases such as that of Darfur, Sudan (2005) and Libya (2011).<sup>5</sup>

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<sup>2</sup> What Is the Security Council, United Nations, <https://main.un.org/securitycouncil/en/content/what-security-council>.

<sup>3</sup> Dr. Sanh Shareef Qader, The Role of the UN Security Council in relation to the International Criminal Court: A Critical Review, 22 Zanco J. L. & Pol. 245, 245 n.1 (2024).

<sup>4</sup> The ICC and the UN Security Council}, Global Campaign for the Prevention of Aggression, <https://crimeofaggression.info/role-of-the-icc/the-icc-and-the-un-security-council/>.

<sup>5</sup> Lindsay Maizland & Clara Fong, The Role of the ICC, Council on Foreign Relations (Jan. 21, 2025), <https://www.cfr.org/backgrounder/role-icc>.

2. **Suspension of Investigation:** the role of UN in maintenance of International criminal justice also includes suspension of Investigation which is also known as power of deferrals before International Criminal Court. Article 16 of Rome Statute empowers the council to request ICC to suspend the investigation and prosecution for one year. This requested can be renewed by the Council under Chapter VII of the UN Charter.<sup>6</sup> This allows in reconciling the potential conflict between ICC's Judicial mandate and Security's Council's peace and security.
3. **Gatekeeper and Legitimacy:** the council acts as an effective gatekeeper determining the situations to be prioritized for criminal prosecution at the global level ensuing international accountability. Further, UNSC's power of referrals open up gates of court even for the non-members. UNSC by legitimizing tribunal process enhances credible mechanism providing necessary backing to overcome issues of Sovereignty and jurisdiction.
4. **Enforcement and Cooperation:** ICC being an statutory independent body, does not possess its own army, police force or means of enforcing its decisions. UNSC can however, adopt binding measures such as sanctions, use of military force, diplomatic actions etc., ensuring with the compliance of International Criminal Justice. The council can further assist in the implementation of international arrest warrants through cooperation and collaboration.<sup>7</sup>

Thus, the UNSC has played a profound role in the maintenance of International Criminal justice ensuring that it functions alongside ICC maintaining a firm stance towards international Criminal Justice.

## CHALLENGES AND CRITICISM

While, the United Nation's Security Council plays a very important role in the maintenance of International Criminal Justice, it is not without its own challenges and criticisms which profoundly affect its effectiveness, impartiality and working capacity. Following can be traced

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<sup>6</sup> Supra note 4, at 3.

<sup>7</sup> Dr. Deborah Ruiz Verduzco, Selected Practise of the UN Security Council in Relation to the International Criminal Court and the Rome Statute System (1998–2012) 1 (Parliamentarians for Global Action, 3d update Oct. 10, 2012).

as some of the major challenges faced by security council in the maintenance of international order.

1. **Politicization of ICC:** one of the major and most persistent issue is the politicization whose main source is the power of referrals granted to the UNSC. Referrals are usually made in the cases involving the interest of the five permanent members of the Security Council enforcing justice selectively. Number of cases have been witnessed by the world such as that of Syria demonstrating the ignorance of crime in lieu of protection of the allies of the permanent members.<sup>8</sup>
2. **Veto power:** the most prominent threat to the international criminal justice is the veto power of P5. This veto power allows the P5 to prevent investigation on situations which they think of being politically sensitive.<sup>9</sup> This power may also lead to deadlock preventing timely attention to important and ongoing international atrocities. The power of deferral is also politically used by these members to pressure council to drop politically driven cases.
3. **Resource Constraints:** United Nation's Security Council works based on funding, cooperation and effects from member states. Any referrals made by UNSC to ICC does not generally come with the funding which ultimately forces ICC to cover investigation of high profile cases within their limited budget restraining court's resources in their other important cases.<sup>10</sup>
4. **Failure to enforce and ensure cooperation:** while the resolutions of UNSC are legally binding on its member states, it is evident the council itself fails to enforce its own mandates. The referrals made by council to ICC often faces enforcement problems. When the ICC finds that a state has failed to cooperate, it refers the matter back to the council making the enforcement of justice significantly delayed or sometimes not even served.

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<sup>8</sup> Hemi Mistry, Referral by the United Nations Security Council: International Criminal Court (ICC), in Max Planck Encyclopedia of International Procedural Law (Jan. 2021), <https://opil.ouplaw.com/display/10.1093/law-mpeipro/e3225.013.3225/law-mpeipro-e3225>.

<sup>9</sup> Akshat Agarwal, UNSC Referrals at ICC: An Unnecessary Evil and the Problem of Impunity}, RMLNLU L. Rev. Blog (May 19, 2024), <https://rmlnlulawreview.com/2024/05/19/unsc-referrals-at-icc-an-unnecessary-evil-and-the-problem-of-impunity/>.

<sup>10</sup> Supra note 8, at 5.

5. **Legal and jurisdictional challenges:** the core challenge of ICC is to exercise jurisdiction over the state who are not the party to its authority or in other sense to the Rome Convention. The power of referral of UNSC of cases involving non members of Rome Statute often bypasses the principle of state consent to jurisdiction. The Council's engagement in international criminal justice thus, raises significant questions regarding the legal and jurisdictional authority. Balancing state sovereignty along with imperative efforts to maintain international criminal justice remains a contentious issue.

## CASE STUDIES INVOLVING ROLE OF UNSC IN MAINTENANCE OF INTERNATIONAL CRIMINAL JUSTICE

Several Landmark case studies highlight the role of UNSC in ensuring international criminal justice. They highlight the role, achievement and challenges faced by the council in the maintenance of International Criminal Justice.

- **Darfur, Sudan (2005): UNSC Referral**

This was the first case referred to ICC by Security Council and also the case involving first time investigation by ICC in a non party state. In 2005, the United Nation's Security Council passed a resolution to refer the situation to ICC prosecutor to investigate the genocide, crime against humanity and war crime.<sup>11</sup>

The referral reinforced the ability of UNSC to use the mechanism of ICC in ensuring international peace and security also providing ICC with the jurisdiction over non party states. Since, Sudan is not the party to Rome Statute, it has largely failed to cooperate and after years of investigation and obstacles, the militia leader Ali Kushayb was finally convicted on October 7 on counts of war crime and crime against humanity.<sup>12</sup>

- **Libya (2011): UNSC Referral**

The United Nation's Security Council in February 2011 passed the resolution referring the situation of Libya to ICC for the commission of crime against humanity.<sup>13</sup> Likewise to the

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<sup>11</sup> Darfur, Sudan (Situation in Darfur, Sudan, ICC-02/05), Int'l Crim. Ct., <https://www.icc-cpi.int/darfur>.

<sup>12</sup> Ottilia Anna Maunganidze, A little too late? The ICC's first Darfur conflict conviction, ISS Today (Oct. 16, 2025), <https://issafrica.org/iss-today/a-little-too-late-the-icc-s-first-darfur-conflict-conviction>.

<sup>13</sup> Libya (Situation Phase: Investigation—Ongoing), Coalition for the Int'l Crim. Ct., <https://www.coalitionfortheicc.org/country/libya>.

previous study, Libya is also not the member state of Rome Statute.

The rapid and unanimous referrals during the developing crisis underscored the council's power to swiftly engage international justice in response to widespread and systematic attacks against civilians.<sup>14</sup>

## CONCLUSION

The United Nation's Security Council has profound powers in the maintenance of International Criminal Justice while it is not without its challenges and criticism. The authority of UNSC is rooted deeply in Chapter VII of UN Charter and also enshrined in the ICC statute which provides it with immense powers such as those of referrals, deferrals and enforcement. However, the political obstacles and issues such as those of jurisdiction and resource constraints have sometimes led to the limiting of power of UNSC.

The case studies highlights Council's capacity to transcend the principle of state sovereignty, extending the ICC's jurisdiction to non-State Parties and thereby ensuring that grave crimes do not go unaddressed merely because a state is outside the Court's treaty regime. Irrespective of the role of UNSC, the case studies also highlights the drawbacks and failures to secure the cooperation and arrest of alleged individuals.

Thus, it can be concluded that the UNSC plays a very important role in the maintenance of international criminal justice. This article has highlighted the role of UNSC while maintaining that the challenges and political biases by P5 can significantly hinder the capacity of Council to act impartially and serve justice.

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<sup>14</sup> Libya (Situation in Libya, ICC-01/11), Int'l Crim. Ct., <https://www.icc-cpi.int/situations/libya>

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