

Litigation procedures before the International Criminal Court

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Summary :

The International Criminal Court is the first permanent judicial body established by an international convention governed by a statute, which gives it a major role in establishing international criminal justice. In order to achieve its goal of bringing criminals to justice and ensuring that they do not escape punishment, the Court relies on the referral system established by its Statute. Such referrals may be made by States Parties, by the Security Council acting under Chapter VII of the Charter of the United Nations, or by the Prosecutor on his own initiative. Once a case has been referred to the Prosecutor, he or she initiates an investigation and then notifies the Pre-Trial Chamber of the referral so that it may grant approval for referral to the Trial Chamber, i.e. the trial stage, based on the evidence and documents submitted by the Prosecutor.

This study aims to identify the procedures for litigation before the court by identifying the cases referred and the investigation procedures carried out by the Prosecutor before the Pre-Trial Chamber, leading to trial before the Trial Chamber, which issues first instance judgments that are subject to appeal and review before the Appeals Chamber, ultimately resulting in the enforcement of those judgments once the charges against the individuals have been proven.

Keywords : International Criminal Court, States Parties, Security Council, Prosecutor, referral to the International Criminal Court.

Introduction :

The need to maintain international peace and security has become imperative for the international community, prompting it to seek ways to achieve this security and confront the dangers facing humanity.

From this perspective, the international arena has seen numerous attempts to establish legal mechanisms for tracking down and prosecuting criminals, thereby ensuring that they do not escape punishment. These attempts range from various treaties and ad hoc and special tribunals to the International Criminal Court, which was established in 1998 as a permanent international judicial body. It is governed by the Rome Statute, whose mission is to prosecute persons who have committed serious and grave crimes. This system also guarantees several principles to achieve fair and swift international justice, such as the presumption of innocence, the right to defence, the possibility of two levels of litigation, and others.

The jurisdiction of the Court is defined in Article 5 of the Statute, which states that it has jurisdiction over crimes of the utmost gravity of concern to the international community

(genocide, crimes against humanity, war crimes, crimes of aggression), which requires certain procedures to be followed in order to achieve the objective for which it was established, namely to achieve criminal justice and prosecute those involved in committing such crimes.

In order to consider these crimes and violations, the Statute has surrounded them with a set of mechanisms whereby international proceedings are brought before the Court for crimes falling within its jurisdiction. Among these mechanisms is the referral system, through which the Court is seized of a case and the investigation is conducted by the Prosecutor. Such referrals may be made by States Parties, by the Security Council acting under Chapter VII of the Charter of the United Nations, or by the Prosecutor on his own initiative.

It can be said that the aim of studying this topic is to identify the most important litigation procedures before the International Criminal Court, from the methods of referral to it to the issuance of the judgment, its appeal and, finally, its execution.

Based on the above, the study focuses on the following questions:

How effective are the proceedings before the International Criminal Court, from referrals and investigations to trials, in reducing impunity and achieving international justice?

In my study, I have adopted **an analytical approach** by examining the various procedures carried out before the International Criminal Court in order to achieve fair international justice.

In response to the problem posed and within a two-part plan, I divided my study into two main themes:

The first axis: Investigation procedures before the International Criminal Court (mechanisms for referral to the Court)

The second axis: Trial procedures before the International Criminal Court.

Finally, I answered the question posed and summarised **the conclusions** reached, along with some **suggestions**.

First focus: Investigation procedures before the International Criminal Court (mechanisms for referral to the Court)

Article 13 of the Statute of the Court states that: "The Court shall exercise its jurisdiction with respect to a crime referred to in Article 5 in accordance with the provisions of this Statute in the following circumstances:

1. If a State Party refers a situation to the Prosecutor in accordance with Article 14 in which it appears that one or more crimes have been committed.

2. If the Security Council, acting under Chapter VII of the Charter of the United Nations, refers a case to the Prosecutor in which it appears that one or more crimes have been committed.

3- If the Prosecutor has commenced an investigation in respect of one of these crimes in accordance with Article 15.

We will therefore use this section to explain the role of the States Parties, the Security Council and the Prosecutor in referring a case to the International Criminal Court and their contribution to the investigation.

First: Referral of a case by States Parties

A **State Party** is any State that has taken steps to ratify, accept, approve or accede to the Statute of the International Criminal Court¹, whereby the International Criminal Court has jurisdiction to examine cases suspected of constituting crimes within its jurisdiction, which are referred by States Parties. The latter is granted by Article 14(1) of the Statute the power to refer a case² to the Prosecutor, where it appears that one or more of the international crimes set forth in Article 5 of the same Statute (genocide, crimes against humanity, war crimes, crime of aggression) have been committed, and that requests the Prosecutor to investigate the case with a view to taking a decision on it, and to provide him with all clarifications, documents and materials that may assist the Prosecutor in the performance of his functions, with a view to bringing charges against a person or group of persons³.

It should be noted that this referral is subject to a set of conditions, as not all States Parties may refer a case to the International Criminal Court. These conditions are set out in Article 12(2) of the Statute of the Court and are as follows: ⁴

*The State Party must be the State in whose territory the criminal conduct in question occurred, or the State of registration of the ship or aircraft if the crime was committed on board a ship or aircraft.

*The person accused of the crime must be a national of the State Party.

This applies to States Parties, but the question is: can a non-State Party refer a case to the International Criminal Court?

The International Criminal Court has allowed non-States Parties to refer cases to it, provided that these States accept the jurisdiction of the Court in respect of the crime in question, by means of a declaration deposited with the Registry of the Court expressly stating their acceptance of jurisdiction, as confirmed by Article 12(3) of the Statute of the Court⁵.

Second: Referral of a case by the Security Council

The Security Council was established pursuant to Article 23 of the Charter of the United Nations, and its purpose at the time was to maintain international peace and security. The Council was given the authority to make decisions and to compel Member States of the United Nations to comply with them. The Security Council is the main body responsible for managing the global security system, and its primary goal is to maintain international peace and security. It is responsible for considering disputes that could lead to a breach of international peace and security, as stated in Article 24 of the Charter. The Council consists of 15 members of the United Nations, including five permanent members.⁶

Article 13 of the Statute of the Court makes it clear that the Security Council has the power to refer a case to the Prosecutor in accordance with Chapter VII of the Charter of the United Nations. This means that the Security Council makes referrals in accordance with the Charter and not the Statute, so that its authority to refer cases to the Court reflects the complementarity and coordination that exist between the Council and the International Criminal Court, particularly in cases where the Security Council is performing its duties in maintaining international peace and security, given the close relationship between international crimes and the maintenance of peace⁷.

In order for the Council to refer a case to the Court, the following conditions must be met:

***The referral must come from the Security Council**, with the President of the Council informing the Secretary-General of the United Nations of the referral decision so that the latter can notify the Prosecutor to initiate investigation proceedings⁸.

***The referral must be based on Chapter VII of the Charter**: according to Chapter VII, the Security Council may refer a situation to the Prosecutor, as the body responsible for maintaining international peace and security, when it considers that one or more crimes within the jurisdiction of the Court have been committed.

Among the cases suspected of crimes falling within the jurisdiction of the International Criminal Court and referred by the Security Council are:⁹

***The referral of the Darfur case in Sudan** pursuant to Security Council Resolution 1593 of 31 March 2005, where the Prosecutor began his investigation in June 2005 and charges were brought against several individuals, including **Ahmed** Haroun, **Ali Kosheib**, and the current President of Sudan, **Omar Hassan Ahmad** al-Bashir, for crimes of murder, torture, extermination, and war crimes.

***Referral of the case of Libya** to the Prosecutor of the Court pursuant to Resolution No. 1970 issued on 26 February 2011, whereby the Prosecutor commenced the investigation on 3 March 2011 and **Saif al-Islam Gaddafi** was charged with crimes against humanity, namely murder and persecution.

It should be noted that although the Security Council was granted the power to refer a case to the Criminal Court under Article 13 of the Statute, which is predominantly political in nature, it also granted it the power to postpone an investigation under Article 16 of the same Statute, i.e. the right of the Security Council to suspend an investigation or proceedings by the Criminal Court into a crime referred to in Article 5 of the Statute, always in accordance with Chapter VII of the Charter of the United Nations, where Article 16 states the following: "No investigation under this Statute shall be commenced or continued for a period of 12 months, upon a request by the Security Council to the Court to that effect, contained in a resolution adopted by the Council under Chapter VII of the Charter of the United Nations, and the Council may renew such a request under the same conditions."¹⁰. It should be noted that this article introduces a dangerous and unprecedented measure in the international criminal justice system, namely interference in the affairs of an independent judicial body established by an international agreement.

On the basis of the aforementioned Article 16, the Security Council may prevent investigation or prosecution if it concerns the maintenance of international peace and security, considering that criminal justice and the maintenance of peace are the primary responsibilities of the Security Council, which allows it to intervene to prevent the Prosecutor from conducting an investigation and continuing to seek information related to the deferred case¹¹.

The power to defer investigation or prosecution is considered a genuine application of the Security Council's actual powers under Chapter VII of the United Nations Charter to maintain international peace and security. However, it is not absolute but is subject to a set of conditions that must be met, as follows:¹²

*The Court must ensure that the request by the Security Council to defer investigation or prosecution is part of a decision taken in accordance with Chapter VII of the Charter.

*The resolution containing the request for deferral must be adopted in accordance with the correct voting procedures, and therefore requires the approval of nine members, including the votes of the five permanent members of the Council, in accordance with Article 27(3) of the Charter of the United Nations. In this case, it is understood that opposition by one of these States to the decision to defer investigation or prosecution allows the Court to proceed.

*The decision to defer shall be an explicit expression of this Council's request that the Court defer consideration of a case before it in accordance with Article 15(3) of the Statute of the Court.

Third: Referral by the Prosecutor

The Prosecutor has an office and is one of the most important organs of the International Criminal Court, operating independently of the other organs. His task is to receive cases and any information on crimes falling within the jurisdiction of the Court for examination with a view to carrying out investigations and prosecutions in accordance with Article 14 of the Statute¹³.

If the States Parties or the Security Council do not refer a particular case to the Court that is believed to constitute a crime within its jurisdiction, the Prosecutor may, pursuant to Article 13(f)(c) and Article 15 of the Statute, initiate an investigation on his own initiative if the necessary conditions for such action are met.

The actions taken by the Prosecutor may be limited to the following cases: ¹⁴

*The Prosecutor may initiate investigations on his own initiative on the basis of information relating to crimes provided by States, United Nations agencies, international organisations, non-governmental organisations, or any other reliable sources he deems appropriate.

*If the Prosecutor concludes that there is a reasonable basis to proceed with an investigation, he or she shall submit a request for authorization to proceed to the Pre-Trial Chamber, together with any supporting materials he or she has gathered, and victims may make submissions to the Pre-Trial Chamber in accordance with the rules of procedure and evidence.

*If, after examining the request and the supporting materials, the Pre-Trial Chamber finds that there is a reasonable basis to proceed with an investigation and that the case appears to fall within the jurisdiction of the Court, it shall accept the case.

*If the Pre-Trial Chamber refuses to authorise an investigation, this does not prevent the Prosecutor from submitting a subsequent request based on new facts or evidence relating to the same case.

One of the cases referred by the Prosecutor, which was considered his first actual investigation, was on 24 June 2004, concerning the first case referred to the International Criminal Court for crimes allegedly committed in the territory **of the Democratic Republic of the Congo** since 1 July 2002. The Prosecutor's decision came after a thorough examination of the conditions of admissibility and jurisdiction set out in the Rome Statute, after which the Prosecutor concluded that it was necessary to conduct an investigation into the crimes committed in **the Democratic Republic of the Congo** and that this would serve the

requirements of justice and the interests of the victims¹⁵. The Office of the Prosecutor began analysing the situation in that country on 9 July 2003, initially focusing on crimes committed in **the Ituri region**. In September 2003, the Prosecutor notified the Assembly of States Parties that he was prepared to request authorisation from the Pre-Trial Chamber to open an investigation on his own initiative.

It should be noted that within one month of receiving that notification, the States Parties must inform the Court that they are conducting or have conducted an investigation with their nationals or others within their jurisdiction in relation to criminal acts that may constitute a crime specified in Article 5 of the Statute¹⁶.

We can therefore conclude that international criminal cases are referred to the Court by one of the following three bodies:

*Referral by a State Party, whereby any State Party may refer to the Prosecutor any case in which it appears that one or more crimes within the jurisdiction of the Court have been committed.

*Security Council.

*The Prosecutor of the Court has the right to initiate investigations on his own initiative if he has information about crimes within the jurisdiction of the Court.

Second axis: Trial proceedings before the International Criminal Court

The trial is characterised by several procedures, including those relating to the preliminary rules of the trial and those relating to the rights of the accused and the parties, and concludes with the issuance of the judgments deemed appropriate.

First: Preliminary rules of trial (preliminary measures)

¹⁷Article 60(1) of the Statute of the Court stipulates that after a person has been brought before the Court, either voluntarily or pursuant to a warrant of arrest, the Pre-Trial Chamber shall satisfy itself that the person has been informed of the crimes with which he or she is charged and of his or her rights under this Statute, including the right to seek provisional release pending trial. Article 61 of the same Statute stipulates that the Pre-Trial Chamber shall hold a hearing in the presence of the Prosecutor and the person charged, accompanied by his counsel, and that these preliminary proceedings prior to trial may not be held in absentia, and the evidence against the accused shall be disclosed to him through the pretrial chamber. However, this hearing may be held without the defendant being present if this procedure facilitates the smooth running of the proceedings and enables the defendant's defence to represent their client¹⁸.

The purpose of these proceedings is to give the defendant or his defence counsel the opportunity to examine the evidence that the prosecutor will disclose before the trial and then to decide whether to accept the charges on the basis of this evidence. However, the evidence presented by the prosecutor to the preliminary chamber is not all of the evidence that he intends to rely on before the trial chamber (trial chamber) from official documents, statements and declarations, but only evidence sufficient to convince the judges of the preliminary chamber to adopt the charges, as he is not obliged to disclose all the evidence he presents before adopting the charges¹⁹.

After the public prosecutor has completed the necessary procedures and the accused has appeared before the court, preliminary proceedings before the Pre-Trial Chamber commence, the primary purpose of which is to ensure that the accused is fully informed of the charges against him or her and of his or her rights during this stage, which include the possibility of provisional release or of challenging the charges against him or her and presenting evidence to prove his or her innocence after the above-mentioned procedures have been exhausted²⁰ . and to ensure that the judicial investigation complies with the procedural rules set out in the court's statutes, rules of procedure and rules of evidence, the pre-trial chamber must refer the case and the accused to the trial chamber in order to commence a stage that is no less important than the above-mentioned stages, namely the trial.

A. Functions and powers of the Trial Chamber: The trial chamber exercises its powers in accordance with the provisions of the court's statute, rules of procedure and rules of evidence, so as to ensure a fair and speedy trial that respects the rights of the accused, victims and witnesses. This has led the statute to assign several tasks to the trial chamber, as set out in Article 64, which are as follows: ²¹

1- The freedom of the court of first instance to determine the language or languages to be used in the trial, provided that the defendant understands and speaks them in a manner that does not prejudice his right to defend himself.

2- The right to deliberate with the parties to the case and take the necessary swift and fair measures to complete the trial in accordance with Article 64/F3/A of the Statute.

3. The right of the court of first instance to join or separate charges against more than one defendant as appropriate to achieve justice, provided that the parties involved in the proceedings are present.

4. The right of the Trial Chamber to exercise any of the functions of the Pre-Trial Chamber (Preliminary Chamber), and it may request the attendance of witnesses, hear their testimony, take all necessary measures to protect the confidentiality of information that cannot be made public due to its nature, take appropriate measures to protect the accused, victims and witnesses, and rule on other matters even if they are outside the scope of the case, provided that they are relevant to it in accordance with Article 64/F6 of the Statute.

5. The right of the court of first instance to disclose previously undisclosed documents and information, whether at the preliminary investigation stage before the pre-trial chamber or at the evidence-gathering stage before the public prosecutor. This procedure must be carried out sufficiently in advance of the start of the trial to enable the accused to defend himself and respond to this evidence and documentation, in accordance with Article 64/F4 of the Statute.

6. The preliminary chamber may hold closed sessions if this is necessary to protect the accused or the victims or to preserve evidence and documents, in accordance with Article 64(7) of the Statute.

B. Trial: Once the Pre-Trial Chamber has confirmed the charges and issued an indictment for the crime for which the accused has been referred to the Court, and the Trial Chamber has been constituted, it shall be responsible for the subsequent proceedings. The trial shall be held at the seat of the Court **in The Hague, Netherlands**, unless otherwise decided. The trial may be held in another country if it is in the interests of justice and at the request of

the Prosecutor, the defence or a majority of the trial judges. A request shall be submitted to the Presidency of that country and, after its approval, the judges shall decide to convene the court in that country in a public session by a two-thirds majority, in accordance with Article 62 of the Statute²².

The trial proceedings shall be conducted before one of the trial chambers and shall be held in public, unless that chamber finds that certain circumstances or reasons relating to the protection of victims or witnesses or to the protection of confidential information require that certain proceedings be held in camera. The proceedings shall be transparent so that the judges can form their own opinion based on the discussions before them and not solely on the investigation documents²³.

The Rome Statute is considered the applicable law before the Court, followed by the Rules of Procedure and Evidence, the elements of crimes, then the applicable treaties and principles of international law, followed by the general principles of law that the Court derives from national laws. The Court may also apply principles and rules of law on a precautionary basis.²⁴

The court adheres to several principles, including that a person may not be tried twice for the same crime, thereby respecting the principle of no crime and no punishment except by law, as well as the non-retroactivity of the law unless it is more favourable to the accused²⁵.

At the beginning of the trial, the court of first instance must read to the defendant the indictment approved by the preliminary chamber. The court of first instance must ensure that the accused understands the nature of the charges and must give him the opportunity to plead guilty or not guilty in accordance with Article 65 of the Statute, and must guarantee him a speedy and fair trial and respect the rights of the accused. The prosecutor then makes an opening statement and presents witnesses and evidence, bearing the burden of proving that the accused is guilty.

Contrary to the usual practice, the court of first instance may, as an exception, conduct any part of the trial in closed session, which is normally open to the public, and allow evidence to be presented by electronic means using audio or video technology or other means. The purpose of these measures is to protect victims, especially child victims²⁶.

If the accused admits guilt, the court must ensure that he understands the nature and implications of his confession and that it was made voluntarily, without coercion and after sufficient consultation with his lawyer. If the court is satisfied that the confession is genuine and has additional evidence that has been presented and is convinced that the charge is proven, it may convict the accused of the crime to which he has confessed.²⁷

The president of the trial chamber shall announce the time at which the presentation of evidence is closed and shall invite the prosecutor and the defence to present their closing arguments and statements, after which the trial chamber shall retire to deliberate in the deliberation room and shall then notify all participants in the proceedings of the date on which it will deliver its judgement.

Second: The rights of the accused and the parties before the International Criminal Court

Appearing before the International Criminal Court, whether as defendants, victims or witnesses, grants parties rights that are considered guarantees for them, as regulated by the Court's Statute for the purpose of a fair trial.

A. Rights of the accused: The Statute of the Court has established numerous guarantees for the accused to ensure a fair and speedy trial, the most important of which are:

1-Presumption of innocence: Like all national laws, the Statute adopts the principle that a person is presumed innocent until proven guilty by a final judgment that has the force of *res judicata* ⁽²⁸⁾. This presumption serves as a natural immunity against judicial authorities seeking to prove the contrary. The Statute regulates this presumption in Article 66(1).

2-Trial in the presence of the accused: In order for the trial to be fair and not violate the accused's right to defend himself, the trial must be conducted in his presence.

3-Approval of charges before trial: Before referring the international criminal case to the trial court, the preliminary chamber must take the administrative and judicial measures necessary to confirm the charges against the accused, which involves holding a hearing to confirm the charges on which the prosecutor intends to base the trial. This is a guarantee that enables the accused to use all means of defence to refute the charges against him²⁹.

4-Application of the law most favourable to the accused: This is stipulated in Article 24/F2 of the Basic Law, whereby certain conditions must be met in order for this principle to be applied, as follows:

*The new text must be issued before the final judgment is issued, i.e. before the judgment becomes enforceable.

*The new text must be more favourable to the defendant than the old text.

5-The right to appoint a lawyer: In order for the accused to be able to exercise their right to defence, they must be enabled to seek the assistance of a lawyer to help them in their defence, chosen by the accused themselves to protect their rights, prove their case and defend them at all stages of the criminal proceedings.

B. Rights of victims, injured parties and witnesses: These are as follows:

1-Compensation for damages and compensation for victims: Compensation is the entitlement of the accused for damages, and damages are any harm that befalls a person, causing them loss or depriving them of legitimate earnings, or both. The court is responsible for assessing the damage and its extent or harm at the request of the injured parties, and then issues an order to pay appropriate compensation.³⁰

2- **Witnesses** also have rights, even if they conflict with the rights of the accused. They have the right to preserve their dignity, safety, and privacy, and they may not be subjected to any pressure.³¹

Third: Judgments issued by the International Criminal Court

The Statute of the Court regulates the penalties imposed by the Court when the accused is found guilty. These penalties and judgments are preliminary and subject to appeal before the appellate authorities, as the Statute provides for appeals in accordance with the principle of two levels of litigation.

A. Penalties imposed by the Court: Article 74 of the Statute stipulates that the Trial Chamber shall render its judgment by a unanimous vote of the judges. If they are unable to

reach a unanimous decision, the decision shall be rendered by a majority vote of the judges. The deliberations of the Trial Chamber shall be confidential, and its decisions shall be in writing with regard to the evidence and findings. The judgment shall be rendered in public in the presence of the accused.

In accordance with Article 110 of the same Statute, the court may impose one of the following penalties on a person convicted of committing one of the crimes specified in Article 5 thereof:³²

*Imprisonment for a specified number of years, up to a maximum of 30 years.

*Life imprisonment where this penalty is justified by the extreme seriousness of the crime and the particular circumstances of the convicted person.

In addition to the custodial sentence of imprisonment, the court may impose the following:

*The imposition of a fine in accordance with the standards set out in the rules of procedure and evidence.

*Confiscation of proceeds, property and assets derived directly or indirectly from those crimes, without prejudice to the rights of bona fide parties.

B. Appealing judgments: The court issues first instance judgments that are subject to appeal, whereby the basic system provides for an ordinary means of appeal in the form of an appeal without opposition, and an extraordinary means of appeal in the form of a petition for review without cassation.

1- Appeal: Appeal is a normal method of appeal that the defendant in a criminal case may resort to without being restricted to specific grounds. Therefore, it does not suspend the execution of the judgment unless the law provides otherwise. It also transfers the case, with all its parties and subject matter, from the judicial body that issued the judgment to a higher judicial body, and in itself re-examines the validity of the proceedings related to the trial, as the trial is repeated³³. Only the public prosecutor and the convicted person have the right to appeal, not the victims, for example, in accordance with Article 105/2 of the Basic Law.

The appeal shall be lodged with the Court of Appeal within a period not exceeding 30 days from the date of notification of the party concerned of the decision or judgment to be appealed. However, the Court of Appeal may extend this period for any reason when the party seeking to appeal submits a request to that effect. The appeal shall be submitted to the court registrar and shall include the arguments, evidence and documents supporting the appeal. If no appeal is filed, the decision, ruling or order for compensation issued by the court of first instance shall become final. The appeal court shall hold a hearing as soon as possible, provided that the appeal proceedings are in writing. This court shall have all the powers of the court of first instance³⁴.

2-Appeal by way of petition for review: The convicted person, or after his death, his spouse, children, parents, or any person to whom the accused sent written instructions before his death, or the public prosecutor on behalf of the convicted person, may submit a request to the Court of Appeal to review the final conviction or sentence³⁵. if new evidence has come to light that was not available at the time of the trial and that would have affected the court's decision and led to a different verdict, or if it has recently become apparent that crucial evidence

relied upon by the court in the conviction was fabricated or falsified, or if it has become apparent that one or more of the judges who participated in the conviction committed serious misconduct or seriously breached their duties in a manner that would have warranted the removal of that judge.

The request for review must be submitted in writing, stating the reasons for it, and may be accompanied by supporting documents as far as possible. The decision on the merits of the request shall be taken by a majority of the judges of the Court of Appeal and shall be supported by written reasons . Notice of the decision shall then be sent to the applicant and, as far as possible, to all parties who participated in the proceedings relating to the initial decision³⁶ . If the application for review is unfounded, it may be rejected. If it considers that the request is worthy of consideration and well-founded, it may, as appropriate, call upon the original court of first instance to reconvene, form a new court of first instance, or decide the matter itself, in order to reach a decision, after hearing the parties, on whether the judgment should be reviewed.

The appeal court shall decide on the request for review by a majority of its judges, and the decision shall be pronounced in open court. The decision shall state the reasons on which it is based³⁷ .

C. Enforcement of sentences: The enforcement of a **prison** sentence requires that the State in whose territory the sentence is to be enforced be determined in accordance with Article 103(1) of the Statute from a list of States that have confirmed to the Court their willingness to accept sentenced persons in their territories. When declaring its willingness to receive sentenced persons, a State may attach conditions to their acceptance, which shall be agreed upon by the Court.

It should be noted that when designating the State that will enforce the sentence of imprisonment, the Court shall take into account the need for States Parties to share responsibility for the enforcement of sentences of imprisonment in accordance with the principles of equitable distribution, such as the principle of equitable geographical distribution and the need for each State on the list to have the opportunity to accommodate some of the sentenced persons³⁸ .

If no State is designated to enforce the sentence pursuant to Article 103(1) of the Statute, the prison sentence shall be enforced in a prison provided by the host State in accordance with the conditions set out in the headquarters agreement, in which case the Court shall bear the costs arising from the enforcement of the sentence.

According to Article 104 of the same Statute, the State designated for enforcement may be changed by the Court at any time upon a reasoned written request from the convicted person or the Prosecutor to transfer the convicted person to a prison in another State³⁹ .

The rules of procedure and evidence require the registrar to notify the public prosecutor and the sentenced person in the designated State of enforcement, after which the sentenced person shall be transferred as soon as possible to that State. The registrar shall ensure that the transfer is carried out properly, in consultation with the authorities of the State of enforcement and the host State. If the sentenced person is transported by air through the territory of a State as a transit State, that State shall, within the limits permitted by its national law, authorise the transit of the sentenced person. The executing State shall bear the normal costs of enforcing the

sentence in its territory, and the Court may bear other costs, such as the costs of transporting the sentenced person⁴⁰.

With regard to **the enforcement of financial penalties**, Article 109 of the Statute provides that States Parties shall enforce the fines or confiscation ordered by the Court, without prejudice to the rights of bona fide parties and in accordance with their national law. If a State Party is unable to enforce a confiscation order, it shall take measures to recover the value of the proceeds, property or assets ordered to be confiscated by the Court, without prejudice to the rights of bona fide parties⁴¹.

For the purpose of enabling the designated State to execute the order, the Court shall identify the convicted person and the proceeds, property and assets ordered to be confiscated and their location, so that it may transfer these proceeds to the Restitution Fund established by decision of the Assembly of States Parties for the benefit of victims of crimes within the jurisdiction of the Court or their families⁴².

It should be noted that the enforcement of fines and confiscation measures applies to all States Parties, unlike the enforcement of prison sentences, which applies only to States Parties concerned with the enforcement of prison sentences in their territory.

Conclusion:

Based on what has been presented in this study and in response to the issue raised, it is noted that in order for the International Criminal Court to achieve its goal of delivering swift international justice that ensures that criminals do not escape punishment, it has relied on the mechanism of referral to the Court, which its Statute grants this power to States Parties and the Security Council, in addition to the Prosecutor, when there are violations that fall within the jurisdiction of the International Criminal Court as stipulated in Article 5 of its Statute, as well as investigating those violations, adopting charges and collecting evidence and documents, while respecting the guarantees and rights of the parties and the accused as stipulated in the Statute. This is so that it can issue its ruling on these violations and then issue preliminary judgments that can be appealed before the Appeals Chamber, ultimately leading to the enforcement of those judgments against those convicted, which has achieved, to a certain extent, the relative non-impunity of the accused and the achievement of fair international justice.

Among **the conclusions** reached are the following:

*Referrals to the International Criminal Court are made by States Parties, the Security Council and the Prosecutor in accordance with Article 13 of the Statute. These mechanisms, introduced by the Statute, aim to expand the cases in which the Court has jurisdiction so that international justice is achieved and there is no impunity.

*Referrals by the Security Council are more political than judicial in nature.

*Under its Statute, the International Criminal Court grants defendants and parties numerous rights and guarantees so that their rights are not violated and they have the opportunity to a fair and speedy trial.

*The sentences handed down by the International Criminal Court are limited to imprisonment for a period not exceeding 30 years, provisional detention, fines and confiscation

of property. These sentences are preliminary and may be appealed or reviewed by the Appeals Chamber.

*States Parties that express their willingness to do so shall enforce the penalties imposed by the Court, whether imprisonment within their territory or financial penalties. If no State is willing to enforce the prison sentence, the Court shall enforce this penalty in the host State, i.e. the State where the International Criminal Court is located.

Proposals:

*The Security Council's power to defer the work of the International Criminal Court should be limited.

*States should take the initiative to ratify the Statute of the Court so that the Court has universal jurisdiction and not just international jurisdiction.

*States should be urged to cooperate with the International Criminal Court.

Finally, despite the efforts made by the International Criminal Court to achieve international justice and ensure that criminals do not escape punishment, its efforts are marred by shortcomings, as evidenced by some violations that prevail in some countries that have not been referred by the States Parties, the Security Council or even the Prosecutor, such as the State of Palestine.

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¹ Bouhajla Bou Abdullah, *Referral to the International Criminal Court*, Doctoral Thesis in Public Law, Specialising in Criminal Law, University of Algiers 1, Faculty of Law, 2020/2021, p. 105.

² The term "case" in the Rome Statute refers to the actual general text under which it is believed that a crime falling within the jurisdiction of the Court has actually been committed.

³ Mohamed Belkacem, "Referral to the International Criminal Court as a mechanism for ensuring accountability," *Journal of Legal and Political Research and Studies*, Issue 8, p. 195.

⁴ Article 12(2) of the Statute of the International Criminal Court.

⁵ Mohamed Belkacem, *op. cit.*, p. 196.

⁶ Bouhajla Bou Abdullah, *op. cit.*, p. 145.

⁷ Ali Abdelkader Al-Kahouji, *International Criminal Law*, Al-Halabi Legal Publications, Beirut, 2001, p. 288.

⁸ Bouhajla Bou Abdullah, *op. cit.*, p. 155.

⁹ Mohammed Belkacem, *op. cit.*, p. 199.

¹⁰ Article 16 of the Statute of the International Criminal Court.

¹¹ Kamal Daoud, "Problems Facing the International Criminal Court," *Journal of Legal and Social Sciences*, Ziane Achour University, Djelfa, vol. 6, no. 3, 2021, p. 302.

¹² Linda Lamamra, *The Role of the Security Council in Implementing the Rules of International Humanitarian Law*, Master's Thesis in Law, Mouloud Mammeri University of Tizi Ouzou, Faculty of Law, 2012, p. 134.

¹³ Article 14 of the Statute of the International Criminal Court.

¹⁴ Mustafa Abdel Nabi, "Mechanisms for Referral to the International Criminal Court by the Prosecutor," *Academic Journal of Legal and Political Research*, University of Laghouat, Vol. 4, No. 2, 2020, pp. 793, 794.

¹⁵ Mustafa Abdel Nabi, *op. cit.*, p. 795.

¹⁶ Ziad Atani, *The International Criminal Court and the Development of International Criminal Law*, 1st ed., Al-Halabi Legal Publications, Beirut, 2009, p. 343.

¹⁷ Article 61(1) of the Statute of the International Criminal Court.

¹⁸ Article 61(2) of the same Statute.

¹⁹ Fida Najib Hamad, *The International Criminal Court Towards International Justice*, Halabi Legal Publications, Beirut, 2006, p. 184.

²⁰ *Ibid.*, p. 183.

²¹ Article 64 of the Statute of the International Criminal Court.

²² Montaser Saeed Hamouda, *The International Criminal Court, General Theory of International Crime, Provisions of International Criminal Law, An Analytical Study*, New University Press, Alexandria, 2006, p. 265.

²³ Article 63(1) of the Statute of the International Criminal Court.

²⁴ Article 24 of the Statute of the International Criminal Court.

²⁵ Montaser Saeed Hamouda, *op. cit.*, p. 284.

²⁶ Article 64(9) of the Statute of the International Criminal Court.

²⁷ Fida Naguib Muhammad, *op. cit.*, p. 188.

²⁸ Montaser Saeed Hamouda, *op. cit.*, p. 289.

²⁹ Article 61 of the Statute of the International Criminal Court.

³⁰ Fida Naguib Hamad, *op. cit.*, p. 197.

³¹ Article 22 of the Statute of the International Criminal Court.

³² Article 110 of the same Statute.

³³ Montaser Saeed Hamouda, *op. cit.*, p. 293.

³⁴ *Ibid.*, p. 297.

³⁵ Ali Abdul Qadir Al-Qahwaji, *op. cit.*, p. 351.

³⁶ Ali Abdelkader Al-Kahouji, *op. cit.*, p. 352.

³⁷ Mohammed Ghali, *Proceedings before the International Criminal Court*, Master's thesis in Criminal Science and Criminology, University of Aboubakr Belkaid Tlemcen, Faculty of Law, 2004/2005, p. 199.

³⁸ *Ibid.*, p. 214.

³⁹ Article 104 of the Statute of the International Criminal Court.

⁴⁰ Mohamed Ghali, *op. cit.*, p. 216.

⁴¹ Article 109 of the Statute of the International Criminal Court.

⁴² Article 89 of the same Statute.