

**Financing of situations referred to the International Criminal Court
by the United Nations Security Council**

Legal background

Article 115 of the Rome Statute anticipates funding from the United Nations for situations referred by the Security Council, as it states:

The expenses of the Court and the Assembly of States Parties, including its Bureau and subsidiary bodies, as provided for in the budget decided by the Assembly of States parties shall be provided for by the following sources:

- (a) Assessed contributions made by States Parties;
- (b) **Funds provided by the United Nations subject to the approval of the General Assembly, in particular in relation to expenses incurred due to referrals by the Security Council.**¹

The possibility of funds flowing from the United Nations to the International Criminal Court is further addressed in the Relationship Agreement between the United Nations and the Court, in its article 13, paragraph 1:

The United Nations and the Court agree that the conditions under which any funds may be provided to the Court by a decision of the General Assembly of the United Nations pursuant to article 115 of the Statute shall be subject to separate arrangements. The Registrar shall inform the Assembly of the making of such arrangements.²

The United Nations General Assembly annually adopts a resolution on the “Report of the International Criminal Court,” which also governs relations between the United Nations and the Court. In the latest such resolution the General Assembly

Acknowledg[ed] the Relationship Agreement as approved by the General Assembly in its resolution 58/318 of 13 September 2004, including paragraph 3 of the resolution with respect to the payment in full of expenses accruing to the United Nations as a result of the implementation of the Relationship Agreement,³ which provides a framework for continued cooperation between the International Criminal Court and the United Nations, which could include the facilitation by the United Nations of the Court’s field activities, **and encourag[ed] the conclusion of supplementary arrangements and agreements, as necessary,**⁴

¹ Rome Statute of the International Criminal Court, article 115. Emphasis added.

² Relationship agreement between the United Nations and the International Criminal Court, article 13, paragraph 1, contained in the annex to A/58/874 and approved by United Nations General Assembly Resolution 58/318 and ICC Assembly of States Parties Resolution ICC-ASP/3/Res.1.

³ Articles 10 and 13 of the Relationship Agreement.

⁴ United Nations General Assembly, “Report of the International Criminal Court”, A/RES/65/12, 3 February 2011, ninth preambular paragraph; emphasis added. The same paragraph has been in each resolution on the Report of the International Criminal Court since the General Assembly’s 60th session.

Conclusions

The referral of situations to the Court by the Security Council creates a large financial burden which has heretofore been borne entirely by States Parties to the Rome Statute. This situation was not intended by the Statute, which assumes that the United Nations will reimburse the Court for the costs incurred due to Security Council referrals.

Operative paragraph 8 of SC resolution 1970 (2011) and operative paragraph 7 of SC resolution 1593 (2005) are not binding decisions (indeed, the introductory verb “recognizing” makes it clear that it is neither binding nor a decision), and have clearly been written in full respect for the General Assembly’s sole authority over budgetary matters at the United Nations.

The General Assembly could, therefore, through the establishment of “separate arrangements” in accordance with article 13, paragraph 1 of the Relationship Agreement between the United Nations and the Court, provide for the payment of expenses incurred by the Court due to situations referred by the Security Council. Indeed, the phrase “encouraging the conclusion of supplementary arrangements and agreements, as necessary” contained in its annual resolution on the Court⁸ seems to indicate a positive disposition in this regard.

In order to alleviate the financial strain placed on the Court through Security-Council referrals, the Court would therefore have to pursue the conclusion of a supplementary arrangement between the United Nations and the Court negotiations with the Secretary-General. Such arrangements would then require approval by the General Assembly. It would also be helpful if the Security Council were to avoid any reference to the apportionment of costs in possible future referrals.

⁸ See note 4 *supra*.