

The UN Security Council and Its Decision-Making Mechanism

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Abstract

Protecting international peace and security is the primary goal of establishing the United Nations. To achieve this goal, the organization has established, since its founding, the International Security Council. The International Security Council is one of the most important main bodies of the United Nations and is primarily responsible for maintaining international peace and security. The Council also With the tasks entrusted to it under Article (24) of the Charter, after the members of the organization, pursuant to this article, entrusted the Council to carry out on behalf of the countries of the organization the task of maintaining international peace and security, which is represented by major and important duties, and because achieving this goal is entrusted to the Security Council, the Charter of Nations granted it the United Nations has many powers and powers that the General Assembly does not have. We find the basis of these powers in Chapters (6-7-8-12). The Council's decisions also have binding force, as member states are committed to implementing its decisions, based on what is stated in Article (25) of the United Nations Charter, all of this comes in order to protect international peace and security. Article 23 of the United Nations Charter came as the basis for the establishment of this important body, after Chapter Five of the United Nations Charter regulated the work of the Security Council, including the functions and powers, formation and management of the Council's meetings, and the work of its affiliated bodies. The composition of this Security Council has a characteristic that differs from the rest of the United Nations bodies, as the five major member states enjoy an advantage that the rest of the Council's member states do not enjoy, and this advantage is evident in the right to permanent membership and the right to veto any decision issued by the Council. Finally, we conclude that the UN Security Council is the real institution that it dominates not only the United Nations, but the entire world. In view of the fundamental goal of the United Nations, which is to protect international peace and security.

Keywords: UN Security Council, Decision-Making Mechanism

INTRODUCTION

Firstly: Introduction of Research

The Security Council, as the main instrument of the United Nations and the holder of authority in the field of maintaining international peace and security, is the task entrusted to it on behalf of the members of the United Nations, based on Article (24) of the United Nations Charter. It also has broad powers and, for this purpose, is entitled to issue resolutions that have force. Obligation in terms of effect based on Article (25) of the Charter. It also has the authority to form permanent and temporary committees in order to complete its tasks assigned to it. All of this comes within the framework of maintaining international peace and security. Therefore, we will try to clarify the basis for forming the Security Council and the basis for forming these committees. The legal basis for its decisions and the mechanism for issuing those decisions in order to identify the weaknesses, imbalances and obstacles that plague the work of the Security Council through our tagged research.

Second: The Importance of Research

The subject of our research is of utmost importance because it contains within it solutions to the problem of the dominance of the great permanent member states over Security Council decisions, as our research deals with (the concept of the UN Security Council and the mechanism for making decisions), and we in turn will try to demonstrate the ability and potential of the UN Security Council to perform its assigned mission. In accordance with the United Nations Charter to maintain international peace and security, by examining the decisions it issues that have binding force, the extent of the binding force of these decisions, and the problems that plague the work of the Council.

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Third: The Problem of Research

The problem of the research is evident in the role of the UN Security Council in performing its mission to maintain international peace and security through the decisions it issues, and this problem has long been ramified by several problems. Therefore, the study requires research into these problems, as several questions emanate from this problem, which we will examine from During our research tagged:

How legitimate is the formation of the UN Security Council? What is the legitimacy of UN Security Council resolutions? The extent of the legitimacy of the veto right granted to the five permanent member states and its impact on the work of the Council, as well as the subjection of the Council's decisions to oversight.

Fourth: The Objective of Research

Our research, entitled (The United Nations Security Council and the decision-making mechanism), aims to reach what was raised in the research problem, and to find legal solutions to those problems.

Fifth: The Methodology of Research

In order to reach what we proposed in the introduction to the research, and what we will present in the folds of this study, we have adopted the analytical approach in order to analyze the texts of the United Nations Charter and the resolutions issued by the Security Council, in order to reach the legal basis for the role of the UN Security Council, as well as Knowing the legal gaps that plagued the legal texts concerned with the study, in addition to our adoption of the descriptive approach in order to describe the role of the Security Council and the roles of its permanent committees, and the temporary committees formed by it, in accordance with the resolutions of the UN Security Council. We adopted the applied approach when we dealt with the applications of the Security Council in what it issues. Of decisions within the framework of maintaining international peace and security.

In order to understand the concept of the UN Security Council and the mechanism for making decisions, we divided this topic into two requirements: In (the first requirement) we address the definition of the UN Security Council, while in (the second requirement): we will discuss the mechanism for making decisions and voting on them.

THE FIRST REQUIREMENT

Introduction to the UN Security Council

The UN Security Council is one of the most important main bodies of the United Nations, and it is primarily responsible for maintaining international peace and security. The Council carries out the tasks entrusted to it in accordance with Article 24 of the Charter, whereby the members of the organization entrust the Council to carry out on behalf of the countries of the organization the task of preserving International peace and security, represented by great and important duties through the powers granted to it by the provisions of the Charter under Chapters Six and Seven thereof, and due to the importance of this body and in order to define it from all aspects, we will address this demand in two parts, as follows:

First Branch

The Origins and Objectives of the UN Security Council

In this section, we will discuss: the emergence of the UN Security Council (first) and the goals and objectives of the UN Security Council (second).

First: The Establishment of the UN Security Council

The United Nations Security Council was established as one of the main bodies of the United Nations, as the Council is considered the executive body of the United Nations, and one of its most important bodies and its backbone, in view of the task that was placed on it, which is the task of maintaining international peace and

security, which is the primary goal of establishing the United Nations, and the same is true. Upon the establishment of the UN Security Council.

The United Nations established this Council to be the effective and basic instrument of the United Nations in performing the mission entrusted to it. The legal basis for the establishment of the UN Security Council is what was stated in the text of Article (23) of the United Nations Charter, and Chapter Five of the Charter was devoted to this body. What is important is that, based on Article (24) of the Charter, the members of the United Nations are aware of the main consequences for maintaining international peace and security, as this article is considered the legal basis for the Council's mission, in addition to that the Council's decisions are binding on member states in accordance with Article (25) of Charter.

Second: The Goals of the UN Security Council

Maintaining international peace and security is the main goal of the UN Security Council, not only for the Council but also for establishing the United Nations. As for the rest of the goals, they fall under the title of this goal and are linked to it. The members of the United Nations have entrusted the Security Council with the main responsibilities in the matter of maintaining international peace and security, in accordance with Article (24/1) of the Charter of the United Nations as the Council acts as their representative, except that the second paragraph of this article has restricted the limits of this representation, to the goals and purposes of the United Nations, and the Council, while exercising this jurisdiction that has been placed on it under the Charter, He must adhere to the goals and purposes of that body, which lie in his purposes and principles contained in Articles (1-2) of the Charter of the United Nations.

The composition of the Council differs in terms of membership from the rest of the United Nations bodies. In terms of membership, the United Nations Charter differentiates between two types of members. With reference to the text of Article (23) of the Charter, which is the legal basis for the formation of the UN Security Council, we see that it has distinguished between two types. Of membership in the Security Council, it mentioned: permanent membership and non-permanent membership, as Article (23) in its first paragraph stipulates: "The Security Council shall consist of fifteen members from the United Nations, consisting of the Republic of China, France, the Union of Soviet Socialist Republics, and the United Kingdom of Britain." Great Britain, Northern Ireland, and the United States of America are permanent members of the Council. The General Assembly elects ten other members of the United Nations to be non-permanent members of the Council. This shall take into account in particular and above all the contribution of the members of the United Nations to the maintenance of international peace and security and to the other purposes of the body, and fair geographical distribution shall also be taken into account." ().

The second paragraph of Article 23 stipulates: "Non-permanent members of the Security Council shall be elected for a period of two years, provided that in the first election of non-permanent members after increasing the number of members of the Security Council from eleven to fifteen members, two of the four additional members shall be chosen." For a period of one year, a member whose term has expired may not be re-elected immediately ().

Moreover, there is temporary participation for specific cases in Council meetings, clearly referred to in Articles (31-32-44) (), we can call it (temporary membership). As for the structural structure of the UN Security Council, the Council, based on Article (29) of the Charter (): It consists of several committees that assist it in performing its duties assigned to it, including permanent committees, and among them temporary committees that are established to perform specific tasks, ending with the completion of the task assigned to them. In this section, we will discuss the membership structure of the Council (First), then we explain the structural structure of the Council (second), and finally we explain the Security Council meetings and how they are held in (third).

First: The Membership Structure of the UN Security Council

The Security Council consisted of (11) members, five permanent members and six non-permanent members, since its founding, until General Assembly Resolution No. (1991) was issued on December 17, 1963 at its eighteenth session, which became effective on 31 December 1963. /K1/ In 1965, the UN Security Council

became composed of fifteen members of the United Nations, in accordance with the text of Article (23) of the Charter after it was amended, provided that the five major countries (Russia, China, France, the United Kingdom and North Ireland, the United States of America (permanent members), and the General Assembly shall elect ten other members of the United Nations to be non-permanent members of the Security Council. Their election shall take into account in particular and above all the contribution of the members of the United Nations to the maintenance of international peace and security and to the other purposes of the body. Fair geographical distribution shall also be taken into account and in application For this article, the Security Council consists of two types of members: permanent members and non-permanent members. There is a third type of participation of states in Council meetings, which is called temporary membership, which is mentioned in Articles (31-32-44).

Permanent Members

According to the text of Article (23/first paragraph) of the United Nations Charter, each of (Russia, China, France, the United Kingdom and Northern Ireland, the United States of America) enjoys permanent membership within the Security Council, which continues as long as the United Nations continues. Due to historical circumstances, which is that the majority of them took responsibility in the war against the Axis powers (Germany - Italy - Japan) during World War II, which made them insist on occupying a distinguished position within the organization, and each of these permanent members enjoys two rights within the Council:

The first: the right of permanent membership, which continues as long as the Security Council continues. The second: the right of veto, that is, preventing the issuance of any decision by the Council that the permanent member states do not desire, as the reason for granting these two privileges is due to:

The importance of the role played by these countries, especially in World War II, as they participated in it against the Axis powers during World War II, which gave them a distinguished position within the organization.

The importance of the role that these countries are expected to play in the field of maintaining international peace and security, due to the material and military capabilities that these countries enjoy.

Non-Permanent Members

They are non-permanent member states, numbering ten states. They are elected periodically by the General Assembly from among its members for a period of two years, by a two-thirds majority of the members, and upon the recommendation of the Security Council, noting that a member whose term has expired may not be re-elected immediately. Article (23) has specified that From the Charter, the following controls for the election of non-permanent members.

The General Assembly is the one that elects these ten members.

The election period is two years, and it is stipulated that a single member shall not be re-elected twice in a row.

This election should take into account the extent of the contribution of member states to the issue of maintaining international peace and security, and the extent of their contribution to achieving other goals of the United Nations.

Equitable geographical distribution is taken into account, and the criterion for equitable geographical distribution is that all countries, large and small, are represented in the Security Council as non-permanent members. This is followed after the amendment, as the distribution and after the issuance of General Assembly Resolution No. (1991) dated 17/1/1963 is based on The following basis: five seats for the continents of Asia and Africa, two seats for Latin American countries, one seat for Eastern European countries, one seat for Western European countries, and one seat for other countries.

Temporary Membership

In addition to permanent membership and non-permanent membership in the Security Council, there is temporary membership in certain cases, as it is permissible, in specific cases, to invite non-member states to participate in the work of the Security Council without these states having the right to vote, as the Charter indicates the most important of them in the articles (31-32-44). In all of these cases, the participating state is considered a member of the Security Council and may participate in its work, and it is noted that the Council, in accordance with Article (31) of the Charter, is not obligated to invite the non-member state, but the Council is obligated to invite it in Article (32). According to Article (44), participation is left to the state itself, and in all cases the participating states do not have the right to vote. The following is an explanation of the three cases:

The first case: What is stipulated in Article 31 of the Charter of the United Nations: "Every member of the United Nations other than a member of the Security Council may participate without a vote in discussing any matter presented to the Security Council if the Council deems that the interests of this member are significantly affected by it."

The participation of any member of the United Nations other than a permanent member state means that he may participate without voting in the discussion of any issue presented to the Security Council, if the Security Council deems that the interests of that member are particularly affected.

The second case: This is what is stipulated in Article (32) of the Charter of the United Nations: "Every member of the United Nations is not a member of the Security Council, and any state is not a member of the United Nations if either of them is a party to a dispute submitted to the Security Council for consideration." He is invited to participate in discussions related to this dispute without having the right to vote, and the Security Council sets the conditions that it deems fair for the participation of a state that is not a member of the United Nations.

This means that the Security Council may invite every member of the United Nations, or not a member of the Security Council, or any state that is not a member of the United Nations, if one of them is a party to a dispute before it. To participate in discussions related to that dispute, without having the right to vote.

The third case: What is stipulated in Article (44) of the Charter of the United Nations: "If the Security Council decides to use force, before asking a member who is not represented on it to provide armed forces in fulfillment of the obligations stipulated in Article 43, it must call on this member to "If he wishes, he may participate in the decisions he issues regarding the use of units of this member's armed forces."

This means that if the Council decides to use force, before asking a member who is not represented in it to provide armed forces, in fulfillment of the obligations stipulated in Article (43) of the United Nations Charter, it should invite this member to participate, if it wishes, in the decisions it issues. With regard to the use of armed units from the forces of this member.

It is also noted from the provisions of the Charter regarding temporary membership in Article (31) that a state participates in the event that there is a possibility that its interests will be harmed by a discussion presented to the Council. In this case, the Council is not obligated to invite the non-member state. As for Article (32), the state participates. If it is a party to the dispute being discussed in the Council, whether or not it is a member of the United Nations, here the Council is obligated to invite that state. As for participation, according to Article (44), participation in the decisions issued by the Security Council regarding the use of units of the forces of the concerned state when the Council decides to use force against aggressor states. Participation in the Council's decisions is up to the state itself. Also, participation in the Council's decisions is up to the state itself. Participation here makes the Security Council composed of eleven non-permanent states instead of ten states.

Second: The Structural Structure of the UN Security Council

The Security Council is assisted in exercising its duties by a group of bodies, including those stipulated in Articles (46-47) of the Charter, such as the War Staff Committee, and other committees that are established pursuant to decisions of the Council pursuant to Article (29) of the United Nations Charter, which stipulates

that: “The Security Council may establish whatever secondary branches it deems necessary to perform its functions.” It is clear from the content of the text of this article that the Council may establish whatever committees it wishes, and each committee has its own tasks. Among these committees established by the Security Council are: the permanent committees and the temporary committees. We will provide a brief overview of these committees:

Permanent or basic Committees

These committees are generally established to address specific procedural issues. The Security Council has established five permanent committees to help it perform its functions. These committees include representatives of the member states of the UN Security Council.

There are Five Committees

War Staff Committee

Article 47 of the Charter of the United Nations stipulates ()the formation of a war staff committee from the chiefs of staff of permanent members or their representatives. This committee has the freedom to establish subcommittees or regional committees if authorized by the Security Council to do so and after consultation with the relevant regional agencies. This is to provide advice to the Security Council and assist it in all matters related to its military needs in order to maintain international peace and security, and to use and command the forces placed at its disposal to implement the Council’s decisions taken in accordance with Chapter Seven, and to organize armament and disarmament, this committee is responsible, under the supervision of the Security Council, for the strategic direction of any armed forces placed at the disposal of the Security Council. This committee was formed on January 25, 1946, but in 1948, due to the severe dispute between the United States and the former Soviet Union, the committee submitted a report in which it admitted that The ability to carry out its work, and as a result, the committee’s work stopped and it remained in place from a legal standpoint.

Committee of Legal Experts

This committee consists of members of the Security Council. This committee was established at the first meeting of the Security Council in 1947. This committee includes a group of specialized legal experts. Its mission is to interpret and study all the topics referred to it by the Council, and everything related to the interpretation of the Charter and the rules of procedures and expressing Legal opinion on it ().

Committee for Accepting New Members

This committee was established on May 17, 1946, and consists of all members of the Security Council. This committee is responsible for studying and examining applications for membership in the United Nations, verifying the availability of substantive and formal conditions, and submitting reports to the Council in this regard, by issuing a recommendation to the Assembly. the public.

Disarmament Committee

This committee was formed in 1953 by the General Assembly to assist the Security Council in matters of disarmament. This committee consists of representatives of the member states of the Council in addition to Canada, and is concerned with issues of armament, its organization and its reduction, especially weapons of mass destruction, as well as oversight of the creation of nuclear weapons and means of using atoms and energy. Nuclear weapons only for peaceful purposes, and this committee works under the supervision of the Security Council and the General Assembly.

Collective Procedures Committee

This committee is concerned with collective security measures, which the Security Council has the right to take in accordance with the provisions of Chapter Seven of the United Nations Charter.

Temporary Committees

These are the committees established by the Security Council in order to carry out a specific task in a certain field, and they end with the completion of that task. They are called subcommittees of the Security Council. Article 29 of the Charter of the United Nations explicitly stipulates that the Security Council may establish whatever subsidiary bodies it sees fit. Necessary to perform its functions (), and this means that the Security Council has the right to establish these committees to study and research a specific topic, so that their existence ends with the end of the purpose for which they were established. Such as emergency forces and peacekeeping forces to confront international crises, they are only subsidiary bodies in the strict sense and in accordance with the legal definition (). The Security Council has established many of these committees, including, for example:

The 661 Committee, which was formed by the Security Council by Resolution 661 on August 6, 1990, and consists of all members of the Security Council. This committee is responsible for implementing the blockade on Iraq.

The United Nations Monitoring, Investigation and Inspection Committee and the International Atomic Energy Agency. This committee was charged with disarming Iraq of weapons of mass destruction. These committees were formed pursuant to Resolution 687 issued on April 3, 1990. These committees were canceled by Security Council Resolution 1762 in 2007. After it was proven that Iraq does not possess weapons of mass destruction ().

The United Nations Commission to Supervise the Truce in Palestine, which was established by the Security Council on May 28, 1948 ().

The United Nations Peacekeeping Committee in Cyprus in 1964.

A committee in the Congo in 1961.

Bosnia and Herzegovina Committee in 1993.

A committee in Somalia in 1993 ().

The United Nations Compensation Committee, which was established pursuant to Security Council Resolution (687) dated 2/4/1991 to address claims and pay compensation for losses and damages as a result of Iraq's invasion of Kuwait ().

The Counter-Terrorism Committee, which includes all fifteen members of the Security Council, and monitors the implementation by all countries of Resolution No. (1373) of 2001, which includes the threats to international peace and security as a result of terrorist acts ().

Third: Security Council Meetings and How They are Held

The Security Council is a permanent body, given the mission entrusted to it, which is to maintain international peace and security, and with this mission it requires its meetings on an ongoing and permanent basis, and therefore member states are obligated to send permanent representatives to the Council (), in accordance with the text of Article (28/1) of The Charter stipulates: "1. The Security Council shall be organized in such a way that it can work continuously, and for this purpose each of its members shall be permanently represented at the body's headquarters." As for Council meetings, the United Nations Charter requires that the Security Council hold two types of meetings, periodic and continuous: Periodic meetings: The Security Council holds periodic meetings with all its members to discuss issues related to international peace and security. Article (28/2) of the United Nations Charter stipulates that the Security Council shall hold its meetings twice a year, on dates determined by the Council based on Article (4) From the rules of procedure of the Security Council

Permanent or continuous meetings: The work of the Security Council differs from the General Assembly, whose work is limited to holding a regular session every year. The Charter puts the Security Council in a position that allows it to work continuously, and its meetings are held at the invitation of its president at any time he sees fit, provided that the period does not exceed The period between every two meetings is two weeks.

Regarding the Council's convening, as we mentioned earlier, the Security Council is in continuous session in accordance with the text of Article (28/1) of the Charter, but how does the Council hold its meetings?

The Council holds its meetings at the invitation of the President of the Council whenever one of its members requests it, or in every case in which the Council is alerted to any conflict or situation whose continuation would endanger international peace and security. It may be alerted by the General Assembly, or by the Secretary-General of the organization, or if the General Assembly issues a recommendation in this regard or refers the issue to the Council as a matter in which it is necessary to take action (). The Council also holds its meetings at the Authority's headquarters, but it may hold them in a location other than the Authority's headquarters based on Article (28/3) of the Charter ().

As for the official language approved in Security Council sessions, Chapter Eight of the Security Council's rules of procedure stipulate that Spanish, English, Chinese, Arabic, French, and Russian are the official languages approved for working simultaneously within the Security Council, based on Article (41) of the Council's rules of procedure. Security (), and the principle is that the sessions are public unless the Council decides otherwise (), as for the presidency of the Council, the United Nations Charter did not stipulate the method of choosing the President of the Security Council and the duration of his presidency, as it left determining that to the internal regulations of the Council, and the method in which the Council chooses its president is not by election, as is the case with the General Assembly, the Secretary-General, the Economic and Social Council, and the Court International Justice, but is chosen through the letters of the English alphabet for a period of one month, based on Article 19 () of the rules of procedure of the Security Council.

THE SECOND REQUIREMENT

The Mechanism for Making Decisions in The UN Security Council and Voting on Them

The mechanism for making decisions within the Security Council differs from that mechanism for making decisions in the rest of the United Nations bodies, based on the text of Article (27) of the United Nations Charter (), which distinguished itself in its second and third paragraphs, and distinguished in the voting mechanism between procedural issues and substantive issues. This matter is due to the right of the five permanent member states (to veto), and in this requirement we will address the legal basis for the legitimacy of Security Council decisions and their legal nature (first section) and the mechanism for making decisions and voting on them, in (second section).

First Branch

The Legal Basis for The Legitimacy of UN Security Council Resolutions and Their Legal Nature

In order to research the legal basis for UN Security Council decisions, and explain their legal nature and legal basis, we will discuss in this section: the legal basis for the legitimacy of UN Security Council decisions (first), then we will address the legal nature of UN Security Council decisions (second), and finally we will discuss the conditions and controls. Legitimacy of UN Security Council resolutions (third).

First: The Legal Basis for the Legitimacy of UN Security Council Resolutions

The legal basis for the legitimacy of Security Council decisions means that these decisions are compatible with some legal rules, based on which it can be determined to what extent these decisions enjoy the quality of legitimacy. These rules are:

The United Nations Charter

With reference to the text of Article (24/2) of the United Nations Charter, which restricted the powers of the Security Council to take decisions within the limits of the principles and purposes of the United Nations, contained in the Charter, where the first article of the Charter stipulated the purposes of the United Nations, while the second article of The Charter stipulates the principles⁰ to which the United Nations is committed

when it seeks to achieve the desired goals. Despite the close relationship between the two (goals and principles), there is a difference between them, which is that the goal is the final goal that the international organization seeks to achieve, while the principle represents the rules of conduct that must be respected in order to provide the necessary climate to achieve this goal, the United Nations Charter also has priority over all previous and subsequent international agreements and this is explicitly indicated in Article (103) of the Charter by saying: “If The obligations undertaken by the members of the United Nations in accordance with the provisions of this Charter, along with any other international obligation to which they are bound, are their obligations arising from this Charter.

Legal Rules Outside the Charter as a Source of Legitimacy for UN Security Council Resolutions

The legitimacy of Security Council resolutions related to international peace and security does not depend only on the extent of their agreement with the provisions of the United Nations Charter, but this legitimacy is sometimes measured by the extent of their consistency with other legal rules outside the United Nations Charter. These legal rules outside the Charter are the rules of public international law that apply to states and international organizations, and those included in special legal documents. Estimating the extent of the legitimacy of decisions issued by international organizations is based on the charters establishing these organizations, as well as other legal rules not included in its charters, therefore, the charters establishing international organizations and other legal rules represent the legal basis for the legitimacy of these decisions, and if a conflict occurs between these rules and the charters establishing international organizations, which together constitute the legal basis for the legitimacy of these decisions, then what matters is the texts of the charters establishing international organizations. This is natural, since international agreements represent the main source of the rules of public international law, as stipulated in Article Thirty-Eight of the United Nations Charter.

Second: The Legal Nature of UN Security Council Resolutions

The legal value of Security Council decisions lies in the legal unity between Article (24/2) and Article (25) of the Charter, since the latter establishes the element of binding and the subjection of member states to Security Council decisions in accordance with the provisions of the Charter, and that the former establishes the element of binding on the Security Council. Article (24/2) is considered a condition for achieving the legality of Article (25) of the Charter (), and with reference to Article One, Paragraph One of the United Nations Charter, which stipulates: “To preserve international peace and security, and to achieve this goal, the Commission shall take effective joint measures to prevent causes threats to the peace and to eliminate them, suppress acts of aggression and other breaches of the peace, and invoke peaceful means, in accordance with the principles of justice and international law, to resolve or settle international disputes that may lead to a breach of the peace”(), and based on Article 25 of the Charter, which states: “The members of the United Nations undertake to accept the decisions of the Security Council and implement them in accordance with this Charter”().

To explain the element of binding in Security Council resolutions, we must differentiate between Security Council resolutions in their meaning, accurate on the one hand, and its recommendations on the other hand, since what is meant by the recommendation according to the provisions of the Charter is: advice, desire, or invitation directed by the Council to states, and this recommendation does not have any binding force. Which makes it lose its importance in the circle of international relations. As for the decisions issued by the Security Council, they are binding on the countries to whom they are directed. Some legal scholars stipulate several conditions in order for the decisions of the Security Council to have binding force. These are the conditions:

That Security Council resolutions are related to maintaining international peace and security

The decisions must be consistent with the goals and principles of the United Nations

That these decisions were taken in accordance with the provisions of the Charter

That the matter relates to decisions in the narrow sense of the word, and not recommendations.

Regarding the nature of the decisions as well, there is a jurisprudential debate about the nature of the Security Council's decisions: some have equated the binding force between the decisions and the recommendations, others see that the recommendations are not binding and that the decisions alone are binding, and others see that the decisions are binding while the recommendations have moral and political value. However, it is not binding, and some are trying to reconcile these opinions, as it is taken from the wording of the decision. If the wording stipulates that it is binding, then it is binding decisions, regardless of whether they are decisions or recommendations ().

In this area, a question may arise about the binding of Security Council resolutions. Are Security Council resolutions binding on non-member states as they are binding on member states? The answer to this question: is that the Council's decisions are considered binding on non-member states, and that the legal basis for their binding is in addition to Article (25) of the Charter, as stated in the text of Article (2/6) of the United Nations Charter (), which stipulates: "The Commission shall endeavor to ensure that non-member states adhere to these principles to the extent required by the necessity of preserving international peace and security." And since the Charter in Article (24) of it has placed on the Security Council the main responsibility for preserving international peace and security, He was appointed as a representative of the countries in this regard, so he had to be given the powers to organize the procedures followed by the Council in order to maintain international peace and security ().

Third: Conditions and Controls for the Legitimacy of UN Security Council Resolutions

The conditions and controls for the legitimacy of Security Council decisions mean those substantive and formal conditions that the UN Security Council must adhere to them when issuing resolutions related to international peace and security, in order to give them legitimacy. It is true that the United Nations Charter has granted the Security Council the powers to issue resolutions that have binding force, based on Article 25 of the Charter, which stipulates "The members of the United Nations undertake to accept the decisions of the Security Council and implement them in accordance with this Charter" (), since this article is considered, from a legal standpoint, the legal basis for the binding of those decisions, and after the member states pledged in accordance with Article (24/1) of the Charter, to the Security Council regarding the main consequences of maintaining international peace and security, which is the main goal of the United Nations and also the goal for which the Security Council was established, and under which the rest of the goals of the Security Council are included. However, the Security Council, while exercising its authority to issue decisions binding on all member states, We find that he is not free to issue whatever decisions he wants, but his authority in this field has been limited by the Charter to several restrictions contained in Articles (1, 2, 24) of the United Nations Charter. After the Charter entrusted the main responsibilities in the matter of maintaining international peace and security in The first paragraph of Article 24. The Charter restricted the Council's authority to issue its decisions with several restrictions in the second paragraph of the same article, it stipulates: "The Security Council shall work, in performing these duties, in accordance with the purposes and principles of the United Nations, and the special powers granted to the Security Council to enable it to carry out these duties are set forth in Chapters Six, Seven, Eight, and Twelve." This means that the Council, while carrying out its duties, is by issuing decisions that have force. Obligation: He must adhere to the restrictions contained in the Charter of the United Nations, and those decisions issued by him must be consistent with the goals and purposes of the Charter (). Accordingly, the resolution issued by the UN Security Council must meet these conditions in order for it to be considered a valid decision, and if one of these conditions is not met, the decision is considered Issued by the Security Council are invalid, and these conditions are of two types: substantive conditions and formal conditions (). To explain these conditions, we will discuss the substantive conditions, then we will discuss the formal conditions:

Objective Conditions for Security Council Resolutions

The Necessity of Adhering to the Goals and Principles of the United Nations

With reference to Article (24/2), the UN Security Council is committed, when issuing its decisions, to ensure that its decisions are consistent with the objectives and principles of the Charter stipulated in Articles (1-2) of the Charter, and this article constitutes a restriction on the Council's method of issuing decisions , and it The

objectives that the Security Council must adhere to when issuing resolutions, which are mentioned in Article One of the United Nations Charter:

Maintaining international peace and security.

Developing friendly relations between nations.

Achieving international cooperation to solve international issues of an economic, social, cultural and humanitarian nature and to enhance respect for human rights.

As for the main principles to which the United Nations must adhere, they are stipulated in Article Two of the Charter, and the Security Council must adhere to them when issuing its resolutions, which are:

The principle of peaceful resolution of international disputes.

The principle of prohibiting resort to force in international relations.

The principle of prohibiting the seizure of others' lands by force.

The principle of non-interference in the internal affairs of states.

The Commitment of the UN Security Council to the Powers Assigned to It

When the Security Council issues its decisions, it must adhere to the explicit and implicit powers granted to it under the Charter of the United Nations, which are stipulated in Article (24/2) of the Charter, and those powers contained in Chapters (6-7-8-12), so that if these decisions are in violation For these jurisdictions, their illegality must be ruled out .

The Necessity of Refraining from Considering Legal Issues

Article (36/3) of the Charter stipulates that “the Security Council, while presenting its recommendations in accordance with this article, must also take into account that legal disputes must be submitted by the parties to the conflict in general to the International Court of Justice in accordance with the provisions of the Statute of the Court” (), therefore, the Security Council does not consider legal disputes, but rather it may recommend to the parties to the conflict that they should be brought before the International Court of Justice, and this recommendation does not have binding force (), which means that the states parties to the conflict have the right to accept or reject the recommendation, since asylum The International Court of Justice has an optional mandate, not a mandatory one. According to Article 36 of the Statute of the International Court of Justice, the original jurisdiction of the Court is the optional mandate to resolve disputes. The bottom line with regard to the substantive conditions of Security Council decisions:

The aim of these resolutions is to achieve the goals for which the Security Council was established.

That the Security Council adhere to the limits of its explicit and implicit powers and powers.

That the Security Council does not interfere in considering legal issues ().

Formal Requirements for UN Security Council Resolutions

The procedural rules related to how the Security Council issues its decisions in general constitute an essential element of their validity, such as those procedural rules contained in Article (27) of the Charter. The UN Security Council must adhere, when issuing its decisions, to the procedural rules that must be followed, such as those rules related to quorum, voting, and the use of The right of veto and other rules. If the Security Council does not take into account those procedures related to issuing the decision, the decision will be flawed in its form and this will result in the possibility of ruling out its illegality. Examples of the formal conditions mentioned in the texts of the Charter are:

The necessity of issuing a Security Council resolution with the approval of nine members, including the five permanent members, on substantive issues, and this is what is stipulated in Article 27/3 of the Charter.

The necessity of a Council member abstaining from voting, if he is a party to the dispute presented, whenever the decision is being taken pursuant to the provisions of Chapter Six of the Charter and Paragraph 3 of Article 52. This is what Article 27/3 of the Charter stated.

The necessity of inviting every member of the United Nations who does not have the status of membership in the Security Council, or any state that is not a member of the United Nations, whenever either of them is a party to the dispute before the Council, to participate in the discussion related to it, without having the right in voting, this is what Article 44 of the Charter.

The bottom line is that the procedural or formal rules relate to how the Security Council issues its various decisions, and they constitute a solid basis for the possibility of saying the legitimacy or illegality of such decisions.

Second Branch

The Mechanism for Voting on UN Security Council Resolutions

Voting on Security Council resolutions is an extremely important issue, and one of the most important and precise problems facing the United Nations, because the voting system in the Security Council is one of the most important issues that conflict with the principle of equality between states, as Article 27 of the United Nations Charter, which came to clarify the provisions for voting on resolutions in the Security Council, it differentiated in its second and third paragraphs between procedural issues and substantive issues in terms of voting on Council resolutions (), therefore, we will discuss the voting system within the Security Council in (first), and we will explain the right of veto (second), and we will address cases of abstention from voting and absence from voting sessions in (third).

First: The Voting System within the Security Council

The voting system within the Security Council is characterized by multiple characteristics, and thus it differs from the rest of the United Nations bodies, through the right of veto possessed by the five permanent members of the Council, which is represented by the approval of the votes of nine members, including the votes of the permanent members ((agreed)) when Voting on decisions, so that the decision cannot be issued in the event that one of the permanent member states does not agree, which results in the use of this right by representatives of the permanent member states canceling the decision proposed for voting on substantive issues, thus, the voting system in the Security Council is considered one of the most important issues that conflict with the principle of equality between states, as the text of Article (27) of the Charter stipulates a voting system that varies according to the nature of the issues presented to the Security Council, whether they are procedural or substantive issues (). Since this Article (27), in its second and third paragraphs (), has distinguished between voting on procedural and substantive issues, so we will explain the concept of procedural issues and the mechanism for voting on them, then we will explain the concept of substantive issues and the mechanism of voting on them:

The Concept of Procedural Issues and the Mechanism for Voting on Them

Procedural issues: These mean matters related to procedures that do not address the core of the matter in general. Jurisprudence is usually based on what was stated in the memorandum and statement of the major powers at the San Francisco Conference dated June 7, 1945 in defining these issues. This memorandum included that the issues which are mentioned in Articles (28-29-30-31-32) of the Charter, are considered procedural issues, and on this basis they are considered procedural issues:

Permanent representation of the members of the Security Council at the organization's headquarters

It is permissible to hold meetings of the Council in places other than the organization's headquarters

Establishing secondary branches of the Security Council

The Council sets its procedures list

Involving a member of the United Nations who is not a member of the Security Council in discussing any issue presented to the Security Council

Deciding whether a dispute or position is subject to discussion.

Decisions or recommendations on procedural matters shall be issued by a majority of nine votes out of the fifteen members of the Council, which may be from among all or some of the countries with permanent membership seats. It may also be limited to nine members out of the ten non-permanent members. This is confirmed by Article 2, Paragraph 2 of Article 27 of the United Nations Charter

The Concept of Substantive Issues and the Mechanism for Voting on Them

The United Nations Charter did not include a specific concept or definition of substantive issues, nor did the explanatory memorandum issued by the major powers to the text of Article (27) of the Charter include any definition of the concept of substantive issues. With reference to the joint statement issued by the major powers, the substantive issues are those that It is not mentioned in Articles (28-29-30-31-32) of the Charter, but in some cases it is difficult to determine whether the issue presented to the Security Council is of a procedural nature or of a substantive nature? to answer this question, we answer with the following: The issue of adjustment is whether the issue presented to the Council in the event of a dispute, is it a procedural issue or a substantive issue? In fact, deciding on this issue in itself is a substantive issue, and this is what was stated in San's statement. Francisco in 1945, as all voting provisions that apply to substantive issues apply to it, and based on this situation, what is known as the right of double objection. The meaning of **the double objection**: is that procedural issues and substantive issues are not mentioned exclusively in the Charter of the United Nations. Therefore, for the purpose of adapting a specific issue, it must be presented before the Security Council to vote on it and clarify its nature, is it procedural or substantive? during the vote, the permanent member who wants to prevent the issuance of a specific Security Council resolution in favor of that issue adapts that issue on the basis that it is a substantive issue and not a procedural one, using the veto power with the intention of converting the presented issue that is to be modified from procedural to substantive, so the permanent member uses the veto power twice. Once in determining the nature of the issue, and again in the case of voting on this substantive matter, that is why it is called the double objection.

Security Council resolutions on substantive matters are issued by a majority of nine votes, provided that among them are the votes of the five permanent member states in agreement. The objection of one or some of them after the start of voting results in the legal absence of the existence of the resolution. This is confirmed by the third paragraph of Article (27). From the Charter of the United Nations, four exceptions to this system were specified by the Charter itself:

The first exception relates to the call to hold a conference to amend the Charter, which is stipulated in Article (109) of the United Nations Charter.

The second exception is what Article.

The third and fourth exceptions are those stipulated in Article (27) of the Charter of the United Nations, regarding the implementation of peaceful solutions in accordance with the provisions of Chapter Six of the Charter, or in application of the third paragraph of Article (53) of the Charter. In these two cases, the state that is a party to the conflict abstains. At the same time, you are a permanent member of the Council by voting.

Second: Content of the Right of Objection (Veto)

Article (27) of the Charter of the United Nations, in its third paragraph, stipulates that: "Decisions of the Security Council on all other matters shall be issued with the approval of the votes of nine of its members, including the votes of the permanent members, which shall be unanimous, provided that in the decisions taken in application of the provisions of Chapter VI and Paragraph 3 of Article 52 of Charter, whoever was a party to the conflict shall abstain from voting." This means that in order for a decision to be issued by the Security Council on an objective issue, nine members must vote in its favour, including the votes of the five permanent

states in agreement. It is noted that the collective approval of the five states Permanent membership in the Security Council raises two problem:

If one of the permanent countries abstains from voting.

In the event of the absence of one or some of the permanent member states from the session in which the vote on the resolution takes place

To explain the concept of the veto right, we will explain (1) the definition of the veto right, then we will explain its types in (2), then we will explain the legal position of the permanent member's abstention from voting and his absence from the voting sessions on the decision in (3), and finally we will show the difference between the position and the dispute.

Definition of the Right of Veto

The right of veto: It is a Latin word that means (I do not allow or I prevent). It is the right to abort and not pass a project or a proposed decision. This right, from the point of view of international law, is defined as: the right of veto used by one of the permanent members of the Security Council. When voting on any draft resolution related to important substantive issues without procedural issues.

Also, the legal basis for the right of veto is found in Article (27) of the United Nations Charter, which talks about how voting on decisions is conducted within the Security Council. This article, after deciding that each of its members has one vote in its first paragraph, distinguishes from Where voting on decisions is between two types of decisions in the second and third paragraphs, as in the second paragraph I dealt with the mechanism of voting on procedural issues and in the third paragraph I dealt with how to vote on substantive issues

Types of Veto Power

A- Real or Simplified Veto

It means a negative vote by a permanent member of the Security Council on substantive issues. This type is familiar and commonly used in the corridors of the Security Council, and is called the real or opening veto.

B- Double Veto

Procedural issues and substantive issues are not mentioned exclusively in the Charter of the United Nations. Therefore, for the purpose of adapting a specific issue, it must be presented before the Security Council for a vote and a statement of its nature. Is it procedural or substantive? During the vote, the permanent member who wants to prevent the issuance of a specific decision by the Council Security, in favor of that issue, adapts that issue on the basis that it is an objective issue and not a procedural one, and that is by using the veto power with the intention of converting the presented issue to be adapted from procedural to substantive

C- Hidden Veto

This means urging a third of the members to abstain from voting, or to vote against the draft resolution presented before the Security Council. This type of veto reveals the reality of work in the Security Council, especially with regard to the voting system, which is what the United States of America does by controlling a sufficient number of votes within the Council. Preventing the issuance of any decision that conflicts with its interests or stands against its ambitions, without any of the permanent members using the right of veto.

D- Veto by Proxy

It means acting, and this right is used when a permanent member state uses its veto power in favor of another permanent member state, since, according to Paragraph Three of Article (27) and Paragraph Three of Article (52), whoever was a party to the conflict abstains from voting. This member appoints another member of the Security Council by using the veto power, and the country that uses this type the most is (America)

E- Collective Veto

Non-permanent members of the Security Council may have the right to veto any draft resolution presented before the Council. Whenever six non-permanent members of the Council reject a draft resolution while voting on it, the required majority cannot be achieved, even if all permanent members vote in favor of the draft. the decision:

Cases of Abstentions and Absences During the UN Security Council

A permanent member has the right to abstain from voting during Security Council sessions to vote on resolutions. This abstention is voluntary on the part of the member, which we will discuss in (a), and this abstention may be compulsory, that is, not by his will, in some cases. We will discuss it in (b), and there is also a case Another is represented by the member's absence from the voting sessions on the decision, which we will discuss in (C- :(

A - If the permanent member state abstains from voting (voluntary abstention)

It means the abstention of one of the permanent member states from voting on the resolution during the session held and designated for voting on the resolution, as it neither supports the resolution, nor opposes it in an official and declared manner (), and that work has taken place within the Council and in implementation of the joint declaration of the major powers that abstention from voting should not be considered a decision. The decision is an obstacle to its issuance, and the decision becomes valid and effective, provided that it has the required majority (), which led to the emergence of a modified customary rule according to which the voluntary abstention of a permanent member from voting does not prevent the Council from issuing decisions on substantive issues, and it is not possible to express The right to object except in a correct, direct and explicit manner as an expression of his desire for the decision not to be issued (), it is worth noting that this abstention can be considered an implicit approval of the decision, because the state representative was present in the session designated for voting, and therefore he can explicitly object. This means that the state that abstained from voting had the possibility of direct and explicit objection to the draft resolution if it did not agree to it and that The first abstention from voting was by the Soviet Union on April 29, 1946, on the occasion of consideration of the Greek question ().

B - If a party to the dispute abstains from voting (mandatory abstention)

This type of abstention is stipulated in Article (27) of the United Nations Charter in its third paragraph, as it means the abstention of a permanent member from voting if he is a party to a dispute. This abstention is considered the second type of abstention from voting, but in this case it is obligatory. In contrast to voluntary abstention, which permanent or non-permanent member states have the option to abstain from voting by choice (), it should be noted that the most important thing that distinguishes compulsory abstention from voluntary abstention is that it applies to all member states, whether they are a permanent member or a non-permanent member. If that country is a party to the conflict, it is illogical for the person to be an opponent and an arbiter at the same time, that is, to be his own judge ().It is worth noting that compulsory abstention is stipulated in the United Nations Charter, and concerns member states of the Security Council and non-member states. With regard to member states, every member state, if it is a party to a dispute before the Council, must abstain from voting when a decision is taken. In application of the provisions of Chapter Six of the Charter, or in accordance with the text of Article (52/3) of the Charter regarding resolving local disputes through regional arrangements, states that are not members of the Security Council must also abstain from voting, that is, not participate in application of Articles (31-32). From the Charter of the United Nations.

C - If the Permanent Member State is Absent from Voting Sessions

In this case, the unanimous approval of the permanent members is not achieved, as stipulated in Article (27) in its third paragraph as a condition for issuing the decision, which requires that voting on substantive issues be with the approval of nine votes, including the permanent member states, in agreement, in the absence of a permanent member from the voting sessions. In the Security Council, this issue has arisen in the work and has sparked many discussions, and differences have emerged from countries and jurists regarding this abstention

from attending Council sessions when voting (), and work has settled within the Security Council, provided that one of the permanent member states is absent from voting. as abstention from voting, therefore, it is not considered a form of using the veto, and this absence does not prevent the issuance of Council decisions if the required majority is available for that (), and therefore the absence of a permanent member from participating in Council meetings entails a violation of the Charter's rank commitment to It is the responsibility of the permanent member states to participate in voting on the resolution to achieve mutual peace and cooperation between countries. It is also a clear violation of the text of Article (28/1) of the Charter, which requires permanent representation at the organization's headquarters to ensure the participation of members in Council meetings (). It should be noted that The most important practical example of this type is the absence of the Soviet Union from the Security Council sessions on the issue of US intervention in Korea in 1950 (), Finally, although the phenomena of voluntary abstention and absenteeism from voting are negative phenomena and indicate that member states with the privilege of veto have shirk their duties and obligations towards other states within the organization, they are not sufficient to prevent the issuance of the decision. Rather, there must be an explicit objection on the decision ().

Third: Distinguishing Between Conflict and Position and Their Relationship to Abstention from Voting

It is stated in the text of Article (34) of the United Nations Charter that: The Security Council has the right to examine any dispute or situation that leads to international friction or may provoke a conflict, and in accordance with the text of Article (37/3), which stipulates: Whereas whoever is a party to A dispute is submitted to the Council regarding participation in voting when the Council takes a decision in accordance with the provisions of Chapter Six and Paragraph 3 of Article (52), It is clear to us from the frankness of the two aforementioned texts that the state is obligated to abstain from voting when it is a party to the conflict, and this is considered an application of the old saying: It is not permissible to be an opponent and an arbiter at the same time, as the same person cannot be his own judge. But if If the state was a party to a specific situation that led to international friction, not to the level of the meaning of conflict, then that state is not obligated to abstain from voting, and here the importance of distinguishing between the conflict and the situation appears. It should be noted that the charter came devoid of setting a standard for distinguishing between these two concepts, but rather left that. To the authority of the Security Council to determine the nature of the matter before it, however, the Small Assembly submitted to the General Assembly on July 15, 1948, a description of the dispute if it affected the following cases:

The state of agreement between the parties concerned regarding the existence of the dispute

The case of a state claiming that other states have violated their international obligations or committed an act that threatens international peace and security, while the state or states deny that claim.

- The case of a state claiming that another state has violated the rights of a third state, and the latter acknowledging this claim, and this is what the member states have followed.

CONCLUSIONS

The formation of the UN Security Council was in accordance with Article 23 of the United Nations Charter, which stipulated dividing membership within the Council into two parts: permanent member states, which are the five major states, and non-permanent member states. This article specifically violated the principle of equality, and the Council International security, according to its current formation, does not express the will of the international community, and it must be reformed and reshaped according to new foundations and standards that differ from the foundations and standards that governed its establishment during the formation of the United Nations. We also noted that the increase in the number of member states in the organization at our present time has not been reflected in the formation of The Security Council still represents the number of members of the organization when it was founded in 1945.

With regard to the voting system within the Security Council, we see that this system has distinguished between two types of issues (procedural and substantive). In procedural issues, voting within the Council takes place with the approval of nine members, and there is no difference in that between permanent and non-permanent members. As for substantive issues, voting is With the approval of nine members, including the members of the five major countries in agreement. The Security Council is the authority in adjusting the nature of the issues presented to it in accordance with a resolution issued by it.

With regard to the veto right granted to the permanent member states, this right is an exceptional privilege that these countries have used to control the decisions of the Security Council and direct it in a manner consistent with their interests. Because of it lies the reason for the weakness of the United Nations, as well as the failure of the Security Council to resolve many issues. And international conflicts that threaten international peace and security. The Security Council, when using this right, has made the political nature prevail over the humanitarian character while issuing decisions. In addition, this right leads to a departure from the principle of equality in international law.

We have noted that any reform of the United Nations in general, and of the Security Council in particular, can only be done through amending the United Nations Charter after the presence of the true will of all permanent member states of the Security Council, because the United Nations Charter has stipulated, when amending it partially or completely, their approval. All permanent members of the Council, in addition to the approval of two-thirds of the members of the General Assembly, based on the text of Article 108 of the United Nations Charter, and this is difficult to achieve due to the right of veto, as the objection of any permanent member to making any amendment will stop the draft amendment, so the amendment requires the presence of that will. In particular, amending Article 108 thereof.

With regard to the decisions of the UN Security Council, we believe that they are not considered correct and free of defects unless they meet the formal and objective conditions, as the legitimacy of the decisions issued by the UN Security Council depends on the extent to which the Council complies with or exceeds the rules approved by the Charter of the United Nations, and it is not enough that These decisions must be consistent with the Charter, and must also be compatible with the rules of public international law and international humanitarian law. In order for the decisions of the UN Security Council in the context of maintaining international peace and security to acquire the status of legal legitimacy, the Security Council must adhere to its own objectives and basic competencies, and its decisions must be consistent with With the principles of human rights, otherwise the Council's decisions will be flawed as they violate the United Nations Charter and international legal rules.

With regard to oversight of Security Council decisions, we have noticed through our study that the oversight of the General Assembly and the International Court of Justice over UN Security Council decisions is formal, marginal, and almost completely non-existent.

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