

The Phenomenon of buying Votes inside the Corridors of the United Nations

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ABSTRACT

The research aims to study and analyse the existence of the possibility of conducting secret meetings and not respecting the conditions surrounding this exception and the frequent resort to it without a convincing legal motive made the internal management of the Council vulnerable to criticism, which led to its analogy to some places where confidentiality prevails and leaves no room for hearing all the opinions of the parties involved in their work and their positions. This measure embodies a fertile ground for breaking the law, especially as it provides a lack of "transparency in work and disrupting the normal functioning of the voting process.

Keywords: buying Votes, inside the Corridors, United Nations.

Introduction :

While the methods of running the organs of the United Nations system include all internal procedures prior to taking a specific decision such as the method of opening the session, its date, its timing, the way to give the floor to the representatives, exchanging the documents necessary to brief the issue discussed, we will only focus on voting methods that will affect the lack of Legitimacy of decisions of this organization.¹

If the voting system in this body does not differ much from what is used in all the structures of the organization, due to the adoption of the majority, then the existence of the "veto" that a few countries enjoy for historical and political reasons represents the advantage of this mechanism².

Also, the focus on this aspect exclusively is imposed on us by the requirements of the studied topic, as it is clear that the arbitrary use of this right represents the largest fear of this device, because it is the most important factor in the illegality of its decisions. Despite the end of the "East-West" collision and the shift from the bipolar system to the unipolar system, the failure to delete the "veto" from the text of the Charter did not change anything, as "Lukman House remained the same", and the permanent members did not hesitate to resort to using their right In revocation from time to time.³

In addition to this legal year, that is, the charter brought it, in practice, it created new mechanisms that were not stipulated in it, neither the core of the charter nor the core of the internal system, but rather the opposite of what it contained. Contrary to what was included in the internal system of the Council, most of its work has been overshadowed by the secret nature.⁴

All sessions that usually precede decisions related to the most important issues are completely confidential, and only the actors on the world stage meet, and it remains for the other parties to express an opinion on very marginal issues, sometimes not related to the original topic presented for discussion.

Based on these considerations, it can be said that the contribution of the methods of running the organization in the illegitimacy of its decisions is confirmed by the opportunities created by the "veto" from opportunities to move away from the provisions of the Charter, and by what it provides for the means of organizing its meetings to exchange bargains in exchange for departing its decisions from the normal controls that govern them.

¹ - See Article 28 of the Charter.

² - See Chapter 1 of Article 1 to Article 5 of the provisional rules of procedure.

³ - These are mechanisms whose existence is due to the "Darwinian" method of the United Nations system of work, which Professor Martinez Jean Claude expressed by saying: "There is a UN Darwinism which adapts the institution to changes in its environment" (see commentary to article 47 CH.N.U., in A. Pellet and J.P. Cot., Op. Cit., P. 746).

⁴ - See in this sense: - Albert Bourgi and Colin (J.P): "Between renewal and crisis: the UN in 1993 ", Foreign Policy 1993, No. 3, pp. 558 et seq.

Due to its irregular nature, the convening of these sessions is subject to the discretionary authority of the Speaker, who alone has the right to choose the time he deems appropriate for the invitation to meet at the request of one of the members of the Council or any other party in accordance with Article 35 of the Charter or at the request of the General Assembly applied Article 11 in Its paragraphs 2 and 3, or at the request of the Secretary-General in accordance with Article 99 of the Charter. The only condition that narrows that discretion of the President is that the interval between sessions does not exceed 14 days.⁵

Also, the need for meetings at the United Nations headquarters is not absolute, as it is possible to agree to change that headquarters whenever the need arises. Before the start of the deliberations, the Secretary-General shall inform the representatives of the Member States in the Council of his position and the positions of the states and the structures of the organization regarding the problem presented for discussion, so that representatives are informed of its content 3 days before the date of the session and in urgent cases, its notification coincides with the opening of the session.

The second characteristic of these sessions is that they are publicly and publicly deliberated unless a report otherwise occurs in specific circumstances. As for the ways in which the interventions are made and the floor is given to the representatives, Article 27 of the rules of procedure affirmed that the president should invite only the representatives who expressed their intention to take the floor, after hearing the interventions of the heads of the committees, councils or decision who might be appointed for some special issues.

The interventions of the representatives represented mainly in proposing or amending draft resolutions or substantive petitions on them must be placed before the rest of the members of the council by writing in one of the council's languages so that the translation will be made in the other official languages, provided that priority is given to the draft decisions and substantive petitions over them.

In conclusion, the stage of voting for what was presented at the Council table comes to be appended to the minutes of sessions presented to all who are interested in it within a period not exceeding 10 hours before the first day of the work following the session⁶.

Based on the foregoing his statement, it is clear that the conduct of some sessions is subject to the discretion of the president, and he is able to confirm the extent of the contribution of absence of periodicity of the sessions in supporting the phenomenon

⁵ -See Article 1 of the Council's provisional rules of procedure.

See Article 2 of the Council's provisional rules of procedure.

See Article 3 of the Council's provisional rules of procedure.

See Article 5 of the Council's provisional rules of procedure.

⁶ - See in the sens:

- Bertrand Maurice, the UN op. cit., p. 54.

- Anderson Nils, the instrument of the politics of the great powers: 50 years already, and then, the O.N.U. op. cit., p. 17.

of selling votes (**Section I**). Also, the absence of accountability and its effect on selling votes requires clarification (**Section II**).

Section I : United Nations meetings system ; A voice market nest:

Meetings are the appropriate framework in which to exchange views and agree on a specific decision⁷. Its organization and determination of its conduct have been made in the Charter and the provisional rules of procedure of the main organs⁸. (A)

It is evident from these two texts that the general rule in these meetings is to be permanent, that is, to meet in an irregular manner whenever the need arises, provided that some cases where periodic meetings are held twice a year are excluded from this rule.⁹ (B)

A- Absence of periodicity of the sessions :

While the absence of the periodic nature of the meetings was in response to the requirements of the speed required by the functions of the Organization¹⁰, the fact that they are not subject to some controls and the President's exclusive right to the initiative to call for the meeting are two factors that contribute to the sale of votes. It may result in them having a meeting without the attendance of all organization members (A). The President's statements may also replace the decisions of the organization (B).

1- Reduced attendance:

This situation can result from two factors. The first is to expedite the convening of a session on an important matter or delay its occurrence until the date of the date of the elections to include some new members and the departure of the old ones¹¹. The

⁷ - See Article 28 of the Charter.

⁸ - See Chapter 1 of Article 1 to Article 5 of the provisional rules of procedure.

⁹ - According to Article 28, paragraph 1, of the Charter, "The Council shall be organized in such a way that it can work continuously (...)". Also, Article 2 of the provisional rules of procedure stipulated that meetings be held at every moment whenever the president of the council deems it necessary.

(As Article 28, paragraph 2, of the Charter states: "The Security Council shall hold periodic meetings (...)" Article 4 of the Council's provisional rules of procedure adds that "The periodic meetings stipulated in Article 28, paragraph 2 of the Charter shall be held twice in the year".

¹⁰ - Contrary to what is distinguished by the General Assembly, which "meets in ordinary session sessions and in special annual session sessions, as required," see Article 20 of the Charter.

¹¹ - This is what can be observed even in the context of the transformation of the presidency from one country to another, as was the case in the Gulf War, as some members used all means to obtain the decision of war before the presidency of Yemen came to the Council, which was expressed by Mr. Verhoven Joe by saying: "There was apparently nothing to justify this decision being made then and not 15 days earlier or 15 days later. To tell the truth, the decisive factor is undoubtedly that the US wanted the Council to adopt particularly firm measures, before handing over, on December 1, the presidency in Yemen, little suspected of great sympathy for sanctions. against Iraq ". (V. Verhoven Joe, "Allied States or United Nations ?, the UN, facing the conflict between Iraq and Kuwait", A.F.D.I., 1990, p. 170.

second is in the case in which it is decided to hold certain sessions before the representatives of some members arrive or when they leave the council table, as was sometimes the case.

The president's habit of consulting his colleagues or some of them before inviting the other members to the meeting will guarantee political considerations in accepting or rejecting the proposal, as it is not conceivable that one of the representatives would accept a session without seeking an interest for his country. The result will be either the Council's push to intervene or neglect the problem presented as required by the nature of the parties to the conflict and the extent to which the conflict or position approaches the country or its spheres of influence.¹²

Also, the date of holding the sessions and controlling their content is subject to return to some parties, especially the permanent members, which would result in the exclusion of one of the representatives because he was unable to reach the Security Council table, as was the case in the Gulf crisis for the representative of Yemen who declined to vote due to his inability to know the extent Sufficient to the entire documentation of the dispute.

Likewise, the election of new members and the failure to set sessions periodically, thus not setting the agenda in advance and coinciding with the report of a particular session, may serve to diminish their sufficient knowledge of the subject and may be used to disrupt the movement of the Council or direct it in a manner that does not conform to the requirements of the Charter. Perhaps that is why the 14 days between sessions were not respected.¹³

Based on the foregoing his statement, he reminds that this aspect should not be forgotten and merged with the projects submitted for the reform of the Council. This does not mean totally abolishing it, which is not in line with the function of the Council and the relationship it has in the international arena today. Rather, it is desirable to introduce some mechanisms that alleviate some of the severity of the President's enjoyment of the discretionary power mentioned above. It is possible to establish an independent committee or body in implementation of the provisions of Article 28 of the bylaws.¹⁴

It is necessary to revert divinely when necessary to decide the convening of a specific session and enable it to initiate a request to the president to call for meetings if the

¹² - The result is the same, whether a country belongs to great powers or weak, which he expressed:

- Leprette Jacques: "the size or political weight of the country in charge of the presidency are important but not exclusive factors; the representative of a modest country will be able to illustrate the presidential chair with his knowledge and skill".

- V. Leprette (J), how to pronounce in C.S., op. cit., p. 49.

¹³ - See in this regard: André Lewin, "The Security Council: From Korea to the Gulf... and After," op. cit., pp. 158-159.

¹⁴ - It is an issue that has been raised by the Presidents of the Security Council (the Soviet delegate and the Egyptian representative) since the early years of the work of this organ. See, for example: (Rép. C.S., 1946/1951, p. 11)

latter delayed this, and so that its activities are not disrupted enough by the initiative of one of its members to push the president to the suit to convene Sessions.

In this way, its activity will act as a deterrent to the wide discretionary authority that the President of the Council enjoys in this field, which sometimes led to the domination of his statements over Council decisions, which paved the way for illegality.¹⁵

2- Compensation of decisions by press releases :

It is pointed out that the official documents, as we said before in the introduction, did not see the division that we have intended in this research, that is, between decisions, recommendations or resolutions and press release, but that some addressing establishes the differentiation between solutions and decisions. And, in the second category, everything the president issues individually.¹⁶

Although the rules of procedure did not include any text that enables the president to be entitled to issue such actions, we have noticed an unprecedented development of these recent years, as well as how they are.¹⁷

In addition to the high number of its content, its content has become interested in fundamental issues that have not only satisfied the competence of the Council, but rather have transgressed them into mothers of outstanding problems on the world stage, which drew attention to jurisprudence, which was not late in focusing on it in some of its studies.

As for the extent to which this phenomenon contributes to the illegitimacy of the Council's decisions, it is confirmed on many levels. First, the breadth of the president's data content is a document that is usually referred to justify the council's breach of the rules of jurisdiction and to address its decisions, some of the problems that fall within the circle of functions of some other structures, such as countries and the organ of the organization.

Accordingly, there is no reason why such data should be a factor in illegitimacy, and it cannot be overlooked except by organizing the practice of this privilege and defining some precise conditions for it.¹⁸

Secondly, the accumulation of such behavior and the frequent resort to it without justification, may occur arbitrarily in its use, which is the best refuge to disrupt the activity and deliberations of the Council, which is proven by reality, as sometimes exceeded the number of solutions or decisions by far. Every time he imagines that there is no benefit from meeting the council and conducting deliberations on a specific issue, the use of this mechanism as a weapon to respond to criticism that may

¹⁵ - Among the studies that dealt with this topic, see for example:

- Paul Tavernier, "the statements of the President of the C.S. , A.F.D.I., 1993, pp. 83-104.

¹⁶ - Security Council Resolutions and Decisions.

¹⁷ - The only article that contained the phrase "the decision of the president of the council", is not related to the matter of these statements, but rather to the issue of the possibility of the president relinquishing his position if the dispute is before the council to consider what matters to his country.

¹⁸ - For more information on this point, see: Paul Tavernier, op. cit., p. 90.

be directed to the council for neglecting to consider an issue before it is taking place. Perhaps for this reason, we discovered that with regard to one issue, the Council will first resort to the statements of its President, and when events change on the world stage and the emergence of the interests of some countries, he will push the Council to conduct meetings and issue decisions in this regard, as was done in the Lockerbie case.

Thus, we may say that the president's statements are the best weapon to freeze or defame a specific issue, and it is the best factor to extend the council's powers and expand its scope, especially in light of the lack of public meetings.

B - Non-publicity of the sessions ::

The existence of the possibility of conducting secret meetings and not respecting the conditions surrounding this exception and the frequent resort to it without a convincing legal motive made the internal management of the Council vulnerable to criticism, which led to its analogy to some places where confidentiality prevails and leaves no room for hearing all the opinions of the parties involved in their work and their positions. This measure embodies a fertile ground for breaking the law, especially as it provides a lack of "transparency in work (1) and disrupting the normal functioning of the voting process." (2).

1- Absence of transparency :

The term "transparence" has appeared in domestic law as an expression of the will to establish and consecrate the "consultation" mechanism in daily practices of the relationship of power to individuals.¹⁹

The consultation came as a reaction to the catastrophic failure of the methods of representative democracy, especially in the context of projects aimed at modernizing the administration. It is a mechanism aimed at the participation of those involved in the decisions in preparing them so that the launching of the necessary needs and prioritization over what is secondary or Marginal, it is a method that contributes to the effectiveness of the activities of the enjoying agencies by issuing such actions.²⁰

On the international level, this term has appeared since the United Nations was opened for NGOs that worked to introduce some concepts that were alien to the language of this organization. Despite the jurisprudential debate about the legitimacy of the existence of such organizations in the United Nations, its activity showed the existence of the term "democracy" in international organizations, which led to praise of the "consultation" mechanism, which was not initially aimed at the participation of (peoples) in preparing international decisions Rather, the participation of the governments of the countries that are the first concerned with them. Thus, the first

¹⁹ -- For a further expansion of this issue, see: divers G., is the representative system democratic ?, pouvoir, 1978, N ° 7, pp. 7-129.

²⁰ - See in this regard: Stosie Bordo (D.), non-governmental organizations and the N.U., Droz, Brussels, 1964.

criticism directed at secret sessions was the absence of consultation, which was expressed in the absence of transparency.²¹

The occurrence of this matter had several reasons, the most important of which was the failure to summarize the deliberations in the minutes of sessions, as stipulated by the humiliation of the provisional rules of procedure, and not to return the related reports and send them to the General Assembly as contained in Articles 15 and 24 of the Charter. This has led to the rest of the member states not being able to see the curriculum on which the deliberations took place, as it was not possible for them to know the positions of other parties regarding the problem presented for discussion, and thus twisted methods to move away from the requirements of legitimacy out of sight and in a solution of legitimacy.²²

This exclusion of some of those involved in the subject of deliberations led to a loud voice to withdraw from these secret meetings and compensate them by forming a committee or a council pursuant to Article 28 of the rules of procedure concerned with privacy issues so that the problem of obstructing the normal course of the vote, which is another factor of illegality, can be overcome.

2- Disrupting the normal functioning of the vote :

Disruption of the normal functioning of the vote is achieved through the exclusion of some representatives from the secret sessions, as it became clear on many occasions that secret sessions were held, that they were unable to attend in such deliberations.²³

This led to depriving the heads of some governments and foreign ministers of some countries of the right to follow the developments of the stages of some issues and some representatives from the natural rights that each representative enjoys at the Council table, such as the right to oppose the validity of another representative, the right to take the floor, and the right to oppose the setting of the agenda, The right to submit, amend or oppose draft resolutions, the right to vote, or the right to demand the repair of temporary meeting records.²⁴

As for the extent to which this obstruction contributes to the illegitimacy of the Council's decisions, it is confirmed by the acquisition by the parties participating in the secret sessions of the right to determine the content of the decision and its goal in advance, and the lack of respect for the role in expressing opinion, and the proven idea of the aforementioned voting, which gives priority to the interests of some

²¹ - See, in this sense, for example: the message that the permanent representatives of the members of the Arab Maghreb Union addressed to the President of the Security Council on 15 February 1991. See Brigitte Stern, Gulf War, the file of an international crisis ... op. cit., p. 465.

²² - See, for example: "Turning point for the UN" a declaration from the Baha'i international community (as an NGO with consultative status with the Economic and Social Council and the UN Children's Fund) on the occasion of the 50th anniversary of the 'UN October 1995.

²³ - As rule 13 of the provisional rules of procedure enabled them to attend some meetings.

²⁴ - See Articles 17,27,30,31,37, 38, 40, 51 of the Council's provisional rules of procedure.

countries over the purposes of activity The original council and displaces its mission to maintain international peace and security.²⁵

The narrow consultation between a few countries before reaching the official base of the council and conspiring on some of the provisions of the decisions in advance leaves no room for other countries to express their opinion because their intervention is very formal and he cannot change what was agreed upon in advance.²⁶

The problem continues even within the formal sessions, where all the means are used to pressure the representatives to follow what has been approved in the secret sessions, which led some jurists to talk about the phenomenon of "buying and selling voting" in exchange for deviating from the laws and official controls of the council and moving away from his job.

But while the structural characteristics of the council have caused it to override its terms of reference, the latter is also not without many shortcomings, which paved the way for the illegitimacy of the decisions of this body, which led us to study the functional factors.²⁷

Section II : Absence of accountability ; A source of bargaining :

Accounting or monitoring is usually defined as a process of estimating the conformity of a specific behavior or situation to a legal system, and it mainly aims to note the validity of a disputed legal behavior and the legal conditions upon which it was based.²⁸

But despite the simplicity of this definition, its inclusion in general international law, especially in the law of international organizations, seems inconsistent with what has been the practice in it. Unlike some regional international organizations, most organizations (especially the global ones) are characterized by the absence of the necessary means for such oversight and the lack of conviction by many of the need to solve this problem - as the will to develop the work of international organizations has conflicted with the search for respect for the law. Also, the characteristics of

²⁵ - The seriousness of this phenomenon relates to the difficulty in understanding the excluded members whether the Council was involved in informal consultations or in a closed meeting. See this: Dr.. Attia Ahmad Effendi, The Security Council and the Middle East Crisis 1967-1977: A Study on the Effectiveness of the International International Organization, Egyptian Book Organization Press, Cairo 1986, p. 170.

²⁶ - Pursuant to those promises made by some permanent members of the Security Council in order to influence many countries elected to follow them in accepting or rejecting draft resolutions of the Gulf crisis (for example, Colombia and Côte d'Ivoire promised to provide financial assistance, China promised to cancel the economic sanctions imposed on it and demand the World Bank With \$ 114.3 million in aid, the annual US aid cut to Yemen, estimated at \$ 70 million, due to its sympathy for Iraq

²⁷ -Professor Caron DD, op. Cit., P. 564 reads:« Importantly, jus as it is alleged the United states in essence boyt votes, so is it as possible that some states demanded that their votes de bought ».

²⁸ - According to Dictionnaire Basdevant, surveillance or surveillance is defined as:" Surveillance carried out to verify the conformity of an act, a situation, the exercise of a power with a rule, with a commitment or with the requirements of good administration".

international control (represented by banality and its submission to the principle of reciprocity, subjectivity and fragmentation).²⁹

While the concern that the Council's exercise of its jurisdiction was not subject to oversight and considering it a factor in the illegitimacy of its decisions, necessitated by the necessity of research and reasons for reform, it was not the consensus of all parties concerned with this issue.³⁰

The reason for this controversy is the different answers to the question regarding the extent to which the activity of the United Nations Organization is subject to oversight.³¹

While some considered the council's inability to do so based on the nature of its discretion and the nature of its political decisions, the other side considered oversight an issue that cannot be avoided (or avoided), because the council is an institutional body and is therefore subject to the rules that established it, and this view has been backed by the reluctance of the claim By subjecting this agency, especially to oversight, due to its distinguished authority and the number of its interventions in these recent years, and we do not forget the advantages that the control may offer to the workflow inside and outside the subject to which it is subject.³²

Those calling for the introduction of democracy mechanisms in the United Nations did not deny the importance of oversight in achieving this goal. All of these perceptions were summarized by the representative of Colombia, who considered oversight the best motivation for the development of international law.

Thus, we may say that the structures of the United Nations organization, especially the Security Council, are in urgent need of oversight over its actions in order to prevent it from violating the Charter, a necessity confirmed by many legal and realistic considerations. First, international organizations have a legal personality and their interventions crowd out the activities of states. Second, the constitutional nature of the charter establishing the council. Third, the inclusion of rules in the law of

²⁹ -- Professor J  el Rideau expressed it in his thesis mentioned above. 64 In the context of his talk about the supervision of international organizations, saying: "Control is the operation by which the controlling authority assesses the conformity of an act or an attitude with the system of law which is based on the founding treaty".

³⁰ - See in this sense, Professor J  el Rideau, op. Cit., P. 65, who explained that: "The function of control consists essentially of ascertaining the regularity or the total or partial irregularity of a disputed legal act and thereafter, the validity of the legal situations which result therefrom."

³¹ -Professor J  el Rideau expressed this idea, saying: « On s'est souvent inqui  t   de l'insuffisance des moyens de recours permettant d'assurer un contr  le du respect du droit dans les organisations internationales(...) le caract  re international des organisations constitue un obstacle s  rieux et difficile    vaincre    l'institution d'un contr  le complet tout en ce qui concerne les requ  rants qu'en-ce qui concerne les juges ».

³² - For more information on this, see: Mouss   (Jean), litigation for organizations and the EU, Bruylant, Brussels 1997.

international organizations has been proven. Fourth, it was confirmed that the political nature of a particular structure was not in conflict with its control.³³

But the reminder is that acknowledging the necessity of establishing censorship does not mean repentance, accepting all that he has contacted, and agreeing on its various forms and the powers that the holder of the censorship may have, as well as its fields and fields that may be dominated by it.³⁴

As far as the first aspect is concerned, it can be said that the forms of oversight differ according to the authority to which the oversight authority is entrusted, as well as the different subject matter of control. As it can be administrative or financial control, as it can be practiced by a political body, and it is described with this attribute, and it can be practiced by a judicial body and attached to it.³⁵

With regard to the second aspect, the authority of the monitored structure can be limited only to merely observing the error, and its will may be directed to its evaluation, either by simply giving the interpretation that it deems to the legal rules relied upon or by issuing a decision to cancel the error, and to change it with another in line with existing legal rules.³⁶

Accordingly, the idea that the jurisdiction of the council is not subject to any aspect of oversight is intended for some forms of oversight and some powers, but not others, that can be in line with reality and the features of the jurisdiction assigned to the Council. That is, the intended censorship is either political or judicial censorship, and the authority that can be granted to the censorship body is either examination or interpretation.

³³ - In this sense, Professor Wilhelm Wengler said: "Here we are again faced with the antagonism of principles that appears in this whole report: the lawyer, who is called upon to give his opinion on the question of the judicial control of international bodies, is between charybdis and Seylla: he would like to support the prestige of international bodies, and he would like to prevent the abuse of power by these same bodies. But often one is only possible if one gives up the other. " (See Wengler's Report to the I.D.I. op. Cit., P. 240).

³⁴ - "International control is both characterized by its goodness (each State, because it is subject to law, but because it is often remembered to exercise it) to, its reciprocity (it is carried out by the States one towards others within the framework of their mutual relations) and its subjectivity (each exercises it only according to the perception which it has of its interests) ". See Dupuy R.J., "Droit International Public", Dalloz, 2nd ed. 1993, Paris, p. 374.

³⁵ -Hubert Thieny, Serge Sur, Jean Combacau et Charles Vallée, p. 138, they wrote in their joint book: "International organizations do not include centralized control of the validity of their acts (...) it does not follow that control does not exist, but quite the opposite, that it is fragmented, so that it belongs it is up to each member state to accept or reject the validity of a resolution on its behalf".

³⁶ - Among the proponents of this view, see: Stravropoulos, who expressed this idea by saying: "(...) The text, the object and purpose of the charter and on its legislative history has (...) consistently been that the powers of the security council are not limited". (See C.I.J. memoirs, legal consequences for States of the continued presence of South Africa in Namibia (South West Africa) notwithstanding Security Council resolution 276 (1970), vol. I, p. 45).

Finally, it is also pointed out that despite the Charter, the issue of oversight of Security Council resolutions has been lost.³⁷

Referring to the lack of it in practice to complete it, many provisions suggest that there is a desire to search for examination of the decisions of this organ as a precedent or subsequent to its issuance, but they are just scenarios that complain of many shortcomings.³⁸

On the basis of the foregoing observations, it may be said that the intended deficiency in this study is on the one hand, the absence of a specialized structure in the interpretation of the provisions of the Charter (A) and the ineffectiveness of the mechanisms included in the Charter, which may, in one way or another, examine the decisions of the organs of the United Nations Organization (B).

A- Absence of a specialized structure in the interpretation of the provisions of the Charter:

Proceeding from the idea that the interpretation constitutes at least indirect control, the absence of a specialized structure in the interpretation of all the provisions of the Charter constitutes the best manifestation of the absence of oversight that may dominate the structures of the United Nations when exercising its functions.

By reference to the Charter, we note that its authors did not attach great importance to the issue of creating a specialized structure to interpret its provisions and consider how valid the approach that the organ of the organization might consider in order to achieve the best performance of the tasks entrusted to its mandate. In addition to denying the creation of a general structure that specializes in interpreting the provisions of the Charter, whatever the device to which it is related (1), opening the door to the possibility of establishing special structures specializing in the interpretation of the terms of reference for each agency separately is attached to it is still excluded (2).

³⁷ -Professor Sur-Serge stated that: "The law of Chapter VII (...) is a right of exception, it is outside international law (...) it prevails over (it) (...). The idea of subordinating the exercise of the powers of the council (...) to such or such prior control, thus has something contradictory with the very idea of collective security as conceived by the charter. (...) He (the Security Council) must be able to function with sufficient flexibility depending on the operations he has to carry out (...) ".(See Serge Sur, security read and the evolution of collective security, ... op. Cit., Pp.129-133).

³⁸ -- Professor Dupuy R.J. Express this idea by saying:“(...) (Be careful not to) tie up (the board) with a restrictive interpretation of its powers. The council must be able to determine itself by conditions of opportunity. " See R.J.Dupuy, conclusion of the conference, “the development of the role of the Security Council op. cit., p. 484.

- Ainsi , See Rosayn Higgins, “the place of international Law in the settlements of disputes...”, op. cit., p. 1.

1- Absence of a supreme authority³⁹ :

The idea of creating a supreme authority from this half is not modern⁴⁰ , but rather old as the United Nations, and it came as a response to the catastrophic failure of the League of Nations and the inconsistency of its organs⁴¹. Therefore, many attempts were made in this regard, calling for briefing (1.1), but they met with great disaffection, which gave him many justifications that completely absent this idea and supported the illegitimacy of the Council's decisions .(1.2)

1.1-San Francisco conference proposals:

Since the first steps in drawing the broad outlines of the United Nations, the problem of interpreting the provisions of its constitution has been at the forefront of the interests of all those attending the preparatory conferences. At the "San Francisco" conference, some delegations proposed the establishment of a committee or council whose competence is limited to considering any disputes that may arise regarding the interpretation of some provisions related to the organ of the organization⁴². However, this proposal did not receive sufficient support, given that many delegations clung to the issue of searching for pushing the organization forward and not obstructing its activities with purely formal matters which are still in their beginning⁴³.

³⁹ -The term supreme authority used above is not to be understood in the meaning circulated in domestic law, i.e. the meaning of a supreme court similar to the court of commentary, which takes over all illegal rulings (appeals and trial) issued by the trial courts or marred by the defect of legitimacy. Rather, the end of the matter is the will to differentiate it from what will be mentioned later, which may be attached to the organ of the organization, as well as to infer its specialization in interpreting the provisions of the Charter in general and without exception

⁴⁰ - See in this sense: Professor Joel Rideau, op. Cit., P. 173, while nothing a difference between the two mechanisms: "... almost (in interpretation) the question he asks the judge relates to the meaning of an act, but not to a violation of the law (such as control)". He acknowledged that there is a correlation between them, given that: "Despite everything, this procedure (interpretation) allows some indirect control". -- Which was expressed by Judge Mohamed Bedjaoui by saying: "... The questions of control of legality, interpretation of the charter and finally of account of the respect of the provisions of this one, are linked by such an intimacy that it would be rather artificial to assure here to each of them a total sealing of treatment compared to others ". See : Mohamed Bedjaoui, le N.O.M. et le contrôle... op. cit., pp. 19-20.

⁴¹ - For more information on the interpretation and control status of the League of Nations, see: Oudinot (M.), « des recours ouverts aux particuliers contre la S.D.N. », J.D.I. 1928, pp. 584 et ss

⁴² - For example, see the proposals of the Belgian delegation , Voir :

- U.N.C.I.O., vol. 8 p. 394 (Commission II, General Assembly, doc. 528, II/1/24, du 23 mai 1945, p. 4.

- U.N.C.I.O., vol. 4 , p. 480 (General Assembly, doc. 2, G/7 (K) (1), du 5 mai 1945, p. 5

⁴³ - See, for example, the observations of the delegations of the Soviet Union and the United States of America at the time: U.N.C.I.O., vol. 11, p. 787 (commission III, security Council, doc. 360, III/1/16 , du 22 mai 1945).

This legislative vacuum has given rise to the same problem and provoked it whenever there is a suitable opportunity for that. Votes did not hesitate for a moment in calling for the necessity of establishing such a structure and enjoying it at least a preventive role, and resorting to it occurs when thinking about making a decision that might be the application of some of the disputed provisions.

In the context of his proposals aimed at trying to overcome the crisis the United Nations is going through, Professor Jamal Dimassi stressed the need to establish a supreme body that was charged with clarifying the ambiguity and lack of understanding of some of the provisions of the Charter⁴⁴. The idea itself was raised on the occasion of presenting the issue of enlarging the Security Council to the pulpit of the General Assembly. The Colombian delegation stressed the need to think about establishing a body for the same purpose in order to resolve without exceeding the Council's competence⁴⁵.

No matter how different the perceptions about the nature of this structure to be created and about its methods of work, achieving it seems difficult in view of some of the edge conditions in the organization, such as the amendment procedures and the financial crisis it is going through. It is not easy to conceive of a consensus on this idea and the attainment of a global conference for the purpose, which will receive unconditional acceptance by the permanent members.⁴⁶

Also, the creation of a structure of this type requires its own with a special budget, which requires additional resources due to the budget's inability to cover what the regular expenses require for its daily running⁴⁷, but these considerations did not constitute all the justifications presented by the framers of the Charter for not having thought of providing for that body.

⁴⁴ - In the context of his talk about this proposed structure, Professor Jamal Al-Dimasi said: "This institution would have to play a role of" High Authority "which could be seized ex officio, or at the request of any organ of the UN institutions in order to rule, within a reasonable time on a question relating to the allocation of tasks subject to confusion". . See: D. Jamel, « La crise du système des N.U. », op. cit., p. 57.

⁴⁵ - He said the following: "(...) Recourse to a separate and independent body (...), could (...) prevent abuses of authority (...) (careful role) would be oriented towards the future in such a way as to dissuade the council from taking decisions on matters whose examination, (...), does not fall under (careful) mandate (...) ". See : Doc. A/48/264, 20 juillet 1993

⁴⁶ - It is inspired from the Charter that every violation of its provisions, whether for the purpose of amendment (Article 108), or with a view to reviewing (paragraph 1 of Article 109) or until change (paragraph 2 of Article 109) takes place only after a world conference is held for the purpose after The approval of the permanent members of the Council, which is difficult to achieve. For an in-depth discussion of this issue, see: - Giraud (Emile), « de l'intérêt des études relatives à une révision de la Charte qui probablement n'aura pas lieu », R.G.D.I.P., 1955, pp. 246-269.

⁴⁷ - For a further study of the imbalance in the United Nations in its budget, see: - Chronicle of international facts , R.G.D.I.P., 1996/2 , pp. 464-466.

1.2- Justifications for the absence of a higher specialized structure :

Among the justifications presented at the San Francisco Conference to advance ideas aimed at deriving the interpretation of the provisions of the Charter from the organ of the organization, it can be mentioned that the system of relations between them is not based on the phenomenon of dependency, and that every organ has the right to self-interpretation of the parts of the Charter that concern it.

Regarding the failure of the Council to be subject to subordination when exercising its competence, many conferences in San Francisco defended it and considered it a result of the principle of equality between the bodies required for the specialization of each agency in a specific field.⁴⁸

The same justification was also signed on the occasion of the Anglo-Iranian Oil Company, which the Security Council considered coinciding with its publication before the International Court of Justice, as this idea was expressed by representatives of Yugoslavia⁴⁹ and China⁵⁰.

However, the organization's reliance on such principles is not incompatible with the authority of another body to interpret the provisions of the Charter for at least two considerations. First: Interpretative opinion is usually characterized by the optional nature and does not constitute algebra, but rather merely directing. Second: Whatever the interpretation of "non-dependency", the body to be established does not constitute an organ that falls under the penalty of all the principles governing the organization.⁵¹

As for the enjoyment by all organs of the organization of the right to interpret the parts of the Charter that concern them, it is considered among the important decisions taken at the San Francisco Conference on the recommendations of the Fourth Legal Committee that was concerned with examining the organization's judicial system, in search of the appropriateness of the provisions of the Charter to the daily activity of those bodies.

This approach is a translation of the commitment of the framers of the Charter to enjoy the organisation's "competence". However, this perception met with alienation of many jurists for fear of the dispersal or distribution that might cause it in the authority of interpretation, which would create inconsistencies in opinions and conflicts that have no limits.

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⁴⁸ - For a more in depth look at all of these elements, see: Mohamed Bedjaoui, « N.O.M. et contrôle de la légalité des actes du C.S. », op. cit., pp. 22-23.

⁴⁹ - In response to the French proposal to postpone the consideration of this issue by the Council pending the issuance of what the International Court of Justice decides on its jurisdiction in that case, the representative of Yugoslavia at the time affirmed the following: "The (French) proposal implies that the question of the competence of the C.S. depends at least to a certain extent on the decision of another organ of the UN: this is an opinion which I do not share". (See C.S., 565th meeting, October 19, 1981, p. 13).

⁵⁰ - On China's reserve to the same proposal, see: S.C., 559th meeting, October 1, 1951, p. 3.

⁵¹ - This mutual cooperation is considered one of the main pillars on which the "institutional balance principle" is based.

taken at the San Francisco Conference on the recommendations of the Fourth Legal Committee that was concerned with examining the organization's judicial system, in search of the appropriateness of the provisions of the Charter to the daily activity of those bodies.⁵²

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Despite the lack of seriousness of the justifications provided for the installation of this body, the thought of establishing it is obstructed by many of the aforementioned obstacles. Perhaps for this reason, the question of the absence of specialized bodies attached to each apparatus occurred, at least in response to what was theoretically underlined at the San Francisco Conference.

2- Absence of a specialized structure attached to each organ:

There has been an awareness of this half of the bodies since the San Francisco Conference, but its formation has been postponed to the practical level in line with the requirements of the activity of each organ, as a report has been left to open the door in the future to assume a "Council of Experts" or a "mixed mediation committee" as stipulated in Article 12 of The Statute of the International Court of Justice, proposing the establishment of such bodies and their enjoyment of the task of an official interpretation of the Charter.⁵⁴

However, seventy-five years have passed since the existence of this assumption, and no formal initiative has resulted in practice in this field, and the idea remains the preserve of the least jurisprudence, which he did not hesitate to raise and take note of and highlight all the elements related to it and any inquiries arising from it. Accordingly, it is necessary to take note of this half of the bodies and the extent to which their absence contributes to the illegitimacy of the council, to highlight their characteristics as envisioned by jurisprudence (2.1) before showing the chances of success or failure that they may encounter and the extent of their contribution to overcoming the illegality of Security Council resolutions (2.2).

⁵² - For more knowledge of this point, as envisioned during the preparations for the Charter, see:

U.N.C.I.O., vol. 13, p. 833, commission IV, Judicial Organization, doc. 750, IV / 2 / B / 1, du 2 juin 1945, p. 1..

⁵³ - Judge Mohamed Bedjaoui expressed his fear of this phenomenon by saying: "(The) dispersion of the power of interpretation between various organs (...) was and remains the source of numerous conflicts of interpretation and makes the question of assessing the constitutional validity of the acts of the organs of the organization inevitable." see: Mohamed Bedjaoui, New World Order and the Contraole of the Legality of Security Council Decisions, op. cit.p.22

⁵⁴ - See in this regard: U.N.C.I.O. vol. 13, pp. 63-6-« commission IV, Judicial organization, doc. 664, IV / 2/33, du 29 mai 1945.

2.1- Properties of the proposed structure:

By referring to some proposals in this regard, three elements can be summarized that summarize this half of the bodies, which is the method of formation, its specialization, its working procedures and its composition.

As for the way it was established, unlike the structure of general jurisdiction, it does not require amending the charter, as its establishment is not considered a change in the content of the charter, but rather it is done by a decision issued by one of the organization's organs⁵⁵. For the Security Council, for example, this process can find its basis in Articles 29⁵⁶ of the Charter and 28 of its provisional rules of procedure.⁵⁷

As for its competence, it is limited to interpreting the provisions related to the activity of one of the agencies, such as the Council, which are the subject of controversy. In this way, he does not enjoy the declarative nature of her actions and does not rise to the level of judicial rulings.⁵⁸

As for its composition, it may include some members of the apparatus attached to it, alternately, or it is formed from personalities recognized for their competence in this field, which are completely independent of the organ of the organization⁵⁹ and are the best solutions, and thus relatively escaping the risks of politicization.

Finally, with regard to how it begins its work, it is carried out at the request of any party with an interest in the matter, and it may be carried out on the initiative of it or from one of its members if it deems it necessary.

Despite the positives of this type of organization and the actions it might provide that could enlighten the way to the activity of the Security Council, some doubts still lurk over the scope of this idea and the seriousness of its contribution to overcoming the illegality of the decisions of that organ.

2.2- Powers of the proposed organ:

While this type of organization is a privilege by overcoming the difficulties of the amendment procedures and the lack of sufficient resources to finance the expenses it

⁵⁵ - This makes it easier for them to find them due to the fact that they are not subject to the procedures of amending the Charter, reviewing or changing it, which are very complicated.

⁵⁶ - Article 29 of the Charter stipulates that "the Security Council may establish from the secondary assumptions what it deems necessary for the performance of its functions."

⁵⁷ - Rule 28 of the provisional rules of procedure stipulates that "the Security Council may appoint a committee, council, or rapporteur for some special matters." Controversy may occur. With regard to the General Assembly, see Article 22 of the Charter, and with regard to the Economic and Social Council, see Article 68 of the Charter.

⁵⁸ - For a further demonstration of this idea and the expansion of the authority that the structures normally entrusted with the mandate to interpret, see: Visscher (C. de), Problems of interpretation in Public International Law, Paris, Pedone 1963.

⁵⁹ - In spite of the full affiliation of the Security Council, which is considered as such in the rank of the Supervisory Authority, it is permissible to summon personalities who did not have any connection with the Council and are not linked to it by any documents. It is possible to seek help from some figures belonging to other structures other than the Majlis and vice versa.

finds, given that it is attached to the Council and is subject to its statute, this does not negate the existence of some obstacles that would hinder the acceptance of this idea as easily as can be conceived for many considerations. First, if the right of initiative is given to members of the Security Council to demand that the aforementioned body embark on its work, it is not conceivable that a quorum will be obtained regularly to obtain a solution from the Security Council in this regard, as it is feared that some ordinary political considerations and obstruction of every effort aimed at removing the task of interpretation from the jurisdiction of the Council .

Second, the lack of acceptance of the idea of compulsory interpretation and the establishment of the option to accept the interpretation of these bodies or not, is a loophole that would enable the Council to prioritize its own interpretation of what may be presented to it from abroad.

Third, the composition and political nature of the aforementioned body can contribute to thwarting its official mission, and may even deviate from it to other goals that negatively affect the share of decisions that may be issued by the Council instead of reforming it and directing it to the right path.

By analogy with the foregoing, we may say that, while the absence of a specialized structure in interpreting the Charter is one of the factors of the illegitimacy of the Council's decisions, the difficulties that its establishment impedes pushing many parties to rethink the issue, but with a new vision and a different style.⁶⁰

The explanation indicates that the search for inspection or oversight began in its proper sense, and instead of creating the new one, thinking has taken place to reactivate some of the structures that are being drawn from the preparatory work of the Charter that existed for this matter. The bottom line is that the search for activation has replaced thinking about modification. During the recent years, the Charter was examined financially, and it looked for what it might provide or provide, using the changes on the world stage, from ways that could be used to reach this goal. And knowing the idea of searching for the existing and fixing its shortcomings instead of taking care of the new and creating it, some methods have been found that can be exploited not only to interpret the provisions of the Charter related to the activity of the organisation's organs, but rather to examine and control them.⁶¹

⁶⁰ - This approach is one of the perceptions presented in the framework of the proposals aimed at overcoming the misfortune of the international community. As opinions were divided into two parts: the first can be called moderate or realistic, aiming to start from what is there, only reform and evaluation, and not looking for renewal due to the difficulty in obtaining it. Second, it can be called a revolutionary as it aims to change the entire United Nations system and search for an alternative, i.e. for a new type of organization if the phrase is correct. For a further expansion of these trends, see: Bertrand (M.), I'O.N.U., op. cit., pp. 108-117.

⁶¹ - Among the articles that summarized this juristic controversy, see:

- Gardmer (R.N.), the United Nations crisis. : it is not the texts which must be modified, but the governments which must change their attitude. World dipl. , April 1965, n ° 132.

- Monique Chehillier Gendreau, "the solution of the United Nations crisis: application of the charter rather than revision" R.B.D.I., 1987, pp. 29-40.

Despite the controversy over the seriousness of incorporating such means in this difficult responsibility, the prevailing opinion of everyone is that neglecting them and not thinking about using them constitutes an important factor of bargaining within the United Nations system.

B- Ineffective existing mechanisms :

As we explained earlier, some of these means are found in the Charter and others are created by the requirements of the organisation's activity in practice, but what unites them is that their inclusion in this field is only a perception that remains among the proposals aimed at conducting oversight of the organization's work. For this reason, the study of not using it as a factor in the constant failure to monitor also requires taking note of the seriousness of its claim as one of the effective means of tracking the phenomenon of selling votes.

But despite the multiplicity and dispersal of its sources, these means are dissolved into two categories: the first is political and the second is judicial, and therefore access to raising the aforementioned elements is subject to interest in the category of politician (1) before delving into judicial category (2).

1- Political mechanisms :

Referring to the preparatory work for the Charter and to some of its provisions and its writings focused on this issue, we note that there are many political mechanisms that, if their exploitation occurred in the manner required, the decisions of the Council would not have reached this level of abuse. A number of mechanisms have been envisioned within or outside the council that can monitor or review the council's decisions.

Internally, the question arose from not seeking the assistance of the president of the council itself or the member states of the organization, and externally it drew attention to both the General Assembly and the organized world public opinion or the so-called non-governmental organizations.

Despite the preponderance of this division, we will not follow it, because the constitutional establishment of the League's role in this field requires us to exclude it from the study circle of the rest of the other political mechanisms and their members with a special element. Considering her accusation of ineffectiveness (1.1), unlike other political mechanisms whose weakness lies in not using it without examining the seriousness of its role (1.2).

1.1- The role of the General Assembly :

The provision of the Charter to ensure that the General Assembly received the decisions of the Council was not interpreted in the same sense, so while some people understood it as a serious examination of the actions issued by the Council, others considered it merely a formality related to the decisions of the Council and had nothing to do with assigning the General Assembly the task of conducting oversight of Organization decisions.⁶²

⁶² -- Jean Combacau, "Chapter VII of the CH.N.U. : resurrection or metamorphosis? "In, colloquium," the new aspects of International Law, colloquium in Tunis, op. cit., p. 147.

In addition to what was included in Articles 15, paragraph 1, which stated that: “1- The General Assembly receives and considers annual and special reports from the Security Council. These reports include a statement on the measures that the Council has decided or taken to preserve the international secret and security.” And Article 24, paragraph 3, which states that:

2 - The Security Council submits annual reports, and other special reports, if the situation requires it to the General Assembly for its consideration. The Council, despite the opposition of many parties to this idea.⁶³

However, whatever the justifications for this controversy, what was stipulated in the Charter complains of some imbalances that affected the effectiveness of the role that the General Assembly may play in this field on many levels.

First, it is inspired from the provisions of the aforementioned articles that the council is not obligated to send such reports, as it has discretionary power in the field, meaning that the right to initiate is not due to one of its representatives in the general assembly, but rather is related to the will of the members of the council, which delayed the submission of reports and impeded their existence Regularly.

Secondly, no effect was actually observed of what the Charter called special reports. Perhaps the reason is that the Council did not see a necessity for that, that is, the case did not require that.⁶⁴

Third, despite the provision in Article 15, paragraph 1, that "these reports shall include a statement of the measures that the Security Council has decided or taken." Knowing its contents, it discovers a clear ambiguity in how it was drafted, which made it difficult to examine and compare it with the controls that govern the council. Perhaps this indicates the contribution of these forms to the illegality of its decisions.⁶⁵

In addition to these constitutional deficiencies, the catastrophic failure of the General Assembly in this field has deepened its identity by neglecting this role completely.

⁶³ - Herve Cassan specifies that

"... Article 24 para. 3, clearly indicates that the reports will be submitted to the assembly "for examination", which seems to exclude a priori any possible power of approval on the part of the plenary body "(v; Herve C., Commentary on the article 24 paragraph 3 CH.NU, an A. Pellet and JP Cot, op. Cit., P. 371).

⁶⁴ - Jean Combacau and Paul Reuter said: "The UN General Assembly , cannot be considered as the control body of the SC, or in general, the plenary control body of the restricted body: between them, there is no hierarchical relationship that can arise for the subordinate body the emanating from the higher organ, and which is expressed in the political responsibility of the former before the latter ". See: Paul Reuter and Jean Combacau, "Institutions and International Relations", P.U.F., 1980, Paris.

⁶⁵ - In addition to the aforementioned articles, the charter is stuffed with many provisions from which the General Assembly should enjoy such specialization, for example, Articles 10, 11, paragraphs 2, 3, 14, 17 and 23 to further delve into the content of these articles and the possible strengthening of their role. The general assembly in this field, see: Delon (F.), "Can the General Assembly control the Security Council? »In colloquium, chapter VII of the CH.N.U. and the new aspects of collective security, op. cit., p. 75.

Given the absence of "meeting records" in some of the cases mentioned above, which led to reflection on some other alternative political means, which also remained mere perceptions that did not come down to reality.

1.2- Other political mechanisms included in the Charter :

In response to the shortcomings of the General Assembly in this field, the question arose not to use some other neglected mechanisms such as the role of the President of the Council, states and organized world public opinion.⁶⁶

The idea that the decisions of the organisation's structures are subject to its president has been deduced from the principle that every institution should be subject to the principle of oversight of its presidential authority.

As well as some of the provisions of the provisional rules of procedure for some of them and the jurisprudence of the judiciary, as the International Court of Justice did not absent this matter and confirmed it in many of its rulings.⁶⁷

However, accepting this idea legally does not mean its efficacy on the practical level, given the limits of the president's mission in this field and the advantages of the presidential plan, as was the exposure to it beforehand.

As for the idea of states enjoying this competence, they have the right to withdraw and not to implement, and some have the right to object to the decisions. However, considering the right of veto as an effective means to monitor the Council's decisions constitutes an incomparable contradiction, as we concluded previously that the right of veto is a factor of illegitimacy, and therefore it should not be considered a means of controlling it⁶⁸.

The main goal of using this right is not to defend international legitimacy but rather to preserve the interests of some members, which is not consistent with the idea of oversight at all.

Also, considering the refusal to implement a specific decision issued by the council, withdrawing from the organization or threatening it, and using the "reserve" that has moved from the law of treaties to the field of decisions of international organizations, mechanisms that monitor the council's decisions are not without many dangers due to

⁶⁶ - "From a procedural point of view, it is up to the president of each body to ensure compliance with all applicable rules: procedural rules, jurisdiction rules, substantive rule, since he is the one who directs the debates and which, in particular, in the exercise of this competence, puts the draft decisions to the vote".

See: Virally Michel, "Unilateral acts of international organizations", op. cit., p. 266.

⁶⁷ - As the presidential authority is considered one of the most important legal mechanisms to which the system of relations within the administrative organization is based in the internal law, for further expansion in this legal institution, see: - J. Rivero, remarks on hierarchical power, A. J. 1966, pp. 154 .

⁶⁸ - See, for example, Article 19 of the Council's provisional rules of procedure, which considered its president as the organ of the United Nations organization, which gives it an opportunity to compare the solutions issued by the Council with the purposes and principles of the organization it represents, which is something that can only be obtained after observation has been made.

the obstruction of the natural course of the council's activity And work as a whole as it has a great impact on the dispersal of the control system with its known results.⁶⁹

As for the role that non-governmental organizations may play in this field, it was motivated by the sweeping of this category of structures in the global arena, its entry into the United Nations and its enjoyment of some rights. This led to her participation in many projects aimed at reforming the organization, either directly, publicly or secretly, as she sometimes participates in deliberations. However, despite the efforts that such organizations might exert in order to uphold the law's banner, the incompleteness of the elements of its statute and its lack of clarity within the United Nations organization, as well as its lack of acceptance by all parties, will cause it to ineffect other political means, which led to the search for an alternative in some judicial means The introduction, which also complains of not being used.⁷⁰

2 - Judicial mechanisms :

Among the existing judicial mechanisms that have been called to revive and exploit them to contribute to overseeing Security Council decisions, we can mention the role of the internal judge, the arbitration mechanism, and the specialized criminal courts in trying war crimes perpetrators, especially the International Court of Justice.⁷¹

However, given the privileges enjoyed by the International Court of Justice at the legal level, as it is considered a major organ of the United Nations, but rather the main judicial tool for it, the study of the issue of non-use of other judicial means will take place first (2.1), before paying attention to neglecting the role of the International Court of Justice and It will be submitted by attempts to evaluate the decisions of the United Nations Organization (2.2).

2.1- Preventive judicial mechanisms :

By these means, we mean the proposals presented to give an opportunity to the internal law judge to extend his control over the decisions issued by international structures, especially the Security Council, with regard to proposals of decisions or the expansion of the jurisdiction of the courts established by the Council to include

⁶⁹ - In its interpersonal opinion on the legal status of southwestern Africa (p. 22), the International Court of Justice stated that: "Any resolution emanating from a regularly constituted body of the United Nations, taken in accordance with its rules and declared adopted by its president must be presumed valid". This is understood from him implicitly, that the president has a degree of authority that enables him to monitor the behavior that may be issued by the agency that he heads.

⁷⁰ - The idea has been raised since the second decade of the work of the organization, that is, the time of the "bipolar system", as Professor Suzanne Bastid expressed it at the time by saying: "All the states, because of the possibility for a great power to exercise its right of veto, have their guarantee, given the diversity of these powers and their" political clientele "that if the agreement is achieved, there is both in the presence of a politically reasonable and politically justified solution "(VB Suzanne, the problem of security since 1945, polyc. Les cours des droit, Paris, 1962, p. 453).

⁷¹ - See Article 7 of the Charter and Article 1 of the Statute of the International Court of Justice.

oversight of its decisions or the formation of an arbitration body entrusted with the task of examining such decisions.⁷²

While these methods contain some privileges compared to political means due to their enjoyment of the elements of independence and specialization, many obstacles will prevent them from being entrusted with the task of monitoring the work of the Council.⁷³

The idea of enabling domestic law to establish control over Security Council resolutions is subject to many obstacles on the surface of reality. First, the internal law judge has been known for his cautious handling of the rules of international law and his refusal to apply them to the dispute before him, even if related to it, and for this he cannot conceive of easily accepting interest in its legitimacy. Secondly, the principle of the supremacy of international law over domestic law does not allow the evaluation of the "national judge" for decisions issued pertaining to the international legal system. Each system has its own organs and special procedures that represent these matters.⁷⁴

The demand to expand the jurisdiction of the criminal court established in recent years remains a matter of many doubts. While some of them have already taken the initiative in interfering in this field and conducting distinguished discussions that have contacted this problem, the lack of agreement on the basis of the law and its subordination to the Council will lose the binding acts it may issue, either to the Council or to the Member States of the United Nations. It is the same criticism that can be directed at the opinions demanding the establishment of a special Security Council court similar to the United Nations Administrative Court.⁷⁵

⁷² - This possibility was raised for the first time on the occasion of examining the decisions issued by the international structures entrusted with the administration of the territories subject to the international trusteeship system. Professor Verdross stuck to it at the IDI when discussing the issue of oversight of decisions of international bodies in general at his "Basyan" session in 1952.

⁷³ - However, this perception was met with strong opposition, especially by Professor Hambro in the context of his intervention in front of the institute when discussing the same topic at its session in Amsterdam in 1957, see: Ann, I.D.I. , Session d'Amsterdam, 47e vol., T.2, 1957, 305.

⁷⁴ - This issue has been re-raised again by the Anglo-Saxon jurisprudence regarding the solutions issued by the United Nations agencies this time, specifically the Security Council, following the expansion that led to some American commercial companies that filed lawsuits to the judiciary complaining about the unfair nature of some measures, especially economic Including those taken by the Security Council and the damages it caused to its budget, requesting the relevant authorities to reconsider how they are implemented. This ground was a sign of the beginning of thinking about the role of the internal judge as an observer of the decisions of the Council, which led Professor Jose E. Alvarez to say that: "National Courts may also be the fora for (de) legitimization of the council's edicts" See: Jose E. Alvarez, "Judging the security council", A.J.I.L., January 1996, vol. 90, n ° 1, p. 12.

⁷⁵ - For more information on this issue, see: - Mosler (H.), the application of public international law by national courts "R.C.A.D.I., 1957-I, vol. 91, pp. 619 and s.

The establishment of an arbitration tribunal has also been considered, entrusted with the task of monitoring the organization's decisions every time a dispute occurs. But this suggestion seems inappropriate not only to the notion of censorship but also to the law of international organizations. One of the characteristics of oversight is that it is entrusted to a permanent body, which is not available in arbitration. The arbitration also poses the problem of agreement on the composition of the committee or the structure concerned with it.

A big question may arise regarding the knowledge of the parties to this agreement, are some countries and the United Nations, the competing states and the Security Council, or members of this body among themselves? All these elements are still in the developmental stage and at the level of the fetus within international organizations, as most international organizations and their organs are still exempt from the field of disputes in the strict sense of the term.⁷⁶

Perhaps for this reason, the issue of neglecting the role of the International Court of Justice as a body has always been raised between permanence and continuity and enables it to gain many time and costs.⁷⁷

2.2- international justice Court :

The International Court of Justice is the principal judicial assistant of the United Nations, and its statute is an integral part of the organization's charter. It has dual competence, competence jurisdiction and includes settlement of all disputes brought to it by states. However, it does not possess such jurisdiction except if it is expressly accepted by the parties concerned, and that is either by signing a treaty or an agreement stipulating that, or by issuing a special permit that benefits this meaning, and such a statement that includes accepting the compulsory jurisdiction of the court may exclude some types of cases Or include some reserves.⁷⁸

The court also has a consultative jurisdiction, as it is for the association or the Security Council to seek the opinion of the advisory court in relation to legal issues presented to them, and that each branch of the United Nations and each of the specialized agencies request their advisory opinion in what is presented to them

⁷⁶ - The Criminal Court's trial of former war criminals in the former Yugoslavia, for its work, was the first occasion to draw this perception into reality, especially when the impeachment of the resolution that established it and the illegitimacy of the Security Council's intervention in such fields occurred. So, if the ruling department expressed reservations about the matter and did not give a clear position on it.

⁷⁷ - See Prosecutor V. Tadic, case IT-94-1-A.R. 72, paras. October 18-22, 2 1995.

⁷⁸ - This perception seems unlikely to be achieved, given that the function of such administrative tribunals is limited to hearing cases of United Nations personnel aimed at protecting their administrative rights from damage. It is inconceivable that its mission will go beyond the control of what is issued by the United Nations bodies in other areas. Refer to the United Nations Administrative Court, for example: - Schowob (J), the Administrative Tribunal of the United Nations, A.F.D.I., 1990, p. 408.

during the performance of their tasks of legal issues And after obtaining the approval of the General Assembly.⁷⁹

The trial principles include two stages: written and oral, in which the litigants are given the right to extend their case and prove it.

As for its role in examining what behaves that the other organisation's bodies may behave, it is an issue that has sparked great controversy since the preparatory work for the Charter in San Francisco and its continuation to this day has led to the emergence of two different parts, the first of which amounted to being the guardian of international legitimacy within the organization. The validity of this opinion is confirmed by relying on many considerations.⁸⁰

First, it is clear from the constitutional basis (the charter and the statute) of the court that one of the methods that led to its establishment is to contribute to the smooth running of the organization and to illuminate the way to the best exercise of its mandate by its organs, which is particularly assured that it has consultative competence in addition to its competing function. Second, regardless of the legal texts, working to introduce the Court of Justice in the field of examining decisions issued by the Security Council can be confirmed by referring to the "theory of implicit powers."

It seems, in our opinion, that the process of examining these decisions is in some cases affixed to the original jurisdiction of the court, which has the right to consider pre-emptive issues regarding the legal problems faced by the organization's legal issues, compared to what was decided by Judge Schwebel regarding the court's relationship with the national judge.⁸¹

The second considered that it is not permissible to interfere in the activities of these bodies, especially the Security Council, due to the nature of its political function and the inadequate judicial control of the way it performs its activities, which is characterized by speed and the search for efficiency.⁸²

⁷⁹ - The reason for introducing the arbitration mechanism into the disputes of the organs of international organizations is due to the difficulties in the judicial means in the performance of the oversight function or others. Professor Charles Leben said: "The slowness of the (judicial) procedure or the ignorance of the facts of the daily life of the organizations could be compensated by the establishment of courts or arbitral organs specific to each of the organizations". (See: Charles Leben, private sanctions... op. Cit., P. 283).

⁸⁰ - It is also pointed out that the perceptions on this issue were not the same, so it is thought to form a special committee for the purpose (see in this sense: the representative of the former Soviet Union intervened: N.U. Doc., off. , A.G., 2^{ème} session, 16 septembre 29 novembre 1947 vol. II, 110^e à 128^e séance, 113 séance , p. 866.

⁸¹ -- Christian Dominice, "the jurisdictional regulation of the external litigation of the international organizations" in, "the International Law, in the service of peace, justice and development", Mélanges Virally (M.), pedone, Paris 1991, pp. 227-230.

⁸² - Attention turned to the legal department of the organization juridique in order to resort to it at the outbreak of a certain difference to play an arbitration role between the parties to the conflict. Judge Mohamed Bedjaoui emphasized this method, saying: "There is also a need to exploit the significant resources offered by the organization's legal department. In the event of

However, regardless of the dimensions of this juristic controversy, the stabilizer in what this court contributed to this framework notes, without a doubt, the divergence between what was underlined in the Charter and the neglect of its role and its neglect in practice.⁸³

The neglect of the role of the International Court of Justice is the result of many objective and subjective factors alike. In addition to the fact that the United Nations or one of its organs is not contesting before the judiciary, the aversion to which the court has been met by states is sufficient to dwarf its role and not to interfere in the peaceful settlement of international disputes.⁸⁴

Also, its automatic refusal to interfere in the activity of the United Nations agencies has become an example of disrupting all projects aimed at improving its role and reforming what needs to be reformed so that its procedures are compatible with what is required by the specificity of the disputes of those bodies. the Council.

However, this situation did not hinder the will to search for an alternative within this court that combines preserving what is present for fear of the difficulties of amendment, and respecting its statute for fear of going beyond jurisdiction. Forcing it to undertake the task of monitoring Security Council resolutions, or at least examining them and showing their validity, some reforms are not being made to their terms of reference and methods of their conduct, which is difficult to the point of impossibility, but rather to preserve and adapt them to what is consistent with this task.⁸⁵

disagreement between the States within the political body on a legal question, it should be called more systematically to the legal adviser (...) whose role is to "mark out" the ground in advance for all questions of the 'agenda'. (See Med. Bedjaoui, *New World Order and control of the legality of the decisions of the council of security...*, op. Cit., P. 98).

⁸³ - With regard to the United Nations bodies, for example, it is sufficient to refer to Article 34 of the Statute of the International Court of Justice, which states that "1 - Only states have the right to, that they are parties to the lawsuits filed with the court", which implies the exclusion of those bodies from the competence jurisdiction. to her. Its interference is limited to the information it provides that may be necessary to determine a case before the court (see in this sense, Article 34, paragraph 2 of the statute of a court).

⁸⁴ - Article 92 of the Charter affirmed that "the International Court of Justice is the main judicial instrument of the United Nations." Article 1 of its statute also included that "the International Court of Justice (...) be the main judicial instrument of the body ...".

⁸⁵ - The Foundation for Preemptive Matters is considered a means by which it can settle disputes in the jurisdiction between the various judicial systems under the dual system within the framework of internal law. For example, it obliges the administrative judge to refer matters brought before him in private law to the judicial judge and vice versa. Even within the framework of the judicial system, the civil judge is obliged to refer any criminal matters brought before him before the criminal judge, and vice versa. In this way, Judge Swchebel tried to establish a system of relationship between the national judge and the International Court of Justice. For a more in depth look at this idea, see: - Schwebel S., *preliminary rulings by the I.C.J. at the instance of National courts*. Quoted by Guillaume (G.), C.I.J.: some concrete proposals on the occasion of the fiftieth anniversary R.G.D.I.P., 1996, n ° 2, pp. 332 (note 14).

According to the International Court of Justice's enjoyment of two specialties, the first being a dispute and the second being a consultant or a swordfish, the fulfillment of its role requires launching from these two elements. The use of competence jurisdiction in the area of oversight of Council decisions is done in many cases.

First, the issue of the legitimacy of the decisions of this organ is incorporated into a dispute between two countries, one of which is the plaintiff and the other is a defendant, which is called the disputed litigation case.⁸⁶

Secondly, the use of the interference procedure, in a dispute before the court that brings together two more countries on a subject that concerns them and prejudices their interests, any of the other member states that have accepted the jurisdiction of the court can submit an accountability whose framework is the legitimacy of a council's decision, provided that the requirements of interference are respected.

.⁸⁷ Third, when skipping the above two phases, it is advisable to use private rooms for such topics in order for the topic to be considered in depth.⁸⁸

As for the consultative jurisdiction, the reason for its disruption lies in the council's failure to resort to such a mechanism due to the lack of agreement among its members and not being considered an effective means to help this device to perform its duties as required.⁸⁹

Accordingly, the advancement of this jurisdiction and its use in the area of overseeing the decisions of the Council requires reliance on the following elements. First, he pushed other organs of the international community to submit requests for the purpose of obtaining an advisory opinion from the court whose subject matter is a legal issue related to the competence of the Council. Second, the UN Secretary-General's authorization to request an advisory opinion from the International Court of Justice, a long-awaited demand to obtain it despite his long-standing redundancy and focus by the Secretary-Generals who held this position.⁹⁰

⁸⁶ -See: ODA (S.), « The I.C.V. viewed from the Breach », R.C.A.D.I.,1993, I, pp. 13 et ss.

⁸⁷ - Among the studies that were exposed to this problem, which are many, one can refer to the most recent: - Monique Chemillier-Gendreau, "the International Court of Justice between politics and law". Le Monde diplomatique, November 1996, p. 10-11.

⁸⁸ - Those who follow the court's position in this field are noted that it is characterized by fluctuation, as it takes from the following cases. In her opinion, concerning the issue of some United Nations expenditures, the court affirmed that nothing prevents it from deciding on the legitimacy of solutions of the United Nations organs if it deems it necessary, and this is what she expressed by saying: "The rejection of the French amendment does not constitute an injunction for the court to have to dismiss the examination of the question of whether certain expenses have been" decided in accordance with the provisions of the charter ", if the court considers it appropriate to 'address' See International Court of Justice, Rec. 1962, p. 156.

⁸⁹ - - In her opinion, however, regarding the issue of the legal status of southwestern Africa, she denied this possibility and categorically denied it, considering that:

⁹⁰ -- In her opinion, however, regarding the issue of the legal status of southwestern Africa, she denied this possibility and categorically denied it, considering that: "It is obvious that the court has no power of judicial review or appeal with regard to decisions taken by the UN bodies in question" see: International Court of Justice Rec., 1971, p . 45, para. 89.

As for circulating the binding advisory opinion. It is something that is still excluded due to its lack of conformity with the provisions of the Charter and the statute of the court and the difficulty of accepting the idea of concluding an agreement outside the provisions of the Charter, given that the latter enjoys superiority over all other sources of international law.⁹¹

Conclusion:

While some of the factors that contributed to the illegitimacy of the Security Council's decisions occurred within the framework of this research, full and complete briefing on what might be a reason for distracting this organ from the organization's constitution is an unimaginable goal.⁹²

Accordingly, what we have mentioned of the elements in this field should not be understood as being inclusive of all dimensions of the problem and not subject to any decrease, but rather, on the contrary, what is really only a simple contribution that may be mistaken and right. Therefore, the reasons that we mentioned do not mean at all that there is no other that acquires the same effect, but that the factors are many, but their effects and their sorting are according to the requirements of each study and its curriculum.

The reference also goes to the fact that we tried to take note of the most important of these reasons, but without giving priority to one over the other, but that does not prevent us from recognizing that while the subject matter of the Council is difficult to understand to the point that every thought fails in reform, the way it is practiced and the ways of doing that organ (side) The structural) deserve to go into depth in order to try to simplify and search for an alternative that stems from the statute of the council itself, so our climate has always been at every point studying the existing legal texts.⁹³ Regarding the problem of controlling the decisions of this body, for example, despite our reference to many attempts that were made to overcome that deficiency, we have

⁹¹ - In the decision regarding the issue of the interpretation and application of the Montreal Convention, the court has reopened the door of hope to those calling for its oversight of Council decisions by postponing the matter until its original consideration if it confirms that: "Whereas the court, in the context of the present proceedings, (...), is not empowered to conclude definitively on the facts and the law, and that its decision must leave intact the right of the parties to contest the facts and make their pleas on the merits..." (see, ICJ, Rec. 1992, p. 14, para. 38).

⁹² - We are anxiously awaiting the court's consideration in the original, especially what it will decide on this particular point, that we envision that it will not add anything to its previous positions in this field due to the inaccurate understanding of the principle of institutional balance that has been incorporated under its banner and is still subject to discussion or amendment If necessary.

⁹³ - In conclusion, we must mention what we mentioned regarding the issue of interpretation of the Montreal Convention. It was reminded again on the occasion of the order issued on April 8, 1993 related to the issue of the application of the Convention to Prevent and Prevent Genocide, where it used the same recital. See: International Court of Justice, Reports, 1993, p. 22, para. 44.

restored stability in addition to what exists to demand the activation of the role of the International Court of Justice and not neglecting it and reviving the branches of the Charter Tree that stagnated, this body may contribute, including In overcoming the defects of the Council's competence.⁹⁴

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⁹⁴ - We are anxiously awaiting the court's consideration in the original, especially what it will decide on this particular point, that we envision that it will not add anything to its previous positions in this field due to the inaccurate understanding of the principle of institutional balance that has been incorporated under its banner and is still subject to discussion or amendment If necessary.

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