

The Legal Basis of the Legitimacy of Security Council Resolutions

الأساس القانوني لمشروعية قرارات مجلس الأمن الدولي

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Abstract:

This study articulates the legal basis of the legitimacy of Security Council Resolutions, after tracing the development of the idea of "legitimacy," in the law means the conformity of the conduct or text, judgment, legal rule, or customary rule. In this regard, the legitimacy of Security Council resolutions requires that to be in accordance with the Charter and Jus Cogens. The Security Council is bound by a set of legal rules that form the legal framework of international legitimacy; these rules are represented in the texts of the United Nations Charter as a document Constitutional for this organization.

The study concludes that the Security Council Resolutions should be issued in accordance with international law and applicable to states and international organizations. These rules or norms, along with the provisions of the Charter, constitute the legal basis for the resolutions issued by the Security Council in the maintenance of international peace and security. For two reasons: First, the Charter is an international treaty and cannot contradict the rules of International Law. Secondly, it cannot distinguish between achieving peace and law, because the Security Council often relies on some principles of international law as the basis for its work.

Keywords: Security Council, Resolutions, Legitimacy, UN Charter, Jus cogens.

ملخص :

توضح هذه الدراسة الأساس القانوني لمشروعية قرارات مجلس الأمن الدولي، بعد تتبع تطور فكرة "الشرعية" في القانون، يعني توافق السلوك أو النص أو الحكم أو القاعدة القانونية أو القاعدة العرفية. وفي هذا الصدد، فإن شرعية قرارات مجلس الأمن تقتضي أن تكون متوافقة مع الميثاق والقواعد الأمرة. مجلس الأمن ملزم بمجموعة من القواعد القانونية التي تشكل الإطار القانوني للشرعية الدولية. يتم تمثيل هذه القواعد في نصوص ميثاق الأمم المتحدة كوثيقة دستورية لهذه المنظمة.

وتخلص الدراسة إلى أن قرارات مجلس الأمن يجب أن تصدر وفقاً للقانون الدولي وتتنطبق على الدول والمنظمات الدولية. وتشكل هذه القواعد، إلى جانب أحكام الميثاق، الأساس القانوني للقرارات الصادرة عن مجلس الأمن في حفظ السلم والأمن الدوليين. لسببان وهما: أولاً، الميثاق معاهدة دولية ولا يمكن أن يتعارض مع

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قواعد القانون الدولي. ثانياً، لا يمكن التمييز بين تحقيق السلام والقانون، لأن مجلس الأمن يعتمد في كثير من الأحيان على بعض مبادئ القانون الدولي كأساس لعمله.

كلمات مفتاحية:

مجلس الأمن الدولي، القرارات، المشروعية، ميثاق الأمم المتحدة، القواعد الأمرة.

I- Introduction:

The Security Council is one of the principal organs of the United Nations, is responsible for the maintenance of international peace and security, where it discharges its duties and functions through the powers conferred upon it by the provisions of the Charter. As the Security Council has the authority to issue its decisions and it may violate the conditions for issuance of resolutions, making them lose their Legitimacy. On the basis of the foregoing it can be determined whether these decisions are legitimate or illegal. Legitimacy is a fundamental source of the Council's authority, and therefore it may sometimes be a source of power to the rest of the UN membership.

The legitimacy of Security Council resolutions depends on its conformity with the provisions of the Charter of the United Nations and the rules of public international law. Many scholars and commentators have noted that the UN Security Council is in danger of losing its legitimacy if it continues on a given course of (illegitimate) action, but very few explain how or why it matters that the Council build or preserve its legitimacy. The usefulness of legitimacy is taken for granted but not explained. Thus, the study attempts to focus on the concept of legitimacy and knowledge of the categories of legitimacy of UN Security Council resolutions.

The study relies on the legal approach which works to provide readings of the most important legal articles that explain the resolutions of the UN Security Council. The research uses the content analysis method, as several legal texts and decisions are analyzed. In addition to employing the institutional approach in the study, by looking at the United Nations as an institutional structure that issues many decisions and recommendations. Hence, the main question, **what is the legal framework of the legitimacy of Security Council resolutions?** To answer this question, the study will illustrate as follows:

Section 1- The legitimacy of Security Council Resolutions.

Part 1- The concept of legitimacy.

Part 2- the three categories of legitimacy of the Security Council.

Section 2 - The legal framework of the legitimacy of Security Council resolutions.

Part1 -the UN Charter.

Part2 -The Legal norms outside of the UN Charter.

II - the Legitimacy of Security Council Resolutions.

In recent decades the term 'legitimacy' has featured heavily in debates about international law and international institutions has been discussed quite intensively. But the concept of legitimacy has remained under-scrutinized, leading to confusion and misuse. The problem of legitimacy, which is central in politics, is not the exclusive property of any one discipline. Philosophy and political science, law, sociology, and political anthropology have all made of it a privileged object of research.

This section, it seeks to clarify the Legitimacy of Security Council Resolutions. In part1, to elaborate the meaning and the nature of legitimacy as a concept. This clarifies the intricate relationship between legitimacy and legality. In part 2, the proposed criteria for legitimacy of UNSC are expressed in three categories. Namely: the instrumental, procedural and constitutional components of legitimacy.

II.1. The concept of legitimacy.

Legitimacy has many meanings; it has been deployed by actors at all levels of the international system, from activists to academics, from politicians to the press, from judges to bureaucrats, each of whom ascribe different meanings to the word. Indeed the plurality of these meanings, and the frequency with which the word itself is used, make it a difficult concept to systematize. (Thomas, 2013, p. 5)

The meaning and nature of Legitimacy Weber's formulation of legitimacy has been a dominant thread in the literature and provides a good starting point for discussion, according to Weber, "the basis of every system of authority, and correspondingly of every kind of willingness to obey, is a belief, a belief by virtue of which persons exercising authority are lent prestige", the idea of belief and the notion of acknowledgment by the governed are the two key elements in Weber's formulation of legitimacy. (Muthiah, 1995, pp. 11-12)

To begin, however, Arthur Applbaum helpfully distinguishes between the word legitimacy, the concept of legitimacy and conceptions of legitimacy, the specific word has been used to denote various ideas across disciplines, time and space, legitimacy as a concept is a kind of meta-definition that seeks to encompass as many of the different conceptions for legitimacy as possible. The majority of the literature on legitimacy is concerned with particular conceptions of legitimacy associated with some variant of democracy, or justice, or 'good administration' and it is only comparatively recently that the concept of legitimacy has been subjected to more sustained attention. (Thomas, 2013, p. 6)

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The word "legitimate" was ambiguous, it seemed to be trying to occupy a space between "lawful" and "unlawful", yet that space is hard to measure or even imagine, of course the ambiguity can be removed by eliminating the space by stipulating that "lawful" and "legitimate" are synonymous. (Anthony, 2008, p. 83)

If one compares the works of various authors or schools of thought, one finds, even within a given discipline, some major divergences. Despite these, there exists a common ground for understanding: the idea of legitimacy concerns first and foremost the right to govern; Legitimacy is the recognition of the right to govern, in this regard, it tries to offer a solution to a fundamental political problem, which consists in justifying simultaneously political power and obedience, to justify power and obedience simultaneously is the first issue involved in the question of legitimacy. (European Research Council, 2016, p. 10)

As for international law, it seems the word first achieved prominence with Talleyrand 'principle of legitimacy' at the Congress of Vienna (although this was more a political principle than a principle of law). (Thomas, 2013, p. 6)

II.1.1. Legitimacy and Legality.

Firstly, it distinguishes what is legal from what is legitimate. Legality refers to what fits within the law and is compliant with a legal framework. It limits us and determines what we can and cannot do according to the law. Legitimacy, however, involves following a correct, fair, genuine, moral and ethical path. Legitimacy is symbolized by what is achieved with justice, what is deserved, what is inherited. Legality, on the other hand, can be symbolized by an official seal. (Danilo, 2015)

The concept of legitimacy in the international system involves the right to exercise collective governance, for Franck, legitimacy "accommodates a deeply held popular belief that for a system of rules to be fair, it must be firmly rooted in a framework of formal requirements about how rules are made, interpreted and applied. Buchanan describes legitimacy as "being morally justified in the attempt to make, apply, and enforce general rules within a jurisdiction. (Allan KM, 2015, p. 20)

The legality of an action or policy is assessed by reference to legal texts, case law, and precedents. Challenges and appeals may be raised as part of the adjudicative process, but there is a clear and final view either in favor or against. An action is always either legal or illegal; it cannot be partly legal. In contrast, legitimacy is fluid and changing—it depends on perceptions and outcomes. As a subjective interpretation of what is desirable and appropriate, legitimacy can be maintained by a constant effort to ensure conformity with the normative expectations of the affected constituents. Legitimate decisions are based in democratic participation whereby affected persons have the opportunity to raise their voices. (Vesselin, 2008, p. 3)

In sum, legality and legitimacy seem to be mutually reinforcing. Legality is an essential component of legitimacy in the sense that it contains an important social element, by creating

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expectations and providing certainty in international relations. Similarly, legitimacy is an essential component of legality, in the sense that international law should bind those to whom it applies. Otherwise, international law would not be law in its true sense, and it would lose its legitimacy.

II.2. the three categories of legitimacy of the Security Council

The preceding part articulated the concept of legitimacy in the international system. This part advances a model of legitimacy for the Council based on this understanding. As noted above, this model of legitimacy proposes a minimal threshold for the Council to legitimately exercise its authority and examines each of the different grounds for legitimacy separately. The proposed criteria for legitimacy are expressed in three categories namely: the instrumental, procedural and constitutional components of legitimacy.

II.2.1 Instrumental Legitimacy:

UN Security Council is created with a specific aim; if it does not fulfil its purpose or if it creates negative externalities, it will not be considered legitimate. Given that UNSC frequently lack fair procedures, scholars have argued that good performance becomes the most important source of International Organization legitimacy. (Martin, 2015, p. 241)

In its traditional sense, the instrumental notion of legitimacy derives from the satisfaction of perceived self-interests. Consequently, international actors will accept the Council as legitimate to the extent that it generates outcomes from which they stand to benefit. This notion of legitimacy follows the “service conception” of authority, and is analogous with the “favourable outcomes” or “output-based” approaches to legitimacy. (Allan KM, 2015, p. 40)

This value-based standard of legitimacy is founded on the understanding that the collective security structure in the Council operates as mechanism to protect common interests, as distinct from a mechanism to protect political interests. These common interests are recognized as international norms with a strong ethical underpinning, which have been established for the protection of the international community as a whole. (Allan KM, 2015, p. 42)

The value-based standard of legitimacy creates a moral obligation in favour of UN member states. In its broad sense, it encompasses two related factors concerning the purpose of the Security Council and its performance. (Allan KM, 2015, pp. 44-48)

- The first factor is normative and holds that its behaviour must not violate the common interests of UN member states (international norms with a strong ethical underpinning).

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- On the inverse, the second factor holds that perceptions of its legitimacy may diminish if it fails to act consistently with these common interests (the legitimate expectation of UN member states).

II.2.2 Procedural Legitimacy:

The Council is dominated by a few states, and that the veto held by the permanent members is unfair. These structural inequalities coupled with the general lack of procedural transparency, have threatened to destabilize the Council as a whole. As Koskeniemi notes: The dominant role of the permanent five, the secrecy of the Council's procedures, the lack of a clearly defined competence and the absence of what might be called a legal culture within the council hardly justify enthusiasm about its increased role in world affairs, a component of the Council's legitimacy depends on procedural integrity (Allan KM, 2015, pp. 48-53)

The quality of an institution's decision-making procedures is the key to its legitimacy. In the international realm, scholars have stressed the role of "fair and accepted procedure" for the legitimacy of international norms, with regard to IOs; four procedural standards are seen to be particularly relevant. (Martin, 2015, p. 241)

- First, the legitimacy of an IO is said to depend on the equal participation of all of its member states in formal decision making.
- Second, the legitimacy of an IO is considered to be a function of transparency that enables interested states and stakeholders to trace the decision making process.
- A third procedural standard is accountability, which means that states and other actors in whose name an IO takes decisions and who are affected by these decisions can hold the IO responsible.
- Fourth, an IO's legitimacy can be undermined if the organization is dominated by great powers and if weaker states are forced to bow to their interests and accede to their values.

Finally, concerning negative side-effects of Council action, the Security Council has been accused of being responsible for human rights violations, especially in relation to the practice of blacklisting terror suspects.

II.2.3 Constitutional Legitimacy:

The UN Charter is one such treaty which established the United Nations, the composition of the Council, and its privileges of tenure raise immediate concerns about its legitimacy. In order to address these concerns, some authors have suggested the need to restrictively interpret its powers under Chapter VII of the Charter. Franck aptly summarizes this notion, stating: while the Council has the power to act on behalf of the UN as a whole and to commit its members to action under Charter article 25, it is only a distorted miniature executive council of the UN membership. A third of its members are unelected. To assert the legitimacy

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of its action, the Council must be seen to be acting in accordance with established procedures and limitations. (Allan KM, 2015, pp. 53-55)

The legitimacy of an IO thus depends on whether states have consented to its creation IOs are also considered legitimate as long as they act in accordance with their own secondary rules, to which states have consented and which determine who has the right to exercise authority, according to whatever procedures have been established, and subject to whatever limits have been determined. Conversely, to the extent that institutions act outside their mandate, they lose their legitimacy. (Martin, 2015, p. 241)

In addition, there must be congruence between the Council's Charter based mandate and its behavior in practice. Therefore, in instances where a situation falls within the Council's constitutional limits, its constitutional legitimacy creates a moral obligation for the Council to act consistently with its mandate. That is, a moral obligation to make a determination in terms of Article 39, and a moral obligation to place the situation on its agenda, and to take appropriate measures to maintain or restore international peace and security. (Allan KM, 2015, pp. 53-55)

In sum, the Security Council's discretion is limited by the Charter in terms of Article 24. Its behaviour must conform to the maintenance of international peace and security, and the Council must respect the essence and the ethos of the principles and purposes of the UN. Furthermore, the Council is bound by its rules of procedure, and its discretion is also limited by jus cogens, as peremptory norms of international law. These legal limitations constitute the essence of the Council's constitutional legitimacy. However, the Council's constitutional legitimacy also depends on coherency, between its constitutional limits, its constitutional mandate, and its behaviour in practice. (Allan KM, 2015, pp. 53-55)

III -The legal framework of the legitimacy of UN Security Council resolutions.

The Security Council is often referred to as a political organ, and it is thus presupposed that its powers and functions are in line with some form of international political authority or international political law. The merits of these references are the subject of interpretation. It refers to an understanding of authority on the basis of political considerations that differ from legal considerations. The Council does not have legal personality, but it derives its authority from the United Nations. Its actions are the work of the United Nations and the Council practises its duties through the decisions it issues in this regard, abiding by the Charter and the rules of public international law.

This section, it seeks to clarify the legal framework of the legitimacy of UN Security Council resolutions. As it divides into two parts -in the first part: The Charter of the United Nations .the second part: The Legal norms outside of the UN Charter.

III.1. the UN Charter:

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International Organization is created under an international treaty and this treaty has special features, it differs from other treaties, on the one hand, it includes a group of the legal rules governing the internal activity of the organization, on the other hand, include the rules the organization's external activity is governed by other countries and organizations, hence the question arose The legal nature of the treaties establishing international organizations. (محمد السعيد، 1973، صفحة 2) The UN Charter is one of sources of legitimacy of Security Council Resolutions. Any International Organization is a functional entity established by states on the basis of an agreement. (United Nations , 1999, p. 3)

This instrument is called a constitution, treaty, or charter. The term "charter" is used for particularly formal and solemn instruments, such as the constituent treaty of an international organization; well-known recent examples are the Charter of the United Nations of 1945. (United Nations , 1999, p. 4) The UN, like any other international organization, is based on an institutional legal instrument, namely the Charter; this instrument specifies the purposes and principles which guide the UN organs and its member states. (Mohamed Sameh, 2014, p. 116) However, as with any legal instrument, there is always the difficult question of interpretation. The question might arise regarding The United Nations Charter is a treaty or a constitution, or both?

III.1.1. the United Nations Charter: a Treaty or a Constitution.

The legal document establishing the international organization is great importance in the scope of the legal system of the international organization, where it is considered the main source of that system, it includes all the rules relating to the statement of the organization, the rules for the conduct of its activity, and the limits of that activity, which determine general principles and defines the powers through which legal rules are established by the agencies , therefore this document is the top of the pyramid in the hierarchy of legal rules Of the organization, this document is often prepared and drafted through An international conference held for this purpose includes the countries that wish to establish the organization and take over one or more countries in some cases this conference is called. (صلاح الدين، 1994، صفحة 206)

The Charter of the United Nations is, without question, a highly significant document, first, as the foundational document of the United Nations Organization, as such, it creates and governs the operation of the Security Council, the General Assembly and the UN Secretariat, as well as (with the annexed Statute of the Court) the International Court of Justice, these institutions have, to a greater or lesser extent, shaped international affairs during the post-WWII era. (European Research Council, 2016, p. 1)

The determination of the nature of the Charter as a constitution or as an international treaty has been a controversial issue since the early days of the UN. (Mohamed Sameh, 2014, p. 117) Under the Charter of the United Nations, States are defined as "sovereign" entities, i.e. human communities that shape their existence according to their own wishes without outside

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interference, essentially, the governments of the world have agreed to regulate their mutual relations by a set of rules called "international law".(Christian, 2017, p. 309)

The view adopted by most of the Eastern bloc countries during the Cold War era was that the Charter has no constitutional nature but is a special treaty unique, this view should be examined because there is no reason to deny the constitutional character of the Charter on the ground that it is based on an agreement among its participants.(Mohamed Sameh, 2014, p. 117)

Right at the beginning of the Charter, in the preamble, the Peoples of the United Nations declare to be determined "to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained.(Bardo, 2018, p. 764)However perceived, doctrine agrees that the Charter is a treaty establishing the most comprehensive framework of cooperation in the history of international relations, the importance of the organization as a permanent forum for multilateral diplomacy, and the moral as well as legal strength of the Charter as the only comprehensive covenant common to the universality of States, is undoubted, the Charter is not only the most important document of the twentieth century, it is indeed one of the most important texts in the history of humankind; it stands as a steady light at the apex of the international legal system giving guidance and inspiration to the life of "the great community, the universal common wealth of the world.(Ronald St, Volume75, pp. 292-293)

The charter was prepared through an international conference. It took the image of the collective international treaty; it becomes effective only after its ratification in accordance with the rules established in international law which was codified by the Vienna Convention on the Law of Treaties in 1969,(207 صفحة، 1994، صلاح الدين،)and some consider that if ratification is considered a cornerstone of international treaties in general, it is necessary for international organizations.(113 صفحة، 1993، عبد العزيز محمد،)

There is a near-consensus among jurists of international law regarding the documentation created for international organizations, they are constitutions that define their principles that they abide by and proceed from them to achieve their goals, define their bodies and how it performs its duties, as the relationships of these mutual agencies show, to say that the only element that determines the legal nature of treaties establishing an international organization is its constitutional nature.(130 صفحة، 1994، حسام أحمد محمد،)

The constitutional character of the Charter has been confirmed by the majority of international lawyers. In their opinions, whatever the name of this instrument - a constitution or a treaty - the UN Charter has certain basic features which distinguish it not only from bilateral treaties but from other multilateral treaties as well. This view is based on the following:(Mohamed Sameh, 2014, p. 117)

- It is a constituent instrument - like constitutions in domestic fields - defining the structure of the organization and setting forth the powers and functions of its organs and the duties of its members.

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- It was intended to last not just for the present or for the foreseeable future, but for “succeeding generations”.
- It is superior to all other treaties as a “higher law” according to Article 103 of the Charter. (United Nations, 1945, p. 19)
- It has been noted that some of the Charter’s provisions foresee the possibility of the organization taking measures with regard to non-member states. (United Nations, 1945, p. 8) This attitude is considered to be in contradiction to the principle that treaties have no effect on third parties.

The Charter of the United Nations is a legal act of a dual nature (as well constitutions establishing International Organizations), it is an international treaty and has a constitutional nature, the first the state has no obligation to join and sign it rather it does so of its own free will, as it is ratified, interpreted and applied by competent organs, while the constitutional character of the charter emerges from the fact that it is who creates the organization and its organs, it distributes competences among them and it is the supreme law of the organization whose rule represents and no break out of it in all other branching legal rules and business, International Organizations have the ability to adapt their competencies and develop their legal system, this gives it a role in the process of interpreting, implementing and amending the treaty establishing it in response to what it reveals on it, the practical reality of the needs of practice in that, which has been termed as the ability to organize and self-management (أحمد عبد الله علي، 2005، صفحة 37)

From a constitutional point of view, more particularly, whether the Charter has risen above the status of a mere international treaty to become something of a constitution for the international community as a whole, this question is increasingly important in view of the number of States members of the United Nations and the variety of situations that call for more detailed regulation in the management of international affairs. (Ronald St, Volume 75, pp. 263-264)

Where the majority of international jurisprudence confirmed that the Charter of the United Nations is a collective international treaty legitimate, like international legal treaties, is distinguished from them only by what they create a permanent body with a set of terms of reference determined by the treaty establishing it, although recognizing the privileged position occupied by the United Nations in relation to other international organizations but the Charter of the United Nations exceeds other treaties, but in the end they say that the Charter of the United Nations is a treaty that applies to it like other treaties of the rules of treaty law and in terms of conditions. (مفيد، 1993، صفحة 195)

According to "Judge Alvarez" in 1948 in the advisory opinion of the International Court of Justice on accepting a new member of the United Nations, has pointed to the constitutional nature of the Charter was starting a part of the jurisprudence adopted these ideas to extent that there are a consensus between these jurists who consider the document created for international organizations as constitution, it outlines the principles that it adheres to when it pursues its goals and defines its organs how they are to perform for its tasks and the rules

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governing the relationship of these mutual devices, it has become this idea prevalent at the international level. (علي، 1995، صفحة 11)

The character of the United Nations Charter may point toward a constitutional model as well. It directs powers and functions, declares a purpose, and has every possibility to provide authority for a wide variety of "laws," due to certain ambiguities, these resemblances to domestic constitutions are bound to be present in many treaties that purport to form organizations, and they are essential to some international contracts, the ICJ has declared that the United Nations is a special kind of organization that its character is different from any other organization due to its purpose and fundamentality, so that this uniqueness should elevate the United Nations Charter to the constitutional level. (Lara M, 2001, pp. 189-190)

As for the treaty model as it is from their point of view, the United Nations Charter is an international treaty in form and content like any other international treaty, considering that the distinction between its formal and substantive aspect must apply to all other treaties, but they believe that the treaty nature of the Charter, it has a special feature that is unique to it from the other treaties establishing international organizations, which is to create a permanent, independent body with its own entity that carries out certain specializations defined by the treaty established for it. (محمد السعيد، 1973، صفحة 62)

Some of Scholars have recognized the difficulty of the constitutional model and have thus focused on the treaty model; the main points in favor of this view derive from the shortcomings of the constitutional model, therefore the following pro-treaty Arguments: (Lara M, 2001, p. 191)

- From the mere fact that the United Nations Charter fits the definition of a treaty.
- A treaty is an instrument between subjects of international law, mostly states, purporting to deal with the objects of international law.
- The United Nations Charter is concluded between the oldest subjects of international law and deals with objects of international law, namely international peace and security.
- There is no judicial review as in domestic constitutions; there are no democratic justifications, no world elections for representation in the United Nations; there is no lawmaking in the domestic sense.
- Countries came together, bargained and formed a contract for the formation of an organization to achieve one purpose: international peace and security.
- There was no delegation of power from the people or, for that matter, from countries to give to a new government. However, contracts are not usually open-ended and do not have the power to bind third parties."
- The United Nations, through its United Nations Charter, has in effect the power to bind and put pressure on third parties.

As a result of that no one can deny the treaty nature of the Charter on its side formality, this is evident in the process of preparing and drafting its texts and also signing it through a

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conference San Francisco, therefore all general rules relating to treaties in terms of conditions apply to the validity of the convention, the legal effects, and by the contents of the Charter, find many its provisions clarify the constitutional nature of the United Nations Charter. (ناصر، 2008، الصفحات 215-217)

The United Nations Charter is no constitution; however, the treaty model has its shortcomings as well, it is certainly a mixture between the two models, the United Nations Charter is a "consensus constitution." (Lara M, 2001, p. 192) A third direction took a middle trend which, it distinguished between the content and form of the Charter, i.e. the Charter of the United Nations was considered of a dual nature, that is an international treaty, and it has a constitutional nature, the first advantage is shown by being a consensual act, so it is not for the states to commit to joining and signing it, but do its own volition, as it is ratified, interpreted and applied by the competent agencies, while the constitutional character of the Charter stands out from the fact that created the organization and its organs, and it is the supreme law of the organization. (أحمد عبد الله علي، 2005، صفحة 52) In confirmation of that, Mr. Muhammad Talaat Al-Ghunaimy considered that the treaty establishing international organizations is considered a treaty in the formal sense and a constitution in the substantive sense. (ناصر، 2008، صفحة 214)

A consensus constitution is a contract forming the basis of an organization, one that exceeds the original consensus but remains limited by its original form. This model gives greater leeway for interpretation, without allowing the filling of blatant gaps in the law, the United Nations Charter does not stand alone and customary international law as well as Jus cogens norms can be utilized when gaps are apparent to help bridge them. (Lara M, 2001, p. 193)

Therefore, the third trend that has taken the dual legal nature of the United Nations Charter By referring to its preparation, drafting and signing of it through the San Francisco Conference, it find that The charter in form is prepared by treaties because the will of states played the decisive role, but in its content, it find that, like the constitutions of states, there are several provisions that clarify the extent of constitutionality.

III. 2. The legal norms outside the UN Charter.

The legitimacy of Security Council resolutions related to the maintenance of international peace and security is based on the extent of their agreement with some legal rules not included in the Charter of the United Nations, the latter being the rules of general international law that apply to states and international organizations, in addition to the rules that can be included in private legal documents.

The legitimacy of the institution derives from its compatibility with moral principles such as justice and democracy. (Lisa Maria, Jan Aart, & Jonas, 2019, p. 3) These legal rules are intended as general international law (صلاح الدين، 2007، صفحة 68), also known as public international law and law of nations, is the set of rules, norms, and standards generally accepted in relations between nations. It establishes normative guidelines and a common

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conceptual framework to guide states across a broad range of domains, including war, diplomacy, trade, and human rights. International law thus provides a means for states to practice more stable, consistent, and organized international relations. (Wikipedia, 2019) This is considered one of the most important sources of legitimacy, as its rules are distinguished by transcendence over the rules that govern international organizations because subject to the provisions of international law and is one of its personality. (محمد السعيد، 1973، صفحة 63)

To summarize that, the Security Council resolutions and the rules of public international law are necessary that may be contained in special legal documents find its legal basis in the Charter of the United Nations itself in addition to the International Court of Justice. Therefore, the treaties established for International Organizations, including the United Nations Charter, remain International Conventions governed by international law, but rather an integral part of it, so how the United Nations or one of its organs - in particular the Security Council - resulting from these agreements break the rules of law International.

International law contains a massive number of rules shaped by its sources, which the article 38 (The Statute of the International Court of Justice, Article 38) of the statute of the International Court of Justice refers to; it discusses some of them as restrictions on the Council Security when issuing its decisions related to maintain international peace and security through sources of international law. (صلاح الدين، 2007، صفحة 117)

On several occasions, the Court has recalled that the Court, being a Court of Justice, cannot, even in giving advisory opinion, depart from the essential rules guiding their activity as a Court to perform a judicial function, as has been noted; when the Court gives an advisory opinion, it exercises its judicial function and, being an organ of international law that body of law is the only one applicable. Article 38 fully applies in such a circumstance; this clearly shows that only international law as defined in Art. 38 apply (Andreas & Christan, 2006, pp. 694-695)

As explained above, the rules outside the Charter are the rules of international law. The term international law refers to public international law; this is different from private international law, which is part of domestic law, and foreign relations law, which is about the relation between a certain state and other states (slim, studeren, 2020). International law is a primary concern of the United Nations. The third preamble paragraph of the UN Charter states as a key goal of the organization "to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained", the Statute of the International Court of Justice is an integral part of the Charter, and the ICJ is a principal organ of the UN. (United Nations, 2020)

The Security Council has primary responsibility for the maintenance of international peace and security; some of its actions have international law implications, such as those that relate to peacekeeping missions, ad hoc tribunals, and sanctions (United Nations, 2020). Even though Article 38 is just a direction to the ICJ, it is seen as an authoritative statement on the sources of international law, in practice there is a hierarchy of procedure. First, the treaty is applied. By absence of a treaty, the custom is applied and if there is not a custom, general principles

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can be invoked. Judicial decisions and writings can determine the rules of international law, but they are not a source, nowadays, international law is more specialized and divided into different fields, called the ‘fragmentation of international law’, International law also relies on other, more dynamic sources, such as acts of international organizations and soft law (slim, studeren, 2020)

International Law also known as “Law of Nations” or “Public International Law”, is the name of a body of rules which regulate the conduct of sovereign states in their relations with one another, sources of Public International Law include treaties, international customs, general principles of law as recognized by civilized nations, the decisions of national and lower courts, and scholarly writings (Matignon, 2019). The sources of international law and the importance of the different sources change in response to the growing number of actors and subject matters. Art. 38 of the ICJ Statute is the starting point for the consideration of sources of contemporary international law (slim, studeren, 2020). The term “sources of Public International Law” is used to mean two things: first, the actual materials determining the rules applicable to a given international situation (the material sources), and second, the legal methods creating rules of general application (the formal sources) (Matignon, 2019). Contemporary international law includes those rules and norms that regulate the conduct of states and other entities which at any given time are recognized as possessing international personality (slim, studeren, 2020)

This Article 38 of the Statute of the International Court of Justice (ICJ) lists the traditional sources of Public International Law, the actual legal materials that the ICJ has to apply to international disputes. According to this Article 38, these sources are of two types: the primary sources that are represented by the international conventions, international custom and general principles of law; and the subsidiary sources that are represented by the decisions of courts and the opinions of legal scholars, moreover, the Article 38 lists (equity) as an alternative source of Public International Law applied by the Court if the parties agree thereto, however, in addition to these traditional sources, there are contemporary sources, such as the acts of the International Organizations (slim, studeren, 2020)

III. 2.1. The Peremptory Norms of General International Law (Jus Cogens):

It is widely accepted, that a category of peremptory norms exists in international law, termed jus cogens, the Vienna Convention denotes the essential of jus cogens (Allan KM, 2015, p. 18). A peremptory norm of general international law (jus cogens) is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character. (United Nations, 2019, pp. 141-150) Albeit, the precise legal content of this category of norms remains ambiguous, and as such, its effect in international law remains uncertain. (Allan KM, 2015, p. 18) Peremptory norms of general international law (jus cogens) reflect and protect fundamental values of the international community, are hierarchically superior to other rules of international law and are universally applicable. (United Nations, 2019, pp. 141-150) The International law commission has

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indicated that the prohibitions of aggression, genocide, slavery, racial discrimination, crimes against humanity and torture, and the right to self-determination constitute those norms which presently meet the criteria for jus cogens, other possible candidates include; the prohibition of the use of force, and the rules prohibiting trade in slaves and piracy.(Allan KM, 2015, p. 18) Bases for peremptory norms of general international law (jus cogens):(United Nations, 2019, pp. 141-150)

- Customary international law is the most common basis for peremptory norms of general international law (jus cogens).
- Treaty provisions and general principles of law may also serve as bases for peremptory norms of general international law (jus cogens).

Doctrine and practice in international law assert that conflicts between Charter obligations and norms of jus cogens result in the invalidity of those conflicting Charter obligations. Suffice to say, jus cogens operate as a concept superior to general international law, customary law and treaty law.(Allan KM, 2015, p. 18) The most important sources are 1- International Conventions (Treaties), 2- Customary Law:

III. 2.1.1. International Conventions (Treaties):

International conventions are generally referred to as treaties. Treaties are written agreements between States that are governed by international law; treaties are referred to by different names, including agreements, conventions, covenants, protocols and exchanges of notes. If States want to enter into a written agreement that is not intended to be a treaty, they often refer to it as a Memorandum of Understanding and provide that it is not governed by international law; treaties can be bilateral, multilateral, regional and global.(Robert, Beckman ; Dagmar, Butte, 2019, pp. 1-12)

During the early nineteenth century, recognition of jus cogens was established. Professor Oppenheim stated that there existed a number of "universally recognized principles" of international law that rendered any conflicting treaty void, and therefore, the peremptory effect of such principles was itself a "unanimously recognized customary rule of International Law", for example, he stated that a treaty supporting piracy is void for being contrary to the "universally recognized principles" of international law.(Hossain, 2005, p. 74). It may consider that jus cogens were introduced into international law by Arts. 53 and 64 of the Vienna Convention on the Law of Treaties of 23 May 1969 (VCLT), and subsequently repeated in the Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations of 26 January 1986 (VCLTIO).(Cezary, 2014, p. 28)

Furthermore, the Vienna Convention on the Law of Treaties has given the recognition of the norms of jus cogens in Article 53, where it states: "A treaty is void, if, at the time of its conclusion, it conflicts with a peremptory norm of general international law. For the purpose

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of the present convention, a peremptory norm of general international law is a norm accepted and recognized by the international community of states as a whole, as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.”(Hossain, 2005, pp. 75-76)

Article 64 of the same convention stipulates that: “If a new peremptory norm of general international law emerges, any existing treaty which is in conflict with that norm becomes void and terminates.”, according to article 53 of the Vienna Convention, peremptory norms have a number of legal consequences which are: (Ibrahim Sief, 2019, p. 184)

- Peremptory norms do not accept any exception even if it is unanimous;
- Any reservations to provisions relating to peremptory norms are inadmissible;
- Any unilateral act leading to breach or violation of a peremptory norm may not be taken.

III. 2.1.2. Customary Law:

Customary international law is one component of international law. Customary international law refers to international obligations arising from established international practices, as opposed to obligations arising from formal written conventions and treaties. Customary international law results from a general and consistent practice of states that they follow from a sense of legal obligation(Cornell Law School, 2004)

The International Court of Justice Statute defines customary international law in Article 38(1) (b) “international custom, as evidence of a general practice accepted as law;”(United Nations, 1945, p. 26)(ICJ, Art 3, 1(b)) this is generally determined through two factors: the general practice of states and what states have accepted as law.(United Nations, 1945, p. 21)

There are several kinds of customary international laws recognized by states. Some customary international laws rise to the level of jus cogens through acceptance by the international community as non-derivable rights, while other customary international law may simply be followed by a small group of states. States are typically bound by customary international law regardless of whether the states have codified these laws domestically or through treaties.(Wikipedia, 2018)

Albeit, the precise legal content of this category of norms remains ambiguous, and as such, its effect in international law remains uncertain, there is no single authoritative list of jus cogens, nor is there universal acceptance on the criteria for that list, Notwithstanding this uncertainty, the Council’s powers under Chapter VII of the Charter are limited by jus cogens. The constitutional element inherent in Article 103 of the Charter cannot in principle extend to jus cogens as peremptory norms(Allan KM, 2015, p. 18)

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The Security Council must issue its recommendations and decisions according to international law, for two reasons: First, the Charter is an international treaty and cannot contradict the rules of international law. Secondly, it cannot distinguish between achieving peace and law, because the Security Council often relies on some principles of international law as the basis for its work. The Security Council is obligated to respect the provisions of the Charter and the rules of international law, and therefore its decisions must be consistent with the provisions of the Charter and the rules of international law, so that these decisions are legitimate.

IV- Conclusion:

The legitimacy of Security Council resolutions require that to be in accordance with the Charter and Jus Cogens. In this regard, the Security Council is bound by a set of legal rules that form the legal framework of international legitimacy; these rules are represented in the texts of the United Nations Charter as a document Constitutional for this organization.

The charter limits the discretionary power of the council through its goals and principles. The discretionary power of the council is also limited by peremptory norms in international law, called jus cogens. As explained above, the Vienna Convention refers to the fundamentals of jus cogens as follows: peremptory norms of international law; Accepted and recognized by the international community as a whole; of which no derogation is permitted; Which can only be modified by a subsequent rule of international law of the same character.

Albeit, the Council has a duty to respect the essence of the purposes and principles of the Charter as a public policy, furthermore, the Council has a duty to abide by peremptory norms as jus cogens, and perhaps in terms of the category that is commonly referred to by the International Law Commission and the International Court of Justice. These restrictions on the Council's discretion are an integral part of its broad legitimacy.

Therefore, Security Council Resolutions should be issued in accordance with international law and applicable to states and international organizations. These rules or norms, along with the provisions of the Charter, constitute the legal basis for the resolutions issued by the Security Council in the maintenance of international peace and security.

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