



Basic elements and principles of the international violation, with an emphasis on the UN Security Council's proceedings

Younes Pourzangbar¹, Hatam Sadeghi Ziazi²

^{1,2}Department of Law, Najafabad Branch, Islamic Azad University, Najafabad, Iran

Abstract

This article examines the elements of international violations of the organization. Due to having a legal personality, the organizations have the right and responsibility. To have the responsibility, the existence of the legal international obligation, and detention of the act or violating this action and the documents must be proved to the organizations or governments. To do a wrongful act, it must be beyond the limits of the powers of the constitution or the limits of authority. However, to determine the legitimacy of a wrongful act, it is necessary to have the criteria, and without having a comprehensive definition of the wrongful act and identifying its elements, it will not be possible to prove the responsibility, since each institution and organization will know their act legitimate and following the established document. Therefore, this article assesses the concept of a wrongful act and examines it in the procedure and doctrine and tried to resolve the gaps in proving the wrongful act and responsibility.

Keywords: International organization; responsibility; wrongful act; legal personality

1. Introduction

Following article 3 of the draft text of the responsibility of international organizations, any internationally wrongful act will have the responsibility for the international organization^[1]. Therefore, to get responsibility, committing a wrong act is necessary. To make the state or organization responsible, the most important condition is a wrongful act or violation of the international obligations which is attributed to the subject of the act. In other words, there should not be a problem between the wrongful act and the offender. According to Aghou, the violation consists of two elements: the material element and the psychological element. The material element of the violation is the wrongful act, and the psychological element is knowledge of the offender from the violation. In article 4 of the draft text, the international responsibility of the organizations, and the elements of a wrongful international act are described. According to this article, the elements of the international violation of international organizations are the behavior of committing the act or omission of the act:

Firstly, it should relate to an international organization under international law and, secondly, it would lead to a violation of an international obligation by the international organization^[2]. It is noteworthy that the sentences and phrases of the two paragraphs in Articles 3 and 4 are similar to those in Articles 1 and 2 of the articles relating to the responsibility of states for the international wrongs, but instead of the government, the international organization has been written^[3]. In this regard, it should be stated that the main characteristic of responsibility depends on the fundamental factors: first, the existence of an

international decisive obligation between the two countries or international organizations, second, the act that violates this obligation and can be related to the government or organization^[4]. And finally, the loss or damage is the result of the actor violating the act^[5].

International organizations should be responsible for their obligations. The responsibility of organizations in committing the wrong, as well as the illegal execution of their obligations, is considered as the general principle of international law. Although the justification of this principle is different in international law treaties and that this principle is confirmed in several judicial decisions of the Permanent Court of Justice and the International Court of Justice; the Wimbledon case in interests of Germany's Celsius cases against Poland, the phosphate case in the Marcoudo case, Corfu Channel case and Compensation of the injuries to United Nations staff members during giving service, the interpretation of the peace treaties of Bulgaria, Hungary, and Romania. In addition to the judicial decisions, this case has been stated in a series of arbitration judgments. However, the transfer of international legal responsibility should be carried out following the characteristics of the organization's statute and the non-governmental organization's treatment of the organizations.

The eastern countries were doubtful about the recognition of the particular responsibility of international organizations, especially because they feared that some claims of jurisdiction would be verified by these organizations or they would encounter some unpleasant claims. That is why the Soviet Union protested against the compensation of the United States'

1 Article 3: 1. Every internationally wrongful act of international organization entails the international responsibility of the international organization.

2 There is an internationally wrongful act of an international organization when conduct consisting of an action or omission.' UN.Doc.A /58 /10 3 UN.Doc.A /58 /10p.46.

4 Helmi, Nosratollah, international responsibility and political support, Mizan Press, 2nd edition, 2011, Tehran, p:34

5 Shaw, MN. International law, Cambridge: University of Cambridge Press, Fifth Edition, 2003, p.696.

United Nations peace-keeping troops in Congo. It is well known that the United States of America objected to the United Nations' compensation to the detriment of the United Nations-sponsored peacekeeping troops in the Congo.

The General Secretary dismissed the objection and noted that the United Nations compensate the injured which would result in legal responsibility for the organization. Therefore, considering the legal entity of international organizations and their rights and obligations and the organization's responsibility in the judiciary and arbitration procedures on the international wrongs, it seems that to make the international organizations responsible, the necessary conditions must be present and the privative conditions must be absent. Rules in the legal order may be divided into two parts; the basic behavioral rules that relate to the determined do's and don't rules set out in the relevant legislation; the secondary rules that relate to guaranteeing the violation of basic rules. An international wrong of an international organization relates to the basic rules which make the international organization responsible for the secondary rules. In Article 3 of the draft law of the United Nations Commission on International Law, it is mentioned that the wrongs of an international organization will result in international responsibility for that organization. It is done when a treatment, whether committing an act or omission the act by the organization breaches international obligations (Article 4). However, the question is that what is meant by the international commitment of international organizations? It can be said that, as the International Court of Justice has stated in its advisory opinion on the interpretation of the March 25, 1951, agreement of the World Trade Organization and Egypt, the International organizations are to follow the obligations of the general rules of international law or commitments of the international treatments.

Therefore, to get the responsibility of international organizations, a wrong must be committed by the organizations. The measure of violation of the content of the initial commitment is mentioned in the international law of international organizations and this wrongful act can be attributed to the organization. About material or non-material damages or losses, it seems that damages are not an essential element for the fulfillment of the international responsibility of an organization. In many cases, a wrongful international act leads to material damage. However, we can say that an international commitment may be violated without material damage and the kind of damages depends on the content of the original commitment. It should be considered that to get the response, we do not need the excuses which relieve the wrongful act. For example, consent (Article 20), legitimate defense (Article 21), countermeasures (Article 32), Force majeure (Article 23), urgency (Article 24), Necessity (Article 25). Finally, after taking responsibility for the wrongful act, the implementation of the responsibility is considered as a guarantee of the main implementation. That is, if an organization commits a wrong, it should accept the legal effects of the wrong and compensate it. The compensation may have different forms. Firstly, it depends on the satisfaction and consistency of International organizations with the victim, including individuals, governments, and other organizations. However, when there is no agreement, a

method should be selected that can compensate for the damage in the best form. The International Law Commission in Section 3 explains the legal implications of violating the act of international organizations. This section covers three chapters that follow the general pattern of governments. The first chapter (Articles 28 to 33) includes general procedures and specifies the scope of the third chapter. The second chapter (Articles 34-40) clarifies the obligation to compensate for the losses and its different forms. The third section (Articles 41 - 42) deals with the double effects of violations, including the effects of violations of the obligations arising from the international conventions.

Violation of the obligation

The essential element of international responsibility offenders is included in the commission of the internationally wrongful act^[6]. As stated in paragraph 2 of Article 3 in the International Responsibility Law, the act of an international organization could be a violation of an international obligation and could be considered as a violation following international law. Any international organization, like the country, is responsible for international violations that can be attributed to the same organization^[7]. This principle is derived from the established rules of international responsibility. For example, the Security Council can, in practice, have international responsibility due to committing any act outside the Charter rules or violation against international public law^[8]. This principle derives from the legal personality of the United Nations as a function of international law having rights and commitments^[9].

Types of violations

An international organization's wrongful act can appear in the form of an act or a deviation from the act^[10]. The subject of the responsibility of organizations, in particular, the United Nations, can be taken in respect of actions outside the scope of control in cases the organization commits a wrong or when an unlawful decision is taken by the organization; for example, the failure of the Security Council to respond to its primary duty in maintaining the international peace and security, at least theoretically, can make the organization responsible. Of all types of wrong, we can mention the acting outside the authority and abuse the authority. Outside the authority, acts can be divided into two parts; acts outside the executive authority and acts outside the discretionary power^[11]. That is, if these acts are at the stage of approval in the organization, they will be acts outside the substantive authority, and if the

6 The main purpose of this definition consists of several acts or not doing the acts that together constitute an offensive act. It is expressed in the interpretations of this article and accepted at the 53rd session of the International Law Commission.

7 Ziaei Bighdeli, Mohammad Reza, (2006) General International Law, Tehran: Ghanj Danesh press, P: 482.

8 Permanent Court of Justice in the vote of the Korzov factory in 1928 stated: "This is an international principle and even a general legal concept so that violation of any obligation needs compensation."

9 Karl, Doehring. 'Unlawful resolutions of the Security Council and their legal consequence', (1997) 1 Max Planck Yearbook of United Nations 10 Zamani, Seyed Ghasem, 1392, The rights of international organizations, Tehran: Shahre Danesh press, 1st edition, p: 318

11 Oskie, E. 'The legal validity of Ultra- Vires decisions of International organizations', (1983) 77A JIL 239-243.

properly adopted decisions executed, then these acts are outside the executive authority. It should be noted that the most common violations of international organizations that could lead to the responsibility of organizations are acts beyond the control of the authority^[12], it was seen in the executive agencies of the United Nations, in particular, the United Nations Security Council.

Acts beyond the authority (vires ultra)

In the case of some United Nations costs, the International Court of Justice makes a distinction between the acts beyond the scope of the authority. So the court states that: If an action is taken by a wrongful institution, it is a matter within the scope of the internal structure, but this does not necessarily mean that the cost is not part of the organization's costs^[13]. Article 7, Statement on the matters of government responsibility in International Commission law provides that: The act of a state organ or a person or an institution who exercises the elements of state authority must be regarded as the practice of that State in international law, even if the acts of an organ, person, or an institution are in the domain of humanity, even if the organ has violated its authority or instructions^[14]. Today, the acts out of the authority of international organizations have been widely accepted so that the doctrine can be used about the other international organizations^[15]. In the case of some of the organization's costs, Judge Morelli argues that there may be some cases in which an organization's activities are considered beyond the authority untrustworthy and therefore completely invalid^[16]. The notion of "beyond the authority" is not defined concerning the actions of international organizations, but it can be defined as an action taken outside or beyond the legal authority^[17]. The result of this act is contributing. Lauterpach says that what is the legal impact of the illegal acts of international organizations? As has been seen, not only the governments but also the international organizations have not yet given an adequate answer. Even so, what is known as "traditional customary international law" is not fully developed and there is not a theory defining the effects of acts that violate these rights. Some people know it void, some say it can be annulled, some suggest a commitment to restoring the former state, while others only suggest the compensation^[18].

Concerning the out of authority acts, the International Court of Justice, in the case of the International Maritime Advisory Committee, said that the action taken by the organization in selecting the Marine Security Committee was an out of authority act. The International Court of Justice stated that the Maritime Security Committee of the International Maritime Advisory Organization, which was elected on January 15 in

12 Ueki, Toshiya, op.cit, p.238.

13 Certain Expenses of the United Nations, Advisory Opinion, ICJ Reports, 1962, p. 151.

14 UN.Doc.A/56/10.

15 Amerasinghe, C.F., principles of the institutional law of international organizations, Cambridge University Press, 1996, p. 167

16 The Separate opinion of judge Morelli, ICJ Reports, 1962, p.223.

17 Amerasinghe, C.F., op.cit, p. 166.

18 Lauterpacht, E., 'The legal effect of Illegal Acts of International Organisations', in Cambridge Essays in International Law, Essays in honour of Lord McNair. London Stevens and Son, 1965 .p 88

1959, was not following the organization's statute^[19]. As previously stated, the problem is that the presentation of theories in determining the consequences of the actions is out of the United Nations' authority and it refers to the lack of a mandatory judicial review system in an international organization. Judge Fitzmorris has stated:

But the important point is how the validity or invalidity of the decisions can be determined. The Court notes that the assembly is not required to consult the Court, and even if it is done, the court only issues a theory that is merely a deliberative one. Besides, there is no judicial authority that can do the mandatory referral and make an obligatory decision^[20].

Abuse of rights

The principle that prohibits the abuse of rights is considered as the general legal principle of civilized nations. Abuse of powers means the use of optional power for a purpose other than that intended^[21]. This definition differs from the definition of action beyond the scope of the authority. In actions outside the scope of the authority, the measures are imposed by the authorities, while in the case of abuse of powers, the measures are within the limits of the determined powers, but they are used for inappropriate or indirect purposes^[22]. In applying this principle to the decisions of the Security Council, it can be said that there are examples that could be used as an instance of power abuse, such as abuse of rights, abuse of the power to interpret, and abuse of the right to interfere in internal affairs. In domestic law, the meaning of "acting out of authority" is that the act performed without having any authority to do the action^[23]. Nonetheless, the authors of the British Administrative Law refer to action outside the authority^[24]. In the case of the British and Egyptian companies^[25], the House of Lords expanded the doctrine of out authority action^[26] so that the inappropriate implementation of it means an action out of the authority.

Violation of UN obligations

The Security Council is required to act following the provisions of the Charter and the Public International Law^[27]. Violating the obligations of the Security Council could have an international responsibility. When a United Nations or a

19 ICJ Reports, 1960, p. 171

20 ICJ Reports, 1962, p. 202.

21 Ueki, Toshiya, op.cit, p. 241.

22 Ibid

23 Amerasinghe, C.F., op.cit, p.163.

24 Ibid

25 In this case, the defense (advocator) was a British company whose property was in Egypt before 1956. The company properties were confiscated by the Egyptian government and sold it to an Egyptian company. The defender (advocator) forced the customers not to buy ore from Egyptian ore Company so that he made an agreement for a \$ 500,000 compensation from the Egyptian company with the United Arab Emirates. The Foreign Compensation Commission stated that they were solely responsible for investigating whether they had succession titles and that they were qualified.

In Anismic Ltd v foreign compensation commission ltd & another Qualified', Walsh, D., 'Judicial review, competence, and the rational basis theory', the student law Journal 2005, available at HTTP://studentlawjournal.com.

26 - Anismic Ltd v Foreign Compensation Commission [1969] 2 AC 147 2 Q B 862.

27 - Ueki, Toshiya, op.cit, p. 239.

third-party State is liable for damage sustained by a Security Council decision based on illicit outward proceedings, a third party will demand its financial and livestock damages through a lawsuit filed under the authority of the United Nations by itself or by the help of the members of the Security Council [28]. Any violation of the obligations under international conventions and customary international law raises the issue of responsibility [29]. In this sense,

Article 12 of the draft law on the responsibility of States says: violation of an international obligation by the government is done when a state, regardless of the principle or nature of the obligation, acts differently from what has been required. Considerable point is that whether the United Nations' responsibility is limited to committing or omission an illegal act based on the organization's reasoning or that the different types of wrongs should be considered [30]. An important question is whether the United Nations is responsible for any wrong, for example, any damage to the third parties in the military operation. However, the determination of such violent acts with some difficulties in practice is the subject of this article.

The manner and the source of the discrepancy in illegal decisions

Authorities determining the actions beyond the decisions of the Security Council

There are three probabilities in determining who should decide beyond the authorities:

1. The right of member states to assess the decisions of the Security Council or any element of an organization.
2. The possibilities of judicial decisions of the Security Council may be examined.
3. The General Assembly's right to challenge the decisions of the Security Council.

The right of Member States to assess the decisions of the Security Council

It can be argued in various cases that the Security Council has not complied with the Charter and international public law [31]. In such cases, it has been argued that the member states of the United Nations have the right to judge the legitimacy of the decisions of the Security Council [32]. Angelet [33] expresses that the right to object comes from this fact that the council has not been given the right to amend the Charter of the United Nations [34]. Nevertheless, there has been an argument against the right of member states to assess the decisions of the Security Council because of the discrepancy of this

assessment with Article 25 of the United Nations Charter [35]. This argument has a slight logical connection with the terms of Article 25 of the Charter; this article stipulates that the member states are bound by the decisions of the Council and interpreted following the Charter [36]. In the case of Libya, the Brazilian representative stated:

According to article 24, paragraph 2 of the Charter, the Security Council is required to fulfill its responsibilities following the purposes and principles of the United Nations. It also means that decisions taken by the Security Council, including decisions under Chapter VII, must be made in the light of their objectives. Meanwhile, it requires the observance of the principles of justice and international law.

On the right of the Member States to judge the decisions of the Security Council, it should be mentioned that irrespective of the terms of article 25, we should assume that the member states should have the right to authorize and judge the decisions of the Security Council. It is worth pointing out that the prevailing view is that the United Nations Charter can be modified in terms of custom or history [37]. If this is possible, the question is that what extent the member states have the right to accurate their interpretation based on the United Nations charter [38]?

Contingency or precautionary measures to protest against the decisions of the Security Council should be following the Charter. It means that the effectiveness of the Security Council should not be affected by such a protest [39]. It is worth noting that member states may express their refusal to the decisions of the Security Council, if they are not following the Charter of the United Nations, with or without formal notice. In this sense, the protest against the decisions of the Security Council is, in fact, twofold: firstly, it may be expressed as the right to express opinions, namely, the expression of dissatisfaction with the enactment of the law and attempts to correct the incorrect implementation of the law by the organization. Secondly, it is the type of outgoing protest [40].

By granting the right to the state members to judge the decisions of the United Nations, the Security Council has been highly legitimate and it will be possible to control the council's decision. However, it should be noted that the right of members to challenge the decisions of the Security Council is inconsistent with their mandatory nature and consequently contradicts Article 25 of the United Nations Charter [41]. Article 25 of the Charter says that the members of the United Nations agree to accept and implement the decisions of the

28 - Ibid. p.240.

29- Ibid. p.241.

30 - Klabbbers, J., An introduction to international institutional law, Cambridge University Press, 2002, P.311.

31 e.g. Security Council resolutions on Bosnia and Libya

32 Schweigman, D., The Authority of the Security Council under Chapter VII of the UN Charter: Legal limits and the role of the ICJ. Kluwer Law International, 2001, p.206

33 Angelet, N, op.cit, p. 282.

34 Angelet N., 'Protest against Security Council decisions', in Wellens, Karel (ed.), International law: Theory and practices, Essays in Honour of Eric Suy. 1998. pp 277.

35 Combacau, J., Le pouvoir de sanction de l'ONU: Etude The'orique de la coercition non militaire, Paris, Pedone, 1974, pp 259 -260., Quoted from Angelet, op.cit, p.278.

36 Angelet., op.cit, p .279.

37 Angelet N., 'Protest against Security Council decisions', in Wellens, Karel (ed.), International law: Theory and practices, Essays in Honour of Eric Suy. 1998. pp 277.

38 In answering this question, it is maintained that "from the outset it must be stated that the according to international law as it stands today, absent any treaty provisions that hold otherwise, states themselves determine the legality of their acts and those of another subject of international law". Schweigman, D, op.cit, p .207.

39 Ibid. pp. 205 - 207.

40 Angelet, op.cit, p. 280

41 Ibid.

Security Council following the Charter. According to this article, if the decisions of the Security Council are following the Charter, the members are required to follow these decisions. In other words, the Charter itself restricts the effects of the decisions made by the Security Council. However, the binding nature of the decisions of the Security Council does not mean that member states are required to follow future decisions made by the Security Council^[42].

In 1966, Portugal and South Africa disputed the legitimacy of Security Council resolutions on Southern Rhodesia and refusal to implement these resolutions. Portugal and South Africa wrote several letters to the Secretary-General in this regard; the Secretary-General did not clearly express the legal aspects of the Security Council's resolutions but replied that the Security Council had the right to interpret its resolutions^[43]. Another important example of the country's procedures in protesting against the decisions of the Security Council is perhaps the refusal of Iraq to participate in the UN Special Committee and its protest against the UN Security Council's executive procedures^[44].

The right of the General Assembly to challenge the decisions of the Security Council

The hierarchical relations between the General Assembly and the Security Council is not clear. In other words, we can say that the Charter has not put the Security Council as a subordinate of the General Assembly. Accordingly, political control of the decisions of the Security Council is not feasible, and basically, there is no such right^[45]. However, it has also been argued that the General Assembly is superior to the Security Council, and therefore the Security Council is in charge of the General Assembly^[46]. The General Assembly cannot review the decisions of the Security Council. Besides, the General Assembly has no basic right to challenge the Security Council's action and cannot take any action in the event of a difference unless the Security Council becomes unable in committing its obligations regarding the same dispute or situation.

Distinguishing the responsibilities between the Security Council and the General Assembly is inferred from the provisions of the Charter of the United Nations, in particular, those set out in Articles 10 to 14. Recently, following the Security Council's decision on building the Israeli's separation

wall in the Occupied Palestinian Territory^[47], the General Assembly endorsed resolutions of 14/10 December in 2003 and asked the International Court of Justice to issue an advisory opinion on the legitimacy of the construction of a wall by Israel in the Occupied Palestinian Territory. The subject was as follows:

What were the legal consequences of the construction of a wall by Israel with the occupying power in Palestine? Including West Jerusalem, as outlined in the Secretary-General's report, taking into account the rules and principles of international law, especially the Fourth Geneva Convention of 1949 and the resolutions of the General Assembly and the Security Council on this matter^[48]?

In the supervisory role of the Assembly, based on the final vote, the following results are achieved

1. The General Assembly can play a very important role in international peace and security by following the thoughts set out in the resolution on the Alliance for Peace. However, it has been argued that the adoption of 14/10 resolutions at the General Assembly is outside the discretion of the Assembly and is not following Article 12 of the Charter^[49]. Nevertheless, in the Advisory Opinion of 2004, the International Court of Justice stated that: recalling the tragedy of the events leading up to the adoption of the resolution (ES-10/14), the Court is currently will address the jurisdictional issues raised in this regard. Firstly, Israel claimed that, given the active role played by the Security Council concerning the situation in the Middle East, including the Palestine issue, by asking for an advisory opinion on the legal consequences of the construction of the wall in the Occupied Palestinian territory, the General Assembly has exceeded the authority given to the court based on the charter.
2. The court has already pointed out that the subject matter is the investigation for an advisory opinion within the competence of the General Assembly under the Charter. However, paragraph 1 of Article 12 of the Charter stipulates: "As long as the Security Council carries out its duty in respect of any dispute or situation attributed to it by the Charter, the General Assembly shall not make any proposal regarding that difference or situation unless the Security Council has demanded it". A petition for an advisory opinion is not in itself a "recommendation" to the general assembly "about a dispute or a situation." However, in the present case, it has been argued that the adoption of a resolution (ES-10/14) by the General Assembly violates its legislative powers to the extent that it is not following Article 12. Therefore, the court tries to assess the conceptual meaning of this article in light of the relevant rules and regulations of the United Nations.
3. According to Article 24 of the Charter, the Security Council has primary responsibility for maintaining

42 Bowett D.W, 'Judicial and political functions of the Security Council and the ICJ', in *Abi-Saab and others, Fox, Hazel (Ed) the changing constitution of the United Nations, the British Institute of International and Comparative, 1997, p.81.*

43 Gross, L., 'Voting in the Security Council: Abstention in the Post - 1967 amendment Phase and its impact on Article 25 of the Charter, (1968)26 AJIL 316-318.

44 S / AC. 2 6 / 1993 / None No. 14 and S / AC. 2 6 / 1993 / None No.17.

45 Ibid. p.126.

46 This view has taken from the most of the representatives of Third World countries as on 22 June 1993, the most of the debates on the plenary meeting of the General Assembly on the Annual Report of the Security Council was concerned on the method of work of the Security Council and the accountability of the Security Council. See A / 4 7 / PV. 106 p. 17-75. Cited in Eric Suy, 'the role of the United Nations General Assembly', In *Abi-Saab and others, Fox, Hazel (Ed). The changing constitution of the United Nations, the British Institute of International and Comparative, 1997.pp 68-69.*

47 As on 14 October 2003, the draft resolution that considering the Construction of the Wall departing from the Green Line was illegal and should be ceased was vetoed.

48 6A/RES/ES-10/14 adopted on 8 December 2003.

49 ICJ Reports, 2004, para.25. Available at www.Ici.Cij.org

international peace and security. Therefore, in this regard, the Security Council has the right to impose on states "a clear and explicit obligation to follow the orders that it can issue under Chapter VII", and to do this, it may prescribe enforcement measures. However, the court is aware of this fact that Article 24 refers to the main competence and not necessarily to the individual case. For example, the General Assembly has such a power under Article 14 of the Charter to "recommend measures for a peaceful settlement" in various conditions. The only restriction imposed by Article 14 to the General Assembly is Article 12; it says that the Assembly does not advise the Security Council while the council is working on the same issue^[50] unless the Security Council requests it^[51].

Consequently, the fact that the court may assess the legitimacy of the General Assembly's proceedings has been accepted by the General Assembly in Article 12. That is, the Court has taken this action by reviewing the General Assembly resolution.

50 Regarding the United Nations and the General Assembly, both initially interpreted and applied Article 12 as an obstacle to enable the Assembly to deal with a problem.

51 Recommendations related to the maintenance of international peace and security, which remain on the agenda of the Security Council. Therefore, during its fourth session, the Assembly rejected some specific measures regarding the Indonesian issue, as well as other reasons based on the fact that the Security Council addresses this issue (official documents of the Fourth General Assembly Meeting, specific political commission, analytical reports of the meetings, 27 September to December 7, 1949, 56th meeting, December 3, 1949, p. 361, para. 118). The Security Council repeatedly removed some points from the agenda to allow the General Assembly to act them. For example, on the question of Spain (Official Journal of the Security Council, 1st Year, No. 21, 79th Meeting, November 4, 1947, p. 498), some events on the Greek border (Official Journal of the Security Council, 2nd Year, No. 89, 202nd Meeting, September 15, 1947, p. 2404) and the island of Formosa in Taiwan ((Official Journal of the Security Council, No. 48, 506th Meeting, September 29, 1950). In the case of North Korea, the Security Council decided on January 31, 1951, to remove the issue from the list of issues that it had pending before so that the General Assembly could decide on it (Official Journal of the Security Council, 6th year (S / PV.531), 531st Session, January 31, 1951, pp. 11-12, para. 57). This interpretation of Article 12 has evolved since then. Therefore, the General Assembly considers that it is able to make recommendations on the Congo issue in 1961 (Resolution (XV) 1955 and Resolution 1600 (XVI) 1600, and on the Portuguese colonies in 1963 (resolution (XVIII) 1913). While these were still on the agenda of the Security Council and there were no new resolutions to be approved. In response to a question by Peru at the 23rd meeting of the General Assembly, the United Nations' Legal Adviser stressed that the Assembly interprets the sentences like "to carry out the full implementation of the duties" in Article 12 of the Charter as "complete the fulfillment of duties at this time" (23rd meeting of the General Assembly, 3rd Commission, 1637th session, (1637 A / C. 3 / SR. 1637), para. 9). Indeed, the Court refers to the existence of a growing tendency for consideration of the General Assembly and the Security Council to review in parallel the issues related to maintaining international peace and security. (for example, see the case of Cyprus, South Africa, Angola, South Rhodesia, and most recently Bosnia and Herzegovina and Somalia). It has often happened, while the Security Council has a tendency to focus on the international peace and security, the General Assembly is dealing with a wider view and focuses on humanitarian, social and economic aspects.

The possibility of reviewing the judicial decisions of the Security Council

Reviewing the concept of judicial review is of particular importance. Indeed, it will be useful to carefully examine what is called "the Acceptance of judicial review". Kaikobad defines the concept of the judicial procedure or judicial review as follows:

The authority of a court to examine a basic act of a government or legislative or official body with a review of whether the acts and approvals were following the constitution of the establishment or other sources of law and that the act was null and void and, therefore, declaring that the proposed action does not have any legal effect^[52].

Nevertheless, in the context of international law, many considerations are being evaluated when analyzing the similarity between the domestic legal system and the international legal system so that both have unique features^[53]. This is in fact due to a close and misleading similarity. However, judicial review in the international legal system could mean the authority of an international court to approve issues related to the international institution's activities and decisions in the light of various principles, which are essentially derived from the relevant documents of the international organizations^[54]. In line with the definition of judicial review and the words of the United Nations' core organs, the crucial issue is whether the court has the authority to review the Security Council's actions and, if so, which proceedings can be assessed and what the Court can do in revising the measures of the Security Council^[55].

Relations between the Security Council and the International Court of Justice

The International Court of Justice is the main organ of the United Nations^[56]. The Security Council is a major organ, too^[57]. However, there is no hierarchy between the Security Council and the International Court of Justice in the United Nations Charter^[58]. In this sense, there is no relationship between the Security Council and the International Court of Justice. On the relationship between the Security Council and the International Court of Justice, Rosenne noted: there is no superiority in terms of priority and hierarchy with others^[59], the International Court of Justice confirms that: the Council

52 Kaikobad, Kaiyan., The ICJ and Judicial Review : A study of the Court's Powers with respect to Judge ments of the ILO and UN Administrative Tribunals, Kluwer Law International, 2000,p. 11.

53 As the lawyer points out; any change of concepts from domestic law to international law should be done only with the concepts, principles, and institutions of international law(Kaikobad, Kaiyan, op.cit, p.27)

54 Ibid.

55 In this regard, "if the court has the authority to review the decisions of the Security Council, to what extent is this power applicable? What is the legal effect of the Court's decisions in this area, and what is the review criterion?"

56 Beighzadeh, Ebrahim (2010) The rights of international organizations,1st edition, Tehran: Majd press

57 Greenwood, C., 'The impact of decisions and resolutions of the Security Council on the ICJ', in Heere, Wyb P.,(ed), international law and the Hague's 75th Anniversary. The Hague: Kluwer Law International, 1999, p. 81

58 Ibid. p.82.

59 Rosenne, S., The world court what it is and how it works. Martinus Nijhoff Publishers, 1994, p.36.

has Political functions for which it is set, while the court has merely judicial functions. Therefore, both organs can individually perform their obligations in the same event ^[60].

Basic Principles for Judicial Review of Security Council Decisions

Whether the International Court of Justice has the power to review the decisions taken by the Security Council or not is an important issue. In other words, a major crisis can arise from accepting such an attitude ^[61]. On the first page of the charter and the Statute of the International Court of Justice, there is not any point related to a judicial review ^[62]. There are no clear rules for reviewing the judicial mechanism. There are two fundamental problems in the review of the Supreme Court: first, the lack of prediction in the Statute of the Court and the Charter of the United Nations, and second, the lack of prediction of a mechanism for monitoring the actions of the Security Council.

Therefore, it has been pointed out that, although no judicial review mechanism has been explicitly provided or no review mechanism is inferred from the principles of interpretation, the authority has been given to this organization to ensure that this discretion is subject to restrictions established by law so that the Security Council can approve the legitimacy of its actions following Chapter VII of the Charter ^[63]. In San Francisco, proposals for judicial review options and whether the International Court of Justice could render UN Security Council decisions were stated that were eventually rejected. An example is a Belgian amendment that was rejected ^[64] because judicial review could limit the freedom of the Security Council. The representative of the Soviet republic stated that the Belgian amendment should not be approved by the committee. He argued that the Security Council must have the full confidence of the members of the organization ^[65].

It seems that due to a lack of prediction of rights in the United Nations Charter and the Statute, the International Court of Justice has no right to revise. However, the silence in the United Nations statute does not mean a reversal of the Court's review of council decisions, arguing that the lack of explicit prediction is not its absence. What is important is that there is no explicit prohibition of judicial review ^[66]. Besides, the implicit power is considered as a legal basis for judicial review. However, the implied opinion and discretion cannot be applied in a judicial review. Skubiszewski continues that

due to the similarity of domestic law, such a discretion should be explicitly allowed for judicial review, and in the absence of such a provision, this implication cannot be implicitly deduced ^[67].

Weston argued that the term "main judicial organ" may implicitly include "a review of judicial power", especially if most governments agree and many jurisdictions have the authority to review the validity of other government bodies ^[68].

Besides, although the function of the International Court of Justice and the Security Council varies according to their responsibilities and composition ^[69], it should be noted that the goals mentioned in the Charter do not contradict judicial review. If the judicial review maintains security and peace, it may be necessary. A judicial review can at least increase the legitimacy of all decisions of the Security Council ^[70]. It is noteworthy that the Court has stated in many cases that it has no such review power. For example, in the Namibia case, the Court states as follows:

Although it is stated that direct petition is not related to the validity of a resolution of the General Assembly or the Security Council, this does not prevent the Court from proceeding. In other words, it is stated that the court is not entitled to examine the terms of the petition, as well as the validity of the resolutions. There is no doubt that the Court has no judicial review powers regarding the measures adopted by the United Nations organizations ^[71]. In the case of costs, the Court states that: In the legal system of governments, the procedures for determining the validity is a legislative and governmental action. But such a process is absent in the structure of the United Nations. During the process of drafting the charter, some proposals were sent to place the final authority for the interpretation of the charter in the hands of the International Court of Justice, which was not accepted, so as predicted in 1945, each organization must first determine their competence ^[72]. But according to the United Nations Charter and the Statute of the International Court of Justice, the Court can apply its opinion in two cases:

▪ *Advisory Opinion*

According to the first paragraph of Article 96, the Charter of the United Nations, the General Assembly, and the Security Council may request the advisory opinion from the International Court of Justice on any matter of law. The court has the right to review the legitimacy of the decisions of the Security Council in cases where the Court has jurisdiction under Article 36 of the Statute of the International Court of Justice, and where there is a request for an advisory opinion ^[73]. As a result, the subject of judicial review can be raised

60 ICJ Reports, 1984, p.435 para.96.

61 Cafilisch, L., 'Is the international Court entitled to review Security Council resolutions adopted under Chapter VII of the United Nations Charter?', in Naumi, Najeeb and others., *International Legal Issues Arising under the United Nations under the United Nations Decade of International Law*, Qatar Conference, 1995, p.655.

62 BOWETT, D., *op.cit.*, p. 73.

63 Cafilisch, L., *op.cit.*, p. 655.

64 The Belgian proposal states: Any member State presenting in the Security Council shall have the right to refer to the Permanent Court of Justice in order to know that whether the Security Council's decision has been in accordance with its law. If the court determines that the Security Council has violated its obligations, it can ask the Council to reassign or refer the matter to the Assembly for a decision on the dispute (Kelsen, H., *The Law of the United Nations: a critical analysis of its fundamental problems*, London Stevens & Sons Limited, 1951, p.446)

65 Kelsen, *op.cit.* 1, p.447.

66 Akande, D., *op.cit.*, p.326.

67 Skubiszewski, Krysztof, 'The ICJ and the Security Council', in Lowe, V., and Fitzmaurice, M., (Eds). *Fifty years of ICJ: Essays in honor of Sir Robert Jennings*, Grotius Publications: Cambridge University Press, 1996, p.623.

68 Watson, G R., 'Constitutionalism, Judicial Review, and the World Court', (1993) 34 *Harvard International Law Journal* 14.

69 Debbas, Vera Gowlland, 'The relationship between the ICJ and the Security Council in the light of the Lockerbie case', (1994) 88 *AJIL* 653.

70 Kande, D., *op.cit.*, p. 336.

71 ICJ Reports, 1971, p. 45.

72 ICJ Reports, 1962, p. 168.

73 Sarooshi, D., *The United Nations and the development of collective security*, Oxford University Press, 2000, p.49.

during an Advisory Opinion on any legal issue^[74]. This can be seen in the context of the International Court of Justice's processes in cases submitted by the Assembly or the Security Council. These include: Firstly, regarding the effect of the sentences issued by the United Nations Administrative Court, the General Assembly raises the legal issue as follows:

Considering the statute of the United Nations Administrative Court and other relevant records, can the General Assembly, for any reason, affect an injunction issued by the Court in favor of a member of the United Nations who has been dissolved without consent^[75]? Without considering the details of the case and the controversy, the court confirmed that the court could review the decisions of the United Nations' organizations.

Secondly, the other Advisory Opinion issued by the International Court of Justice in the case of some United Nations expenses in 1962. The General Assembly of the Advisory Opinion asked the court, whether some of the expenses of the Assembly could be considered as the expenses of the organization in terms of paragraph 2 of Article 17 of the Charter of the United Nations^[76]? The Court's terms of reference in the case of some United Nations expenses are expressed in "the possibility of judicial review", in which the Court states: The Court must be fully free to examine all relevant available information. It must be done in the form of a controversial proposal for Advisory Opinion^[77].

Besides, in the same case, the Court states that: It is requested to respond to a specific issue related to some of the expenses, but the Court can fully comply with its obligations by fully examining the issues raised by the forum^[78].

In this case, the court stated that it had the power to review whether the action taken by the General Assembly was valid, or not. It states as follows:

The goals of the United Nations are so broad, but neither these goals nor the powers delegated to them are infinite. These goals have been put into the organization to achieve common goals. The member states have limited their freedom of action, but when the organization does what it claims to be suitable for one of the purposes of the United Nations, it must also be appropriate for one of the stated purposes of the nations. It is assumed that such an action has not been outside the authorized scope^[79].

In 1970, the Security Council requested an Advisory Opinion from the court for the first time^[80]. The question of the Security Council was that what were the legal consequences and effects of presence in South Africa in Najia for governments? Regardless of Security Council Resolution 276 – 1970, the Court stated that it had no judicial review powers regarding the decisions taken by the United Nations organizations. However, at the same time, the court stated that it could review the actions of the United Nations organizations during its judicial tasks. The Court states:

The issue of credibility and compliance with the Charter of the

United Nations General Assembly resolution 2145 (21) or Security Council resolutions forms the subject of the request for Advisory Opinion. However, in the implementation of the obligations of the Court, and because of the protests in the Court, these objections and protests must be considered before coming to any legal result arising from these resolutions^[81].

Besides, in the case of Namena, the Court reviewed the validity of resolutions 264(1969), 296 (1969) and 276 (1970) and the resolution of the General Assembly (21) 2145 and stated: A resolution that has been correctly drawn up by an organization of the United Nations and following the rules of the organization's proceedings, it should be considered as a validly approved resolution^[82].

In this regard, the court also examines the legitimacy of the Security Council's actions, whether they are following the objectives and principles of the Charter. Therefore, when the Security Council adopts a decision under article 25 and following the Charter, which requires States members to do so, including United Nations members, they are not members of the Security Council^[83], it can be argued that the International Court of Justice mentioned its authorities on reviewing the actions of the United Nations political bodies^[84]. Therefore, we can say that the court could check the legitimacy or invalidity of decisions of the Security Council, where it the subject of an Advisory Opinion.

The unnecessary power of the Advisory Opinion would make the Security Council free to adopt the Court's judgment or not. In this sense, it should be stated that, based on the court, the council is free to accept or reject it. In other words, consultative processes, expressly stated in the Charter, do not affect the authority of the Security Council^[85]. It should be noted that the International Court of Justice emphasizes the non-binding nature of Advisory Opinion^[86]. In any case, the legal and moral effects of Advisory Opinion on or its value in interpreting and developing the role of political organizations in maintaining international peace and security and as important legal principles cannot be ignored^[87].

▪ *Contentious opinion*

In Lockerbie and Bosnia cases, the review of the Security

81 ICJ Reports, 1971, p.45.

82 ICJ Reports, 1971, p.22.

83 ICJ Reports, 1971, p. 54.

84 Schweigman, D., op.cit.p. 271

85 Caflisch, L., op.cit, p .455.

86 The Court stated that "the Court's reply is only of advisory characters such, it has no binding force", ICJ Reports, 1950, p.71.

Also, as the Court stated that "under Article XII of the Statute of the Administrative Tribunal, the Opinion thus requested will be "binding". Such effect of the Opinion goes beyond the scope attributed to the Charter and by the Statute of the Court to an Advisory Opinion', ICJ Reports, 1956, p. 84. However, Judge Castro in his individual opinion pointed out that "the effect of an Advisory Opinion is not confined to the parties as though it were a matter of judgment, the opinion is authoritative erga omnes, and is not restricted to the states or organisations that make written or oral statement or submit information or documents to the Court". ICJ Reports, 1975, p. 138.

87 Hudson maintained that "they are advisory, not legal advice in the ordinary sense, not views expressed by Counsel for the guidance of Client, but pronouncements as to the law applicable in given situations formulated "after deliberations by the Court". Hudson, M., 'The Effect of Advisory Opinions of the World Court', (1948) 42 AJIL 630.

74 Akande, D., op.cit, p. 3 27.

75 ICJ Reports, 1954, p.50.

76 ICJ Reports, 1962, p. 152.

77 ICJ Reports, 1962, p.157.

78 Ibid, p. 158.

79 Ibid, p.168.

80 Higgins, R., op.cit, p. 270.

Council's actions in criminal cases has been discussed ^[88]. Details of these cases are as follows:

Lockerbie case: In 1992, in an airplane crash at Lockerbie, a major issue was raised following the Charter of the Nations and in particular Chapter 7 of the United Nations Charter ^[89]. Besides, in this case, the Court essentially faced a new scenario ^[90]. Also, as Franck explains, perhaps the most important stated point by the court in Lockerbie's case was reviewing the legitimacy of a Security Council resolution ^[91]. By examining the introduction, the issue becomes clear. On 21 January 1992, the Security Council did following Chapter 6 of the Charter and adopted Resolution 731 (1992) to oblige Libya to arrest two Libyan citizens, both for terrorism in the United Kingdom and the United States ^[92]. In response to the Security Council resolution, Libya appealed to the International Court of Justice and called on the Court to rule on this matter ^[93]:

Libya has fulfilled all its obligations under the Montreal Convention

1. The United States has violated its obligations under Articles 5 (2), 5 (3), and 11 of the Montreal Convention and has continued its violations.
2. According to international obligation, the United States must immediately stop the violations and avoid using some and all forces or threats against Libya and also avoid all violations of sovereignty, territorial integrity, and political independence of Libya. However, Libya asked the court to do interim measures against the United States and Britain under article 41 of the Statute of the Court ^[94]. After three days, the Security Council passed resolution 748 (1992) as follows ^[95]:
 - **Acts Citing chapter 7 of the Charter**
 - 1. Based on the decisions on April 15, 1992, all the states should take measures as follows until the Security Council decides that the Libyan Government has implemented paragraphs 1 and 2.
 - 2. To call upon all States, including non-member States and

88 Franck, Thomas, 'The political and the judicial empires: must there be conflict over conflict-resolution?', in Naumi, Najeeb, et International Legal issues arising under the United Nations Decade of International law, 1995, p. 625 . Akande, op.cit p.331.

Cafilisch, L., op.cit, p.638. A new challenge has been raised in Lockerbie cases as it is maintained that "this would be the first review of the validity of a United Nations resolution in contentious proceedings". Debbas, V., 'the relationship between the ICJ and the Security Council in the light of the Lockerbie case', op.cit p .670.

89 Debbas, V., 'Security Council enforcement action and issues of state responsibility ', (1994) 43 ICLQ 55. Actually, judge Shahabuddeen underlined the constitutional crises raised by Lockerbie case by questioned the limits of the power of the Security Council in his separate opinion, ICJ Reports, 1992, p32.

90 Shaw, MN. 'The Security Council and the ICJ: Judicial Drift and Judicial Function', op.cit, p. 252.

91 Franck, Thomas. 'The political and the judicial empires: must there be conflict over conflict- resolution?' op.cit, p. 627.

92 Graefrath, Bernhard. 'Leave the Court what belongs to the Court the Libyan case', (1993) 4 EJIL 184-205. It is maintained that "there is no obligation on Libya under international law to Surrender her own nationals to foreign states" Graefrath, Bernhard, 'Leave the Court what belongs to the Court the Libyan case', p. 188.

93 Cafilisch, L., op.cit, p.641.

94 Cafilisch, L., op.cit, p.641

95 Resolution 748(1992).

all international organizations, to act strictly following the provisions of the present resolution, granted before 15 April.

Although, in its judgment of 14 April 1992, the Court determined with eleven votes against five votes, that the situation is not good to permit the exercise of the power under article 141 of the statute in temporary measures ^[96].

Following Libya's resolution 748, the Tribunal considers that resolution 748/1 is invalid, in so far as the Security Council has violated international law by abusing its powers and violating it and by its charter. The Security Council must abide by the 1971 Montreal Convention to eliminate illegal measures against passenger air traffic. Nevertheless, it continues that the Security Council, following Chapter VII of the Charter, has taken steps to resolve the legal differences that the Court considers. Several judges examined this issue: for example, Judge Lachs, in an independent theory in the Lockerbie case, stated:

According to Libya's resolution 748, the court must call the resolution 748/1 as invalid, so that the Security Council has violated international law by abusing its powers and violating it. The Security Council must follow the 1971 Montreal Convention to eliminate illegal measures against passenger air safety ^[97]. Nevertheless, it continues that the Security Council has taken steps following Chapter VII of the Charter to resolve the legal differences that the Court mentioned. Several judges examined this issue: for example, Judge Lachs, in an independent opinion in the Lockerbie case, stated:

While the Court has the task of enforcing international law as a universal right both within the internal and external spheres of the United Nations, as part of these rights, it is required to follow the decisions of the Security Council. That is, the court is bound to implement the decisions of the Security Council. At present, issues with concurrent jurisdiction are discussed between the Court and the United Nations General Assembly ^[98].

The Court refers to Articles 25 and 103 of the Charter of the United Nations, which states that all member states are required to accept and implement the decisions of the Security Council. That is, the obligations under the Charter precede other kinds of obligations. Therefore, following Article 103 of the Charter, the Security Council Resolution 748 (1992) precedes Montreal Convention ^[99]. Judge Oda highlights the priority of the UN Security Council's resolutions as United Nations rights as follows: I argue that the Security Council's decision, which has been properly made in its jurisdiction, cannot be re-examined, and that is why the Resolution 748 (1992) has been amended. The Court has no choice in this regard, but it confirms the priority of the resolution ^[100]. However, the referral of the Court to Article 103 in the Lockerbie case can remain ambiguous among the Charter's other obligations under the treaty. In this sense, what are the legally binding obligations under the Montreal Convention to

96 ICJ Reports, 1992, p.114.

97 Cafilisch, L., op.cit, p. 641.

98 ICJ Reports, 1992, p138.

99 ICJ Reports, 1992, p. 15.

100 101 ICJ Reports, 1992, p. 17.

Libya that has been violated by the Security Council resolution? Is there a commitment to initiate a ceremony against the defendants if the government is unwilling to repay it? ^[101]

a. *Genocide case*

In resolution 713 (1991), the Security Council imposed an army sanction on the former Yugoslavia. On March 20, 1993, Bosnia passed some procedures against the Federal Republic of Yugoslavia and called on the Court to declare that Security Council resolution 713 should be interpreted in a way that respects the inherent rights of individuals or the legitimate defense of Bosnia ^[102]. Besides, it was asked from the court to give the right to the Bosnian government to examine and receive support from other countries to defend itself and its people following current conditions¹⁰³. It includes the acquisition of military weapons, equipment, and supplies. In other words, the court was asked to interpret the Security Council's resolution essentially and conceptually. However, the court did not address this request and declared that this request was outside the Geneva Convention, so basically, the court did not have jurisdiction ^[104]. However, both the Bosnian and Lockerbie cases are examples of judicial review, but the court has not addressed this issue.

b. *Congo and Uganda Cases*

The issues of reviewing the power of the International Court of Justice and the compliance of Security Council resolutions with international law have been raised in temporary cases, like in the Congo and Uganda cases ^[105]. In this case, Uganda has argued that the Congo's request for temporary action is inconsistent with the resolutions of the Security Council and the Lusaka Agreement ^[106]. The legitimacy of the Security Council resolutions on Congo, including resolution 1304 (2000), did not explicitly dispute the request of Congo. However, the Court considered that the Security Council Resolution 1304 (2000) was approved following Chapter VII, but at the same time, this resolution does not prevent any action following its constitution and the rules of the Court in respect of those events ^[107]. Therefore, the Court finds that in the present case the Security Council has not decided to impede the rights conceived by the Congo to do an appropriate measure ^[108]. It can be concluded that the court, in

the Congo case against Uganda, emphasizes the same powers of the Security Council and the Supreme Court, where a review by the International Court of Justice could be raised.

Reviewing the Illegal Activities and Interpretative Views

The Security Council does not say that the measures taken by the Council are contrary to international law, but the lack of legitimacy can be interpreted as an issue. The interpretation of the Charter of the United Nations and the verification of measures are very relevant issues ^[109]. The Security Council is one of the main organs of the United Nations created by a treaty. Silence on the subject of the interpretation and behavior to be done in both the United Nations Charter and the Statute of the International Court of Justice has led to different approaches to this issue. Famous lawyers believe that the charter must be interpreted fully dynamically. For example, Shaw believes that:

The specific nature of the documents was not only forming multilateral treaties but also forming basic documents provided that it was expressed in procedures. Therefore, the interpretation of both documents and the member states and others are concerning the procedure. This is necessary for offering a flexible and purpose-oriented interpretation ^[110].

In support of a dynamic and rational interpretation, the International Court of Justice states: The court cannot accept what is limiting the powers of the Security Council under the Charter. It cannot be said that the charter has ignored the Security Council's inability in dealing with the necessity of a treaty, not following Article 43 ^[111].

Besides, the International Court of Justice refers to the implicit powers of the Security Council and the General Assembly refers to it in various cases. In the case of compensation to United Nations staff in the performance of their obligations, the Court points out:

The charter cannot explicitly give the organization the right to express the damage to the victim. In its claim for compensation following international law, it must be assumed that the organization has such powers, although it is not explicitly stated in the charter. It can only be used to execute the obligations ^[112]. In this regard, Debbas states that the goals of the charter are not fixed and should be transformed due to changes in the public international law from 1945. An international document can be interpreted within the framework of the prevailing legal system of the time. Considering the concepts contained in the treaty, they are evolved inherently, and that the intention of the contract sides must be taken into account in such a case ^[113]. Also, in reviewing the effect of sentences of compensation by the United Nations Administrative Court and establishing a competent court to issue binding rulings to the United Nations, the legal department of General Assembly says: The Court recognizes that the Court must establish a tribunal for the administration of justice between the organization and its staff to ensure the affairs of the secretariat, and it is fully

101 Graefrath, Bernhard. 'Leave the Court what belongs to the Court the Libyan case', op.cit 91, p. 198. Also, see Dissenting Opinion of Judge Bedjaoui, ICJ Reports, 1992, 47.

102 Case Concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Prov. Measures), ICJ Reports, 1993. Para 2, p.6.

103 ICJ Reports, 1993, para 3, p. 8.

104 Schweigman, D.op.cit, p. 281. Debbas, V., The relationship between the ICJ and the Security Council in the light of the Lockerbie case, op.cit, p.668.

105 On 23 June 1999, the Democratic Republic of the Congo instituted proceedings against the Republic of Uganda in respect of a dispute concerning "acts of armed aggression perpetrated by Uganda on the territory" of the Democratic Republic of the Congo, in flagrant violation of the United Nations Charter and of the Charter of the Organization of African Unity"; Democratic Republic of the Congo v. Uganda Case Concerning Armed Activities on the Territory of the Congo- Request for the Indication of the Provisional Measures. ICJ Reports. Order of 1 July 2000, para. 1.

106 Ibid. para 30.

107 Ibid, para .36.

108 Summary of ICJ Reports, Order of 1 July 2000, paras. 32- 46.

109 Bedjaoui, M., op.cit, p.9.

110 Shaw, MN. International Law, op.cit, p. 1194.

111 - ICJ Reports, 1962, p. 167.

112 ICJ Reports, 1949, p.182.

113 Debbas, V. 'The relationship between the ICJ and the Security Council in the light of the Lockerbie case' op.cit, p.665.

effective in the verification and guarantee of highly effective and competent standards. The ability to do so is due to the necessity of the intention and purpose of the charter. Therefore, the Court has a strong desire to interpret the provisions of the Charter broadly. Increasing the authority of the United Nations organizations instead of a desire to recognize is invalid and is deduced from the necessity of the intention of the charter^[114].

Judicial review Scope

As previously stated, the judicial review appears in advisory and adversarial trials. However, the very important and complex issues surround the judicial review debate that is still ambiguous. For example, what's the review^[115]? We examined the determination authority of the Security Council following article 39 of the United Nations Charter on assessing the threat to peace and rape^[116]. However, it has been argued that the authority of the Security Council under Article 39 can be a valid reason for the review. In other words, the authority of the Security Council under Article 39 is not unlimited. As a result, such a decision should be re-examined in a thought room^[117]. In this sense, in the case of Namibia, Judge Gros advocated the idea expresses. Expressing that an issue in the maintenance of peace can have a reverse answer is not enough for the Security Council to invoke in a global government^[118]. Besides, Judge Gerald Fitzmaurice has stated in the case of Namibia: lack of threat to peace and security is different from what is made as an excuse to achieve the next objectives^[119]. However, this argument has a different legal point so that it makes the possibility of judicial review of decisions taken by the Security Council in Article 39 of the United Nations Charter an exception. This decision is considered as a political issue, as long as it made other restrictions for judicial action^[120]. In this regard, Bowert continues:

It is a mistake to allow the Court to review the council's judgment because it has the seventh rank, either the threat to peace, the violation of peace, or the act of rape has occurred or not. Equally, the council recognition to choose instruments concerning this situation, for example, whether temporary measures following article 40 or economic sanctions under article 41, or measures to maintain peace are not subject to a

114 ICJ Reports, 1954, p. 57.

115 It is worth mentioning that Bowett has suggested the potential grounds for review: 1- Grounds to be excluded such as a. differences of political judgment, b. evidence of bias. C. procedural irregularities. 2. Grounds to be included as valid grounds of challenge a. ultra vires, b. denial of a right to a hearing .c. the decision is manifestly defective. Bowett, D.W. op.cit 3 9, pp 83- 84.

116 Kelsen H., op.cit 1, p.736.

117 Akande, D., op.cit, p. 337.

118 ICJ Reports, 1971, p. 340 para 34.

119 ICJ Reports, 1971, pp. 293- 294.

120 The examples that could be quoted from Bowett are "where the Council decides under Article 39 that the Chapter VII applies, and in addition decides that State is guilty of aggression, or must pay Compensation, the later finding based on the assessment of the facts. So, too, where the Council decides that Member States must apply economic sanctions against State X because of its violation of the right of self-determination. The obligation to apply sanctions arises because of the delict by state X, and A finding of delict is not a purely political decision: it is a finding of fact and law". Bowett, D., op.cit, pp. 84 -85. Also, Northern Cameroons case, ICJ Reports, 1963, p.29.

judicial challenge^[121]. Akande has made many reasons for the failure to review the decision of the Security Council under Article 39 of the United Nations Charter, stating that such a decision is not appropriate by the judicial authority. That is why there are no legal standards for such decisions^[122], he continues:

Therefore, such issues are inappropriate for the International Court of Justice, not because of the inherent limitations of the international judicial function, but because these are not international law matters that the ICC implements Article 38 of the Statute and legal response is required for issues^[123].

It means that the nature of the Security Council's action is political, but the nature of the Court is judicial. Besides, the judge Weeramantry, in contradiction with Lockerbie's case, states:

When we are in the context of Chapter 7, the subject becomes different. Therefore, any issue under the authority of the Security Council decision following Chapter VII is valid^[124].

To summarize the above-mentioned points, we can say that if there has been any peace threats, peace violation, or acts of rape, following Article 39, the decisions must be made by the Security Council. Nevertheless, the political nature of such a decision leads to a complex issue and delineates the boundaries between political and legal issues, and as a result, it leads to some confusion in considering that Security Council resolutions cannot be reviewed and re-examined. Based on the evaluation of Article 39, it harms the search for a judicial perspective. In other words, although there is no clear definition of a threat, violation of peace, or an act of rape, the Security Council selectively decides in any case, following Article 39, and the Supreme Court should not assess this decision. Besides, the aim of preventing the re-review is saving time in the decisions of the Security Council.

The results of illegal acts and the opinion of the court

The overwhelming difficulty of revising the validity of the Security Council's resolutions is finding out the illegal structure and the Court finds that the Security Council resolution is beyond its control. Therefore, it is argued that if the effect of such a decision in a Council resolution can cancel^[125] or revoke it^[126]? By looking at the legal effect of the decision made by the Court, it shows the non-binding power of the advisory opinion of the Court because the advisory opinion not binding, and therefore any decision is limited to the case parties. Because the advisory opinion is not binding, and because of this, any decision is limited to the parties to the case, and agreeing with the Supreme Court's opinion can be selective. Moreover, the lack of use of advisory opinion plays an important role in determining the legal effect. In this sense, Akande continues: Any decision in an advisory opinion in the Council's resolution that is beyond the scope of authority is

121 Ibid. p. 84.

122 Akande, D., op.cit, p.338.

123 Ibid

124 ICJ Reports, 1992, p. 176.

125 Schweigman, D: Null, and void means that decision is without legal effects from the date it was issued", op.cit, p. 283.

126 Voidable means that "avoidable act is an act that produces all its effect in spite of the defects by which it is vitiated . . ." quoted in Schweigman, D., op.cit, p.283.

not binding for the relevant organizations or the government^[127]. The Court has shown that it can decide on the validity of the Security Council resolutions, although it is done through judicial work^[128]. However, can the Court deal with the Security Council? It is stated that undoubtedly the International Court of Justice will not be willing to cross the red line of the Security Council but is it possible to evade the complex cases^[129]? It seems that the Court considers that it does not have the power to revise the concept of definitive canceling of the decisions made by the political organizations of the United Nations^[130].

The International Court of Justice argued that the Security Council resolution violates international public law. However, it cannot argue that the Security Council's action is invalid because the court is in full relationship with the Security Council. Also, the court cannot declare that the Security Council's decision is invalid^[131]. In this regard, Bejavi further points out that the court is aware of all the limitations in this regard^[132].

The prevailing forms of the judicial review process are included in the advisory opinion. These elements are provided under Article 65 of the Statute of the Court and Article 95 of the Charter of the United Nations and are not political^[133]. Nevertheless, these elements provide an opportunity to examine political topics. As noted, the Court, in its operational view, cannot officially deny the Security Council's actions in both advisory and Adversarial processes^[134].

Conclusions

The rational result of any breach of obligation will be the international responsibility of the organization. Exercise outside the scope of the discretion and the abuse of rights are the types of violations that will make the organizations responsible. Nonetheless, in order to prove this, the organization's actions, for example, of the Security Council, should be subject to judicial review. As discussed in this article, fundamental and practical problems can be raised. The first and most important problem I have discussed is the inability to re-examine the Security Council decision under Article 39 of the United Nations Charter which could limit severely undermine the scope of judicial review. The question is whether there is a court that has the power to review the Security Council's actions. From an internal point of view, it is clear that there is no jurisdiction for domestic courts to express such a responsibility, as they are reluctant to do so. Nevertheless, regardless of the fact that the Supreme Court is not an excellent court and it has not a constitution, if the difference on the legitimacy of the Security Council's decision is expressed, the scope limits of the review of decisions of the

Security Council remain limited. Nonetheless, the primary role of advisory opinions is known as credible legal statements about the legitimacy of the organizations. And Judge Bostanite states: An Advisory Opinion is the implementation of a judicial process; a voluntary approach that expresses the advantages of the decision made by the organization to state the legal deficiencies posed by member states. Therefore, according to the International Law, it is very difficult to prove the responsibility of organizations despite the approval of the plan, because on the one hand, there is not an institution to examine the actions of organizations, and on the other hand, organizations have immunity in the domestic courts and are not subject to prosecution.

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