

The ambiguity of UN Security Council resolutions



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Abstract:

The decision is what was decided by the referee on the question. It is said that "it has come to its decision", which is "finished and fixed" and is met in French by "Décision", a term that is widely used in domestic law and has been defined by the jurisprudence of internal administrative law and its jurisprudence as "the administration's declaration of its binding will to create or modify a legal center"¹. The mandatory character is the most important characteristic of distinguishing it from the rest of the other unilateral acts.

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Introduction:

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In general international law, while there is concern for the conduct of the Convention, unilateral acts have not taken the required time of study³. It has always been a tool for research in other institutions and has never been the object of a

¹ - See in this regard:- René Chapus, *droit Administratif Général*, Montchrestien, 8 ed., 1994, p. 348.- Dr. Mohamed Anas Qassem Jafar, the mediator in administrative law, Mervili Brothers Press, 1984, Cairo, p. 247.

² - See in this regard:- René Chapus, *droit Administratif Général*, Montchrestien, 8 ed., 1994, p. 348.- Dr. Mohamed Anas Qassem Jafar, the mediator in administrative law, Mervili Brothers Press, 1984, Cairo, p. 247.

³ - Professor Jacques J. expressed this phenomenon by saying : "(In international law) the theory of the act is summed up in a theory of international conventions followed by a nod to unilateral acts". See Jacques J. "The legal act: reflections of an internationalist", Law 1988, pp. 95 and ss.

specialized study. It is usually mentioned in the research on sources of public international law that it is focused on international organizations or those aimed at briefing international conventions. This situation did not create a fertile ground for the emergence of the term "decision" to use it in its legal sense only rarely. As it is clear from some of the writings that resorted to the existence of two types of definition of this term, the first formality and the second material¹.

On the basis of a formal definition, the term "decision" shall be invoked in respect of every unilateral act or act of a particular international structure after each deliberation in which the voting process takes place, thus becoming the set of legal means used by such structures for the performance of their functions. And actions for the same purpose². It is the same meaning that can be derived from some international agreements established for some international organizations of a global or regional nature.

The Charter of the League of Nations and the United Nations were used to reflect on the activity it had established³, and the founding treaties of some international organizations of a regional nature, such as the League of Arab States, the Organization of African Unity and others, did not detract from this trend⁴.

¹ - This distinction between the formal definition and the physical definition of the term "decision" by Professor Michel Virally in his book:

«L'organisation mondiale», Librairie Armand Colin, paris, 1er éd. 1922, p. 161.

- Professor Constantin Economidés expressed this meaning by saying: "Generally speaking, the decisions of international organizations can be seen as nothing more than mere legal means by which they implement the powers and duties conferred on them to accomplish their mission in the world. international legal order. "See Virally Michel, International Institutional Acts and Sources of International Law", A.F.D.I., 1988, p. 131.

- In the same sense, see: Ebiere Osieke, the legal validity of ultra vires decisions of international organizations, A.J.I.L., January vol. 77, No. 2, pp. 239-256.

- Dr. Mohammed Al-Saeed Al-Dakkak, General Theory of International Organizations Resolutions, Knowledge Establishment, First Edition, 1973, Alexandria, p. 388.

Al-Azhar Bououni, "The Decision System of the League of Arab States", Intervention made in the Forum on the Amendment of the Charter of the League of Arab States, Tunis, 15-16 April 1980, Center for Studies, Research and Publishing, Tunisia. 1, 1982, p. 157.

- Sadiq Shaaban, Law of International Organizations, Center for Studies, Research and Publishing, Tunis 1985, p. 174.

- Dr. Mustafa Ahmed Fouad, The General Theory of International Actions of the Single Will, Knowledge Establishment, i. 1, 1984, p. 90.

- André Gros, the problem of the judicial recourse against the decisions of international organizations, in the technique and the principles of the public right, studies in the honor of Georges Scelle, pp. 269-274.

² - Professor Constantin Economidés expressed this meaning by saying:

³ - See Article 5 of the Charter of the League of Nations and Articles 18 in the General Assembly, 27, 41, 44 and 48 for the Security Council, 67 for the Economic and Social Council and 89 for the Trusteeship Council of the Charter of the United Nations.

⁴ - See Articles 5 and 7 of the Charter of the League of Arab States, and Article 10 of the Charter of the Organization of African Unity signed on 25 May 1963.

Based on these facts, there is no difference between the actions and actions of these organizations between those of a mandatory nature and those that have no legal effect ¹.

If we proceed from the material or substantive definition, the term "decision" applies only to a particular international structure or acts after considering the origin of a particular problem before it, in order to modify some legal status². This definition assumes that there are two conditions in these actions or actions to rise to the degree of "decision". First, its subject matter should be a decisiveness to research a particular issue, which is expressed by considering the original. This condition enables us to exclude some temporary or similar measures from this area³.

Second, it must have the ability to produce legal effects that are directly and legally⁴ capable of entering the circle of international legal acts or actions.⁵

¹ - Even more so, proponents of this definition, when they speak of binding actions or actions, refer to them as "binding or compulsory decisions", which is not legally valid because the decision is inherently mandatory. See:- Constantin Economidés, op. cit., p. 133.

² - Professor Michel Virally expressed this by saying: "But one can also make the decision in a stronger and more substantial sense and consider that the name deserves only the resolutions on the substance of the question being dealt with and initiating an action that may actually alter the factual situation at hand. origin of the debate, see MV op. cit., p. 1

³ - "In order to prevent further aggravation of the situation pursuant to Article 40 of the Charter or of the International Court of Justice to preserve the right of each of the parties pursuant to article 41 of the Charter of the United Nations, Its statute.

⁴ - Professor Quock Dinh, Alain Pellet et Patrick Daillier, expressed this by saying : "In a technical sense, the decision is a unilateral" authoritarian "act, that is to say, an act emanating from a manifestation of the organization's will (...), which creates obligations for its of its recipients. It is a legal act. See, their collective work: "Public International Law", L.G.D.J., 5th ed., 1994? Paris, p. 358.

-- In the same sense, see: * Raymond Ranjeva and Charles Cadoux, Public International Law, EDICEF, 1st ed., 1992, Paris, p. 69. * Jan Kolsa, International Law Studies in honor of Judge Manfred Lachs. Martinus Nijhoff, 1st ed., 1964 THE Hague? Poland, p. 499. * Hubert Therry, resolutions of international bodies in the jurisprudence of the C.I.J., R.C.A.D.I, 1980-II, p. 432.

⁵ - Jean Paul Jacqué has defined the legal disposition of international law as follows: "The legal act may ... be defined as a manifestation of will, attributable to one or more subjects of International Law and intended to create a norm to which International Law relates to the creation of rights and obligations". See his thesis: "Elements for a theory of the legal act in D.I.", L.G.D.J., 1st ed. 1976? Paris? p. 181.- see also, Louis Delbez, the general principles of the D.I.P., L.G.D.J. 3rd ed., 1964, Paris, p. 53.- Paul Reuter, D.I.P., P.U.F., 6th ed., 1985, Paris, p. 91.

The term "decision" has been used in this sense in Articles 4, paragraphs 2¹ and 25² of the Charter of the United Nations and Articles 100-S.4, 103-A.2, 104-X-11 and the Maastricht Treaty on European Unity³.

It should be noted, however, that some of these provisions remain ambiguous, thus creating a serious doctrinal controversy. For example, in the interpretation of Article 25 of the Charter of the United Nations, while the jurisprudence unanimously agreed that the Security Council should have the power to decide⁴, the framework of the decisions of this organ established its authority to take binding actions that remained controversial, where the visions differed and the evidence differed.

The fact that the Charter was not drafted on a standard separated by the decisions of the Council from its other unilateral acts⁵ led to different interpretations of this article. On the basis of the attempts made in this field, we can extract two different directions, the former adopted a broad interpretation, and the second considered a narrow interpretation⁶.

On the basis of the broad definition, it is considered part of the jurisprudence that the Council has a general report authority in all its terms of reference⁷. Accordingly,

¹ - Article 4, paragraph 4, of the Charter of the United Nations states: "The admission of any State (...) to the membership of the United Nations shall be effected by a decision of the General Assembly on the recommendation of the Security Council." When the question of the interpretation of this article was brought before the Court, the International Court of Justice recognized the binding nature of the actions of the General Assembly in this area. See "Collection of Provisions, Views and Orders" issued in 1950, p. 8.

² - Article 25 of the Charter provides that "Members of the United Nations undertake to accept and implement the decisions of the Security Council in accordance with this Charter". The International Court of Justice (ICJ) has confirmed that the Council has a solid reporting authority in its advisory opinion on the legal status of South West Africa.

³ - European Unity replaced the European Economic Community (EEC) on February 7, 1992 under the Treaty of Maastricht, in addition to the term "decision", which contains other terms such as "Directives" and "regulations".

⁴ - See in this regard:

- Virally Michel, op. cit. , p. 186.

- Christian Tomuschat, "Institutional adaptation of the NU to the NOM, intervention at the symposium, organized by the Faculty of Legal, Political and Social Sciences of Tunis, on" New Aspects of the DI, "from 14, 15 and 16 April 1994, under the direction of R. Ben Achour and Slim Laghmani, A. Pedone, 1st ed., 1994, Paris, p. 163.

⁵ - Something that has been overtaken by the League of Nations as decisions are made only acts of the Council or Assembly unanimously. In the League of Arab States, Article 7 of its charter stipulates that "the unanimous decision of the Council shall be binding on all States participating in the University and shall be determined by a majority binding on those who accept it." It should also be pointed out that the General Assembly's demand that the Secretary-General draw a line between what is binding and what has failed has been unsuccessful. See Jan Kolsa, op. Cit., P. 496.

⁶ - This distinction between broad interpretation and narrow interpretation, Professor Erik Suy, raised his comment on Article 25 of the Charter. See, commentary on article 25 Ch. N.U., the US, article by article commentary, edited by Jean Pierre Cot and Alain Pellet, Economica, 2nd ed., 1990, Paris, p. 476.

⁷ - As confirmed by the International Court of Justice in its advisory opinion on the legal status of South West Africa on 21/6/1971, "Article 25 is not limited to decisions concerning coercive measures (of Chapter VII) but applies to" decisions of the C.S. "adopted in accordance with the

the term - in its material meaning - applies to everything that is issued by this body of unilateral acts in order to perform its functions stipulated in the chapters VI, VII, VIII and XII To a chapter without another, as each of these behaviors contains part of the nature of the report¹.

To substantiate this view, many rationales and indicators have been adopted, which can be summarized as follows:

First, Article 24 of the Charter did not specify the Special Powers of the Council in Chapter VII but also in Chapters VI, VIII and XII².

Secondly, article 25 came directly behind article 24 on the functions and powers of the Council and did not come into the heart of Chapter VII, but the draft Belgian delegation to that idea was rejected.

Third, Article 25 did not stipulate that members undertake to accept the decisions of the Council and implement them in accordance with Chapter VII, but according to the Charter, but the draft Belgian delegation to this amendment was also rejected³.

Fourth, The subject of Articles 48 and 49 of the Charter to implement the decisions of the Council within the terms of reference provided for in Chapter VII, denies the validity of any idea relating to the provisions of Article 25 on this chapter⁴.

Fifth, Skip to the power of the report of the limits of Chapter VII, Chapter VI Chapter of the investigation conducted by the Council pursuant to Article 34 is mandatory⁵.

Charter". See collection of resolutions for 1971 p. 50, para. 113. In the same sense, see the commentary of Professor Erik Suy on Article 25 published in the previous author of the two professors. 475. Pellet et J.P. Cot

¹ - This argument was defended by the British adviser Hartley Shawcross on the occasion of the case of Corfu Detroit, the subject of dispute between his government and Albania, stressing that: "The recommendation actually involves a decision since the board decides to make a recommendation," cited by Philippe Munin, the US. and the maintenance of peace: respect for the consent of the State L.G.D.J. 1st ed., 1971, Paris, p. 14.

² - Article 24, paragraph 2, contains: "(...) The special powers vested in the Security Council to enable it to perform these duties are set out in chapters XII-VIII-VII-VI.

³ - See Preparatory work for the United Nations Charter, UNCIO, vol. 11, p. 398-400

⁴ - Article 48, paragraph 2, of the Charter states that "Members of the United Nations shall implement the advanced decisions (relating to the maintenance of international peace and security) directly and through the work of the specialized agencies to which they are members." Article 49 adds that "Members of the United Nations shall Mutual assistance for the implementation of the measures decided by the Security Council "Based on these provisions, the ICJ stated in its above-mentioned advisory opinion that: "If the article referred only to the decisions of the SC relating to coercive measures taken under Articles 41 and 42 of the Charter, in other words, if only those decisions had binding effect, Article 25 would be superfluous because that effect Articles 48 and 49 of the Charter."

⁵ - Article 34 of the Charter reads as follows: "The Security Council may examine any dispute or any situation that may lead to international friction or may provoke a conflict in order to determine whether the continuation of such a conflict or situation would endanger the maintenance of international peace and security." This justification was presented by Professor Philippe Manin, op. Cit. 55 and Goordrich et Humbro, according to the former Philippe Manin, p. 49, who emphasized that : "Article 25 applies to decisions of the Council, so it is necessary to

The other part of the jurisprudence, which adopted the narrow interpretation, considered that the talk of "authoritative authority" is valid only under Chapter VII of the Charter, and therefore the term of the decision of the claimant to implement it applies only to what may be issued by this device from unilateral actions under this chapter Just ¹. As for the documents of this position, which were negative in that they were the criticism of the reasons for the broad interpretation, they can be summarized as follows:

First, to say that Article 24 of the Charter did not specify the special powers of the Council in Chapter VII, but also in chapters VI, VIII and XII, is not conclusive evidence of the validity of the broad interpretation. The term "authority" is not used in this article in its proper legal meaning, since it does not benefit "the enjoyment of the right to reparation of a person to perform a particular thing" ², but rather its use in the sense of function and jurisdiction.

Second, the statement that Article 25 of the Charter did not stipulate that members undertake to accept the decisions of the Council and implement them in accordance with Chapter VII, but according to the Charter, does not deny the allocation of this chapter to the reporting authority. Even in this latter case, implementation in accordance with the Charter must be done with respect to the principles and purposes of the Organization.

Third: The consideration of articles 48 and 49 is merely a return to the provisions of Article 25, the return of its owners. While this article outlines the general legitimacy of the Council's reporting authority, the subject of the latter two articles is quite different, as it relates to the manner in which Member States should follow the implementation of decisions taken in Chapter VII³.

seek - throughout the Charter and including outside Chapter VII - what are the articles which give a power of decision to the Council".

¹ - This view was defended by:

- Michel Virally, the unilateral acts of international organizations, in, D.I.: Bilan et Perspectives, volume I, Mohamed Bedjaoui, general editor, A. Pedone, 1st ed. 1991, Paris, p. 254.
- Judge Fitzmaurice in his independent opinion on the case of the legal status of South West Africa, op. Cit., P. 92, para. 112.
- Gerard Cohan Jonathan, commentary on art. 39 Ch. N.U. in A. Pellet and J.P. Cot, op. cit., p. 662.

It should be noted that some jurists who defended this view confined Chapter VII to only enforceable decisions and considered that all other unilateral acts of the Security Council elsewhere were of a binding nature, but lacked the operational character or enforceability of mandatory. Secretary-General of the United Nations, saying: "The resolutions of the C.S. are binding only if they are based on chapter VII of the charter (...) (the others) are mandatory, but they lack support to make them enforceable." See World Quarter 1992-II, p. 9.

Look in the same sense:

- Mohamed Bedjaoui, "For a N.O.E.I. UNESCO, 1979, p. 88.
- Muhammad Mohafouz, Gulf War An Examination of International Legitimacy, "Publishing and Distribution of Institutions A. Karim Ben Abdallah, First Edition 1991, p.

² - - Larousse Grand Format - 1995 "power is" an authority of law or de facto, of holding on qqn, on qqch "that is to say, the command.

³ - Professor J.P. Jacqué in this sense include: "Article 25 is a general rule, Articles 48 and 49 determine the manner of application of this general rule in the case of decisions relating to the maintenance of peace". See ibid., P. 400.

Fourthly, reliance on the rejection of the Belgian delegation's draft is insufficient as a justification for broad diffusion. Referring to the consultations of Dumbarton Oaks, it is clear that the purpose of article 25 was to take note of the question of acceptance and implementation of Council resolutions and not of the Council ¹.

Fifthly, the investigative nature of the investigation provided for in Chapter 34 of the Charter does not give the Council general authority under Chapter VI.

This investigation is inseparable from that of the Council under the preceding chapter. It can take stock of the dispute or situation and ascertain the existence of certain facts that cause a situation in article 39 so that it may then decide on the necessary measures. It is therefore different from the investigation provided for in article 33, paragraph 1, as a means of proper settlement ².

Sixthly, the idea of general reporting authority is not consistent with the general principles governing international organizations where the sovereignty of States remains the norm ³.

Seventh, The Council's work proves this, and this body often threatens the measures of Chapter VII, which is confirmed by its distinctive character.

Despite the gravity of its documents and its compatibility with the characteristics of international organizations, the only criticism that can be drawn to this narrow interpretation is that it does not take into consideration the two options given to it by the Security Council in Article 39 ⁴, so that it may take unilateral actions in the form of recommendations or decisions.

Thus, we can maintain this narrow interpretation, taking into account the distinction between the Council's decisions under Chapter VII of the recommendations and resolutions. Accordingly, the definition we will adopt for the term "decisions" in the context of this research is the following: "The set of unilateral acts or solutions of the reporting nature of the Security Council adopted by Chapter VII".

This definition raises a number of questions related mainly to the criterion of differentiation in the Council, which is the crux of this chapter between what

¹ - In this sense, the authors of Coordrich, Hambro, Simon wrote: « The Dumbarton Oaks draft of this prevision prompted questions at the san Francisco conference as to whether this phrase was intended to define the manner in which membres were to accept and carryout decisions or the manner in which the security concil was to make decisions. The texte was there for redrafted to make it clear that members where obligated to carry out only those decisions of the council that were legally mandatory". See this view in the author J.P. Jacqu , p. 401.

² - See in this sense:

- Tabrizi Ben Salah: "The international investigation in the conflict resolution", L.G.DJ. 1st ed., 1976, Paris? p. 269.

³ - He defended this idea J.P. Jacqu  in his previous reference, p. 403 : "In the framework of international organizations, the sovereignty of states remains the rule and the decision-making power of organizations, the exception".

⁴ - Article 39 of the Charter states: "The Security Council shall decide whether a threat to or breach of the peace has occurred or an act of aggression has been committed and shall make its recommendations or decide on the measures to be taken in accordance with the provisions of articles 41 and 42 of peace-keeping And international security or reinstatement. "

decisions and what recommendations ¹ , especially since we will study a process limited to decisions only. That this issue is not purely theoretical but has been observed and raised many times in practice, the question was asked, when can talk about the decisions of the Security Council? What are the indications that a unilateral act taken by the Security Council in Chapter VII constitutes a "decision"?

To answer this question, several indicators that can be adopted to sort out the decision are presented, which can be summarized as follows:

First, the terms used by the Council ² . If the Council addressed its clients in the language of reparation and the order, using certain acts, such as deciding on an exige, ordering ordonne or the like, the unilateral act concerned constitutes a decision.

However, if recourse is made to other acts of choice such as invite, exhorte etc., it is a recommendation ³ .

Second: The circumstances of the deliberations that led to such action and how to vote for it ⁴ . It serves as preparatory work in the minutes of the meetings which help to elicit the Council's intention and will to make a decision or recommendation. However, it should be noted that this indicator is difficult to obtain due to the difficulty of obtaining such deliberations because they are not available to the required extent, which leads us to rely on the first indicator, taking into account some cases where the action concerned is an addition or application of an earlier decision ⁵ .

Section I: Incompatibility of Security Council Resolutions:

¹ - It should be noted that the failure to mention the legal basis for the Council's actions led to a problem with knowing the chapters concerned with this activity. Today, however, the Council's frequent return to the provisions of the Charter, especially Chapter VII, has occurred beyond this problem to be replaced by another this time to differentiate between the decision and the recommendation of the crucifixion of Chapter VII.

² - The International Court of Justice has expressed this view in its above-mentioned advisory opinion on the issue of the legal status of South Africa in paragraph 114 by saying: "The wording of a resolution of the SC must be carefully analyzed before it can be concluded that it is binding (...) it must be determined in each case whether these (decision-making) powers have in fact been exercised, taking into account the terms of the the resolution to be interpreted (...) " . See also Yann Kerbrat, op. Cit., 55.

³ - It should be noted that the Council sometimes resorted to some acts that are subject to controversy about its purpose, and asked for the effects of a difference between countries, while some considered the benefit of algebra, many countries clung to the nature of choice. The Council's use of "authorized action in recent years would reduce the seriousness of this indicator." For further information on this issue, see J.A. Salmon, op. Cit., P.99.

⁴ - The ICJ adopted this indicator in the context of its above-mentioned advisory opinion, emphasizing that the binding nature of the Council's actions must also be derived from "... the debates that preceded its adoption ...". See in the same sense Professor Hans Kelsen, op. Cit., P. 740 writes: "The question whether the resolution constitutes a binding act ... or a mere recommendation, depends on the intention of the council, and especially the consequences that it intends to draw from the failure of the state to respect the said resolution".

⁵ - The Council usually takes two separate actions relating to a single subject. If the first is a decision, the second will take the same judgment, especially if it is confirmation or implementation of the first.

Since the adopted definition of decisions is "a set of acts or solutions of a reporting nature adopted by the Council within the framework of its terms of reference set forth in Chapter VII of the Charter", each study shall be carried out only after taking into account the activity of this body in this chapter.

The activity of the Council shall take place in the presence of certain situations or disputes between two or more States, which shall be brought before it and demand intervention to denounce illegal acts. When the research is accepted, regardless of what it can do under Chapter VI, it is required to follow some of the steps outlined in Chapter VII gradually. The activity of the Council shall take place in the presence of certain situations or disputes¹ between two or more States, which shall be brought before it and demand intervention to denounce illegal acts. When the research is accepted, regardless of what it can do under Chapter VI², it is required to follow some of the steps outlined in Chapter VII gradually.

The first step of the Council is to take care of the facts before it and to search for its response to the data contained in Chapter VII, and the extent to which they fall under its banner. In accordance with Article 39 of the Charter, it may decide whether it constitutes a threat to the peace, a breach of it or an act of aggression³, using its broad discretion⁴. That such work reminds us of what a judge usually does, when he is presented with a particular dispute.

The application of a particular legal rule would be obliged to indicate whether the facts of the case represented a case governed by the legal provision adopted, which is known in jurisprudence as "the legal description or modification of the facts"⁵.

¹ - To define the "situation" provided for in Articles 34, 35, 36 and 40 of the Charter, and the disputes (différends) provided for in Articles 33 to 38 of the Charter, Professor Michel Virally wrote: "The distinction between disputes and situations is not always easy to make. There is a dispute when States have articulated mutually exclusive claims or when one State has rejected the claims of another. All other cases of international tensions can be considered as situations. Michel Virally, the world organization, Coll. U. Armand Colin, Paris, 1972, See p. 429.

² - Chapter VI of the Charter, entitled "Peaceful resolution of disputes", extends from chapter 33 to chapter 38, in which the Security Council attempts to assist States in reaching a peaceful solution to disputes that may arise between them. This chapter will be studied redundantly in subsequent pages of this work.

³ - Article 39 of the Charter states: The Security Council shall decide whether a threat to or breach of the peace has occurred if an act of aggression has taken place. "

⁴ - "Discretionary authority" is a legal institution that is widely used in the general branches of internal law, especially the administrative law, that "the legislator leaves the administration with a certain amount of freedom in issuing its decisions, so that it has the freedom to decide whether or not it is in the public interest." "Restricted authority" means that "the legislator shall determine to the administration the way in which it makes its decisions and the conditions of its intervention, and leaves no room for appreciation." See d. Mohammed Anas Kassem Jaafar, "The Mediator in Administrative Law 1985, p. The discretion of the Security Council was based on the absence of a specific legal definition of Article 3 of the Charter, namely that the Council was not obliged to follow the description that might be contained in the claims before it or the acts of other structures such as the General Assembly. See: Gérard Cohe, Jonathan, Commentary on Article 39 of the Charter, in A. Pellet and J.P.Cot., N. Ch., Article by article commentary ed. Eocnomica, Paris, 1990, p. 651.

⁵ - Dictionnaire Basdevant has defined the legal description of the facts as: "Intellectual operation of classifying a fact, an action, an institution, a specific legal relationship in order to apply to it the legal regime corresponding to this category. For example, the characterization of a fact as a wrongful act, a crime as a common law crime or a political crime, a rule of law as a rule of form or a substantive rule ". V. Terminology Dictionary of D.I. Sirey, 1st ed. 1960, p. 493.- Hisham Taleb: Control of the judge exceeded the discretionary authority of the Department: a note to obtain the certificate of studies in depth, Tunisia 1995, p. 387 "The process of legal adaptation of the factual causes of administrative work for the administrative authority is to assess the factual situation in view of the legal reason that the determination by management of whether a particular incident arose from its origin legitimizes a decision or whether it falls within this or that category "He said.

They are relatively different from the manifest error of appreciation. That is: "an error made by the administration, in the exercise of its discretionary power, raised by the applicant and which is flagrant in such a way that there is no doubt."¹

In order not to describe this analogy with exaggeration or exaggeration, it should be noted that the difference between the judge and the Security Council is not discussed.

However, while they are structural and functional, they do not include the outcome of their work, which remains the same as the provision of a judgment on a particular situation. The judge shall submit a judicial judgment indicating the violation of the law, drawing the required punishment. The Security Council shall make a political judgment² clarifying the situation that may characterize the facts of the dispute or the situation before it.

This approach between the two works is sufficient to justify the designation of the Council's activity at this stage as "a description or a legal adaptation of the facts", a track of the findings of some jurists.³

After the completion of this process and the impact of the recognition of a situation provided for in Article 39 of the Charter, the Council shall move to another stage no less important than the first, and if it is a close result. This is the stage in which the Council is called upon to seek solutions to overcome the crisis resulting from the existence of one of the aforementioned cases.

In order to reach this objective, the Council shall choose one of the two paths governed by Article 39 of the Charter⁴. Or to take a decision to apply the measures provided for in articles 41 and 42 of the Charter⁵, and perhaps this latter option is of interest to us because of the fact that, In line with the definition adopted from the outset for the term "decisions". It is therefore legitimate to call this phase of the Council's activity a "step-by-step" phase or, more precisely, a phase of "measures taken by the Council".

In comparison with the above, it can be said that the study of the inconsistency of Security Council resolutions will be evident in the two phases described above. This problem is clearly manifested at the level of the process of adaptation or legal description of the facts and then at the level of measures taken to maintain and

¹ -Imededdine Achour, manifestly significant error in disciplinary matters, DEA thesis, Tunis 1995, 9.

² - Professor Gerard Cohe Jaonthan expressed this idea by saying: "If the findings made by the C.S. are sometimes equated with a judgment, it is a political judgment that is". See *ibid.*, P. 654. However, the political nature of the content of this provision does not deny that the relevant legal printer is fundamentally grounded in the application of certain legal provisions of the Charter.

³ - Among the jurists who raised this idea can be mentioned Professor Gerard Cohen Jonathan, *op. Cit.*, P. 649, and Professor Michel Virally, *op. Cit.*, P. 453

⁴ - Article 39 of the Charter provides, in the last half, that: "... the Council shall make its recommendations or decide on measures to be taken in accordance with articles 41 and 42 to promote and restore international peace and security."

⁵ - Article 41 of the Charter states: "The Security Council may decide what measures should be taken that do not require the use of the armed forces ... and may include the suspension of economic, rail, sea, air, postal, telegraphic, radio and other means of transport, Or wholly and sever diplomatic relations. " Article 42 adds that "if the Security Council considers that the measures provided for in article 14 are inadequate or have not been fulfilled, it may take the necessary measures to maintain or restore international peace and security. These acts are demonstrations, blockade and other operations by air, sea or land forces of the Members of the United Nations.

restore peace and security. However, in this study, the focus will be only on the first level, in the hope of allocating a second level research in another field.

Chapter I- Incompatibility of the legal adaptation of the facts:

The "process of legal description or adaptation", as defined in advance, is only based on existing and correct facts. Validation of their existence is an inevitable step in the way of describing or adapting it legally in order to determine whether it meets the requirements of a legal norm that can not apply to something that does not exist ¹. Accordingly, the Security Council is called upon to establish the existence of certain facts when considering the application of the provisions of Article 39 of the Charter². No threat to the peace, breach or act of aggression may be determined without the knowledge of the facts on the ground, The facts may be considered as one of these cases. The proof of these facts enables us to overcome some of the false allegations that often occur when one party insists that it is not true.³

Every decision taken on the basis of facts that do not exist or are incorrect is flawed by the so-called error in the existence of facts and their validity or error in the facts⁴, which would cause another flaw known as error in the legal description of the facts⁵. Thus we may consider illegitimacy in this area to be the mistakes that may be made either in the process of proving the existence of the facts that will be adopted or in the process of legal description of them.

However, the close links between the task of legal description of the facts and the rest of the activities followed and the importance of this process in the function of the Council, as well as the illegality that the Council may have on the Council's respect for the most important principles underlying its mission, oblige us not to neglect what may be The results of which are not insignificant due to their close connection to the subject of research and the idea of legitimacy. If the results of illegality at the level of legal description of the facts in domestic law are the errors that may occur in the measures taken in order to implement the decision on the

¹ - Professor R. Chapus wrote on page 720 of the previous reference in this regard that: "It is not enough for the principle of legality to be satisfied, that the facts for which a decision has been taken are of a nature to justify it legally. It is still necessary that the reality of these facts be established.

² - Professor Geard Cocha Jonathan expressed this idea by saying: "(The Security Council) must (...) establish what actually happened (...). He is invited to establish the existence of the facts and proceed to their qualification. See previous reference, p. 660.

It is also possible to conclude the need to prove the facts that constitute the starting point of the legal description process mentioned in Article 34 of the Charter, which is caused by the existence of such matters, which was expressed by Professor Tabrizi bin Saleh, saying: "(...) the investigation of Article 34 can be defined as a prerogative of the SC consisting in the implementation of all means necessary for the establishment of the facts in the exercise of its competences for the maintenance of international peace and security." -See, Commentary on Article 34 CH.N.U. in A. Pellet and J.P. Cot., op. cit., p.580.

³ - To this end, the Charter has enabled the Security Council to "examine a dispute or position that may lead to international friction or may provoke a dispute in order to determine whether the continuation of such a conflict or situation would jeopardize the maintenance of international peace and security" (Article 34) The possibility of holding its meetings outside the headquarters of the Organization (Article 28, paragraph 3 of the Charter) falls within the same purpose.

⁴ - See Professor René Chapus, op. Cit., P. 720 - 721.

⁵ - See Prof. R. Chapus, op. s. 717 - 720.

problem of illegality¹, the results to be raised in this The field goes beyond this and undermines some of the core principles of the Charter.

It can be said that the attempt to show the inconsistency of the description or the legal adaptation of the error presupposes a clear indication of its cases (**section 1**) before presenting its results (**section II**).

Section I - cases of non-conformity of the legal adaptation of the facts:

We have explained that the process of legal description or adaptation of the facts is divided into two phases or two categories, the Council is in the first to collect and confirm the information and examine the validity of the claim of existence, whether using the mechanisms enabled by the Charter² or the use of what may be initiated by some external parties³. The Second is concerned with examining the applicability of the provisions of Article 39 of the Charter to the information and facts that have been revealed, since it is concerned with answering the question as to the validity of such incidents as a threat to or breach of the peace or an act of aggression.

As noted in the advanced pages of this work, the first phase is called the research on "the existence and validity of facts" and the second is known as the legal adaptation. Accordingly, it may be argued that an attempt to study cases of inconsistency or legal adjustment of facts requires that the error that occurred in the existence or validity of the facts be examined (**A**). Before dealing with the same error in the description or the legal adaptation to it (**B**).

A- Factual Error:

The factual error is the case in which the facts adopted for a particular decision are incorrect or suspect in their material existence. Which is different from the error resulting from the non-conformity of the contents of the decision with the facts, as the problem is related to the disproportionate measures taken with what happened, the encouragement is simple and the mitigation of what is fatal⁴.

The error that concerns us in this context is linked to the facts on which the Security Council was based to arrive at a legal description or adjustment⁵. We shall therefore merely examine the error in the facts adopted by this organ in order to determine a case of Article 39 of the Charter. I have raised this matter more than once in the

¹ - See Prof. R. Chapus, *ibid*.

² - Such as the investigative mechanism provided for in Article 34 of the Charter, as well as information that the Secretariat may provide.

³ - For example, some States may provide information in accordance with the provisions of Article 35 of the Charter.

⁴ - The issue of "incompatibility of the contents of the decision with the facts" is usually raised in administrative law, specifically in the articles of public service and administrative control, and relates to the problem of estimating punishment for error, ie, the obvious and obvious incompatibility between the fault and the punishment. See in this regard Mr. Ayad Ben Ashour: *Administrative Law, C.E.R.P., C.N.U.D.S.T.*, 1st ed. 1982, pp. 576-581. The Security Council will be exposed to this issue when we examine the second level mentioned above concerning illegality at the level of measures taken to maintain international peace and security.

⁵ - It is true that there are many cases in which the Council relied on facts that are questionable in order to tighten the sanctions against Iraq, for example. As was the case with the facts of resolution No. 674 on the issue of hostages and third-country nationals in Iraq and Kuwait, but this does not fall within our concerns because it is not related to the process of legal description of the facts.

context of the minutes of the Council's sessions, which we are aware of¹, which preceded the issuance of some resolutions related to the Gulf II crisis and the Lockerbie incident and the attempt to choose Egyptian President Hosni Mubarak in Addis Ababa on 26 June 1995.

Accordingly, the error in the facts in some decisions related to the Gulf crisis **(1)** will be presented in order to conclude in the other two cases because of the fact that they are closely related. **(2)**.

1 - Wrong facts in the decisions of the Gulf crisis II:

The Council resorted to Article 39 of this crisis almost four times, on the occasion of the issuance of resolutions 660, 667, 688 and 949. In resolution 660, the Council decided that Iraq's invasion of Kuwait was a breach of international peace and security². In resolution 667, decided to defame the Iraqi authorities³. In its resolution 688, he considered that the suppression of the Kurds and their flight towards the borders of neighboring States posed a threat to international peace and security in the region⁴. In resolution 949, it was stated that the military maneuvers declared by Iraq in the vicinity of Its borders with Kuwait represent a threat to international peace and security in the region.⁵

While the validity of the facts adopted for the adoption of the first two resolutions has not been discussed, it is often assumed that resolutions 688 and 949 have been based on questionable facts, so that the facts that led to the adoption of resolutions 688 **(a)** and 949 **(b)** will only be highlighted.

a. The error in the facts of resolution 688:

The error in the facts adopted in this resolution can be seen by reference to the minutes of the Council's preceding sessions. It is clear from some interventions that while the gathering of many Kurds on the borders bordering Iraq is a matter of observation and discussion, this displacement was not the result of the repression of the Iraqi authorities by the Kurds, The US administration wanted to stir up confusion among the Iraqi people and incite it to undermine the ruling regime, using media blackout mechanisms to defame the problem it had created to intensify the support of world public opinion. The purpose was to maintain the continued presence of allied forces in Iraq and to give them the opportunity to progress in their soil more than ever before. The sources of information adopted outside the framework of the United Nations, therefore, were not used by the Council to investigate Article 34 of the Charter⁶, which was also absent in resolution 949.

¹ - It is noteworthy that we have not been able to access all these records due to their scarcity in Tunisia. We have been able to obtain the minutes of some decisions related to the Gulf crisis only, while the other cases we have relied on some studies related to them to extract some of the deliberations in the previous decisions By.

² - See preambular paragraph 2 of resolution 660 of 2 August 1990.

³ - See paragraph 1 of resolution 667 of 16 September 1990.

⁴ - See preambular paragraph 3 of resolution 688 of 5 April 1991.

⁵ - See preambular paragraph 4 of resolution 949 of 15 October 1994.

⁶ - A Council could have established the existence of such facts using the powers conferred by the absence of Article 34 of the Charter, which affirmed that "the Security Council may examine any dispute or position which may lead to international friction that may provoke a dispute in order to determine whether such continuation Conflict or situation would jeopardize the maintenance of international peace and security".

The point is made that the question of the need to rely on the information provided by the United Nations organs is a matter of the hour, which has been demanded by some States on the occasion of the debate on the question

b. The error in the facts of resolution 949:

The fact that the direct event for the issuance of this resolution was not the direct declaration by Iraq of military maneuvers on a shrine from the Kuwaiti border¹, but rather the threat that Iraq had in the past to its neighbors with the use of military force against them², The events of the past have become a ride that can be resorted to at any moment intended to abuse this country.

What happened in the past is not desirable to be a reason to issue such a decision for at least two reasons:

First, it is not lawful to punish a legal person twice for one act, and as we know, Iraq has been penalized in the past for using military force against its neighbors or threatening them³. Secondly, it is supposed to rely on immediate facts and even if it is based on facts that occurred in the past must have simultaneous effects with the date of the issuance of the decision on them, which is not available in the case⁴. This question is related to the announcement of Iraq's intention to postpone military maneuvers not observed Any effect in fact and what Iraq has done has nothing to do with the developments of the date of issuance of this resolution.

Thus, we can say that the Council has actually made a mistake by relying on existing and correct facts, but on promises that have nothing to do with reality. This is not in keeping with the provisions of Article 39 of the Charter⁵, which has achieved the

of equitable representation on the Security Council and the promotion of the number of members that signed on 20 July 1993. See Representative of New Zealand (Doc.A / 48/264, 20 juillet 1993). Just as some states and jurists have raised the possibility of establishing consultative mechanisms to be used by the Council to ascertain the validity of the parameters obtained from other sources, see Yann Kerbrat, op. cit., p. 42.

¹ - A statement issued by the "Revolutionary Command Council" in Iraq on 6 October 1994, to further inform the circumstances of the issuance of this resolution, see: Gilles Cottureau, October Rebound in Iraq: Resolution 949 of the C.S. (October 15, 1994), A.F.D.I., 1994, pp. 175-193.

² - Paragraphs 3 and 4 of this resolution stated: "Noting that, in the past, Iraq has threatened to use and has effectively used force against its neighbors, considering that any act of hostility or provocation directed by the Iraqi Government against its neighbors constitutes a threat to peace and security in the region".

³ - In the past, Iraq has been penalized for the illegal acts it committed in accordance with resolution 661 of 6 August 1990 and by resolution 678 of 29 November 1990, including the provisions of resolution 687 of 3 April 1991, which means that the illegitimate nature of such acts is over. There is no need to re-raise them without legal obligation.

⁴ - Contrary to what some may think that this behavior is justified by the new philosophy of the United Nations dealing with crises, which is known as preventive diplomacy, we consider that this approach is limited to resolving conflicts properly and not to the continuation of the activity of the Council in Chapter VII, for at least two reasons: First, from the definition presented by the former Secretary-General of the United Nations, Mr. Boutros Boutros-Ghali, to this institution, the core of his "peace plan" in 1992, preventive diplomacy is only a consolidation of the means for the proper settlement of disputes. To prevent the escalation of conflicts or to prevent their escalation into armed conflicts or to cease their spread to other parties and to limit them to the limits of their original parties. Second, this mechanism aims at preventing the situation or the dispute before the Council from reaching a situation which makes it vulnerable to the application of the provisions of Chapter VII. To further explore this issue, see: - B.B. Ghali, "U.N. and the new diplomacy of peace" Interview of the quarter in the quarter of the World, 1992-II, pp. 9-16.

- Schricke (C.), "The agenda for peace of B.B. Ghali: analysis and first reactions" A.F.D.I., 1992, pp. 11-31.

- Thierry (H.), "The Agenda for Peace and the Ch. N.U." in the development of the role of C.S. op. cit., pp. 375-384.

- also Lamia Ben Messaoud, in Harmony and contradiction", pp. 187-188. "It is thought that it is a preventive qualification" ". However, this idea is criticizable because it is considered that a preventive qualification of M.P.S.I. should in principle fall within the scope of Chapter VI of the relative charter of R.P.D.

⁵ - This error is also a violation of the provisions of Article 39 of the Charter because it is not limited to the serious non-confirmation of the existence of correct facts, but is a kind of misinterpretation of the content of the said

same fate in the resolutions concerning the Lockerbie incident and the attempt to assassinate the Egyptian President.

2 - The error in the facts of the Lockerbie incident and the attempt to assassinate the Egyptian President:

The study of these two issues in one element justifies the common questions that have arisen concerning some important legal institutions in public international law, such as extradition, international terrorism and others¹, in addition to their convergence in the manner in which the Council has dealt with them². Since the Lockerbie incident occurred first historically, the error in the facts of its decisions will be brought (b) before the same situation is shown in the decisions regarding the attempted assassination (a).

a. The error in the facts of the Lockerbie incident:

The story of this case is that on 21 December 1988 a US civilian aircraft "Buij 747" belonging to the "Pan American" over the city of Lockerbie, Scotland, and the victim of this incident 270 people. At the time, charges were brought against Iran, Syria, Libya and some Palestinian organizations. On September 19, 1989, a French civilian plane DC-10 crashed over the Niger desert, killing 170 people. The charges were also brought to several parties, including Libya. This was the case until the end of the Gulf War when the aspects related to these incidents began to surface again. On October 30, 1991, the French investigating magistrate issued international arrest warrants against four Libyans accused of involvement in the French plane bombing. On 14 November 1991, judicial authorities in both the United States and Scotland issued arrest warrants for two Libyan officials accused of masterminding a US aircraft incident.

The US and British governments then submitted a joint memorandum to the Libyan government demanding the extradition of the Libyan suspects to complete the investigations and try them before the American or Scottish courts. The Libyan government, of course, rejected this request on the grounds that there was no agreement to extradite the accused or criminals and that it was incompatible with Libyan law. Western countries therefore preferred to address the issue through the Security Council, which dealt with this issue in an unprecedented manner and is a typical case of political preference over legal considerations, especially with regard to the existence of facts.

Then we are in charge of a charge that must be verified by legal means first and then the penalty should be imposed if the charge is proven. But the Security Council surprised everyone by its resolution 731, calling on Libya to cooperate with the

article. The nature of the understanding provided for its provisions has the effective effect of echoing the validity of the work of the Council in this first phase of the process of legal description of the facts.

¹ - The interest of these institutions will be analyzed and discussed later in our study of the illegality of the measure taken by the Council to maintain security, peace and internationality, which will be the subject of The interest of these institutions will be analyzed and discussed later when we study the illegality of the measure taken by the Council to maintain security, peace and internationality, which will be the subject of another research..

² - The Council has dealt with these two issues using its jurisdiction as provided for in chapter VI in the first stage and then addressed Chapter VII in a second phase. The question of the consequences of illegality at the level of legal description of the facts will be examined in a redundant manner.

United States, Britain and France¹. Which implicitly implies Libya's demand that the accused be extradited to stand trial before the US or Scottish courts and in cooperation with the French authorities in the investigation into the crash of the French plane. Which also means its involvement in the two incidents. However, this presumption is not legally justified since it is a matter of accusation that it must be validated first before any action is taken, which confirms the uncertainty of the existence and validity of the facts, since the Council proceeded from an assumption that had nothing to do with the reality at the time of its intervention.

Although Libya tried to take a very flexible stance on this solution and showed great cooperation with regard to the special link to prove its disconnection with all terrorist organizations, its refusal to extradite the accused and its proposal to question the impartiality of the Libyan judiciary was tried in another neutral State, Failure to cooperate with the demands of Western countries, the issuance of its resolution No. 748 to give Libya a two-week opportunity to extradite the defendants or sanctions imposed under the previous chapter². Which again confirms the facts based on questionable seriousness, because what the Libyan government did is the best evidence of its willingness to cooperate with the rest of the parties in the case³.

To overcome the error in the above facts would have been easier if the Council had used its own means - investigation - in order to verify this accusation and not rely on what the Western States parties to the conflict due to lack of integrity. Which is missing in the decisions on the assassination attempt on the Egyptian president, too.

b. The error in the facts of the decisions concerning the attempt to assassinate the Egyptian president:

The facts of this case are summarized in the fact that on 26 June 1995, Egyptian President Hosni Mubarak was subjected to an assassination attempt by unknown persons on the occasion of an official visit to Ethiopia to attend the 31st Summit of the Organization of African Unity.

When the incident was presented to the OAU's "Mechanism for Conflict Prevention⁴, Management and Resolution", the Sudanese government was indicted and asked to cooperate with the countries involved in the case. In the absence of a

¹ - See paragraph 3 of resolution 731 of 21 January 1992, that linking the two incidents to each other and finding a single solution to them, despite their different circumstances, has more than a political significance, showing the solidarity of Western countries in settling their accounts with one of the regimes that they consider to be remnants of the cold war.

In this sense, see Dr. Hassan Naf'a, United Nations in half a century study in the evolution of international organization since 1945 p. 345, World of Knowledge Series, Politics Press - Kuwait First Edition - October 1995.

² - See paragraph 3 of Resolution No. 748 of 31 March 1992.

³ - For further information on the circumstances and circumstances of this decision, see: - Gerard de la Pradelle, "About the Libyan case. The O.N.U. , the right and the American grip, "the diplomatic world - May 1992, p. 21. - Sourel (Jean-Marc), "The Orders of the ICJ of April 14, 1992, in the Matter of Interpretation and Application of the 1971 Montreal Convention Resulting from the Lockerbie Air Incident" RGDIP 1993, pp. 689 and ss.

- Laurence Boisson de Chazournes, "Orders for the indication of provisional measures in the case concerning the application of the 1971 Montreal Convention resulting from the Lockerbie, J.A.L. /R.U. - J.A.L./E.U. Provisional Measures, Orders of 14 April 1992 ". A.F.D.I. 1992, pp. 469 and ss.

⁴ - The adoption of the preliminary decision for the establishment of this mechanism on the occasion of the 28th Summit of the Organization of African Unity in Dakar in 1992 was finally confirmed by the 29th Summit meeting in Cairo - see International Political Journal, January 1994, p. 59 and beyond is related to the "Cairo Summit and the New African Mechanism".

response from the Sudan, the Ethiopian Government presented the case to the Security Council, which had never substantiated the facts and made little effort to confirm its existence and validity. And quickly issued a solution under the number 1044¹ tail under resolutions 1054² and 1070³, as long as the Sudanese government to extradite the third accused to Ethiopia for trial in implementation of the extradition agreement signed between them since 1946. This means facing them under the auspices of the Sudanese government and help them, which is doubtful And can not be considered, to determine a case of Article 39 of the Charter, and to do so would be an affirmation of the factual error.

B: The error in the legal description of the facts:

The error refers to the legal description of the facts, the situation in which a rule of law applies to a fact that does not fall under its purview, that is, an institution or a case in which it regulates it⁴.

For example, an actual description of a crime or misdemeanor is in fact only a violation of the simplest degree of crime, or if the failure of a particular employee is considered a serious mistake. In general international law, an error in the legal description of the facts is the case in which an illegal act of a particular State is described as an international crime and in fact amounts only to the extent of the international offense⁵.

With regard to the Security Council, it would be wrong to describe the facts of what might be done when determining a case of article 39, that is, the situation in which the Council determines that what has occurred constitutes a threat to international peace and security and, on the contrary, Constitutes an act of aggression.

That the attempt to present this error is faced by many obstacles, including the absence of legal and formal definitions of the terms "threat of peace" and breach of peace⁶ and "aggression"⁷, in addition to having a broad discretionary power to deal with the circumstances of each crisis or conflict.

If, for example, we return to the number of decisions issued in this area, we can not extract a specific approach or one dependent walk to extract specific content for such cases, since there is no consistent classification. These considerations, however, do

¹ - See paragraph 4 of Resolution No. 1044 of 31 January 1996.

² - See paragraph 1 of resolution 1054 of 26 April 1996.

³ - See paragraph 1 of resolution 1070 of 16 August 1996.

⁴ - For further information on this issue, see René Chapus, op. cit., pp. 717 - 720.

⁵ - To distinguish between international crime and crime, see article 19 of the draft articles on international liability submitted by the International Law Commission since 1980, published in Directory C.D.I. 1980, vol. I, pp. 67 à 91.

See also the same meaning:

- P.M. Dupuy, Observations on the international crime of the State R.G.D.I.P. 1980, pp. 1-35.

- See also, Abli Souheil, the distinction between crime and offense, Fac. From Sc. Pol. Eco. , Tunis 1997.

⁶ - Professor Pierre Marie Dupuy wrote« there is no "threat to peace" in itself, "a breach of peace" in itself, the whole existence of the bureaucracy would only have been ascertained by the council according to a "realistic" logic: there is has the name of a threat to peace or breach of the peace of which an organ designates a certain thing, because it has the power to "decide".". In the forum organized by the Faculty of Legal, Political and Social Sciences in Tunis on 14-15 and 16 April 1994, concerning: "The new aspects of international law" under the direction of R. Ben Achour and Slim Laghmani, A. Pedone, 1st ed. 1994, Paris, p. 145.

⁷ - On the difficulty of defining the term "aggression", see: - Rambo, the definition of aggression for the U.N., R.G.D.I.P; 1976, pp. 835 and ss.

not prevent the Council from criticizing the mistakes it might make in describing it¹. The discretionary authority should not be understood as an arbitrary .whose disposal is unconditional, but simply the freedom of choice but under the law first and in particular.²

The reference is also made to the fact that the Council's recourse to the determination of the cases of Article 39 of the Charter was not equal. If most of the resolutions issued in this regard contain a description of their facts as a threat to international peace and security to the point of exaggeration, resort to the other two cases - violation of peace and aggression - are almost missing, as if they do not interfere in their jurisdiction or do not form legal cases or they follow the first³.

In spite of this disparity in use, the combination of these cases is a mistake made in its report. Therefore, some examples of errors in describing the facts as a threat to international peace and security (1) will be presented to the same error in the other two cases due to their relationship Theoretically and practically (2).

1.The error in adapting the facts as a threat to international peace and security:

This issue has been raised in the past on the occasion of the issuance of resolution No. 232 concerning the Russia South case⁴, and has been strongly raised in recent resolutions such as resolution 688 on the Gulf crisis II (a), resolution 713 on the Yugoslav crisis (b) and resolution 748 on the Lockerbie incident (c) .

a. The error in the legal description of the facts in resolution 688 :⁵

The provocation of this error can be derived from the first reactions to the French project that was adopted for the adoption of this resolution. In reference to the minutes of the Council's meetings at that time, we find that the fundamental question that formed the focus of the debate is the following: Are the facts presented a threat to international peace and security ?

In other words, is the suppression of the Kurds and their gathering on the neighboring border a threat to peace? In response to this question, the two opinions were divided in two parts. The first part considered that the situation constitutes a threat to international peace and security because of the danger it caused at the borders of neighboring countries.

¹ - This idea was emphasized by Professor Mohammed Bedjaoui, who said: "No one can question the necessity for the C.S. to have discretion (...) to assess the existence of a" threat to peace, or to notice and qualify a situation. But who knows that it depends only on him that this discretionary power is never judicially disputed." See his book: New World Order, op. cit., p. 148. - For further information about the limits of this discretion, see Yann Kerbrat, op. cit., pp. 38-39.

² - Professor R. Chapus expressed this idea by saying: "Discretion (...) is nothing more than the power to choose between two decisions, or two behaviors that are equally consistent with equality. Exercising its discretionary power, the administration can only do what the law allows it to do "; V. R. Chapus, op. cit. , p. 729.

³ - To illustrate this, see: - Farhat Horchani, art. 19 of the United Nations Charter, R.T.D. 1996, p. 99. He speaks of a cautious attitude in the uses of the concept of oppression.

⁴ - On the occasion of Resolution No. 232 of 16 December 1966, the former Soviet Union, France, Mali and Bulgaria considered that the situation was not a threat to peace since the issue was considered to be the core of the United Kingdom's internal authorities. Since Southern Rhodesia (now Zimbabwe) was a British province at the time: - D. Ruzie, International Organizations, A. Colin, 1st ed. 1971, Paris, p. 86.

- Eisemann (M.), " - Eisemann (M.), "Sanctions against Rhodesia", Pedone, Paris 1972.

⁵ - This resolution has brought back the issue of humanitarian intervention on the frontier as it was considered by specialists to be a transit visa to establish the so-called right or duty of humanitarian intervention primarily aimed at a human rights group whose violation is within the territory of an independent and sovereign State.

The Council did not intervene at the request of Iraqi civilians, Which gives the issue an international dimension and corrects its inclusion in Article 39 of the Charter¹. It also considered that international peace and security lost all meaning if internal peace and security were at risk as a result of disrespect for human rights at home.² The second part considered that such interference in Iraq in order to protect human rights was not legally justified. The situation did not constitute a threat to international peace and security. It described it as a translation to seek the realization of certain political objectives of some parties³. Which is clear by reference to the logic of the resolution itself, the Council members are not sure of the validity of this description led to the inclusion of paragraphs on the contradiction is great⁴, as we do not know whether the suppression of civilians or the frequent influx on the border is a threat to international peace and security?⁵. The fact that these questions remain unanswered is a clear indication of the error committed by this organ in describing the facts as it did in resolution 713.

b. The error in the legal description of the facts in resolution 713:

Resolution 713 is the first resolution adopted by the Security Council when it intervenes in the armed conflict that broke out in the former Yugoslavia between dissident parties and calls for independence.

The error in this resolution is that the Council has not decided "whether there has been a threat to the peace"⁶, that is, it did not consider that the facts adopted constituted a real, serious or immediate threat to international peace and security as extended from the provisions of Article 39 of the Charter⁷, "Continuing this situation will pose a threat to international peace and security"⁸.

These statements imply that these facts constitute a threat to peace that is likely to occur in the future and is not certain, which prevents the Council from taking Chapter VII as a basis and a basis for its activity. This description reminds us of the provisions of articles 36.33 and 37 relating to chapter VI and does not provide any link to chapter VII.⁹

So we may say that the adoption of Chapter VII as a basis or a basis for a particular decision to maintain the adaptation of facts or described in line with Chapter VI is a mistake in the legal description of the facts would make the work of the Council. As it may be difficult to disperse the Council's actions under these two chapters, and may facilitate the Council's use of Chapter VII measures before it can ensure that

¹ - See intervention by the representative of the United States of America (S / P.V). 2982, p. 58.

² - See interventions by the representatives of Germany and Sweden (S / P.V). - 982 p. 72 et p. 83.

³ - See the intervention of the representative of Yemen S / P.V. - 2982, p. 27.

⁴ - While in paragraph 3 of the present resolution, the Council considered that the suppression of civilians and their encroachment on neighboring armies constituted realities threatening international peace and security, paragraph 1 of the resolution described the repression of civilians only as a threat to international peace and security.

⁵ - See in this sense: Awatef Troudi Derbel, "The Right of Humanitarian Interference", Dissertation for obtaining D.E.A., Faculty of Law and Economics and Politics - Sousse 1992, pp. 39-41.

⁶ - See Article 39 of the Charter.

⁷ - Many scholars have interpreted this article as an example: □. □□□□□□ « □ □□□□□□□□□□□□□□ □□□□□□□□. □.□□□□, □□□□ □ □□□

⁸ - See preambular paragraph 4 of resolution 713 of 25 September 1991.

⁹ - Professors Drazen Petrovic et Luigui Condorelli expressed this "... in fact the expression used is more like those in Chapter VI, Articles 33, 36 and 37". See their study: "U.N. and the Yugoslav crisis, A.F.DI., 1992, p. 34.

there is a real and real threat to international peace and security, As in other locations¹, resolution 748 is very different.

c. The error in the legal description of the facts in resolution 748:

This decision is the second resolution issued by the Security Council on the occasion of the Lockerbie incident, in which it moved from Chapter VI to VII to tighten the screws on the Libyan government for not cooperating with the States parties to the case. The error in the legal description of the facts lies in the logic of the resolution itself, since the Council considered that the failure of the Libyan Government to prove its renunciation of terrorist acts and any assistance to terrorist groups and their non-compliance with the demands of Western States constituted a threat to international peace and security².

Whatever the answer, the error in the legal description of the facts can be deduced in both cases for several considerations.

In the first case, the source of the error lies in the validity of Libya's description of the terrorist round, That the term "terrorism" is difficult to define in international law³. This description is not permissible. As deduced from The resolution 41/38 of the General Assembly of the United Nations on 20 November 1986, related to the impact of the American bombing on the Libyan territory, the exclusion of Libya from the list of terrorist states⁴.

In the second case, Libya's non-response to the demands of Western countries does not constitute a threat to peace for many reasons. Firstly, it is not legally permissible to establish the responsibility of Libya on the basis of what its citizens have accused, so that they are not automatically considered as structures or agents acting under the government of this country⁵. Secondly, even if this proves to be true, this incident

¹ - The Council continued to use the same phrases in other locations. See, for example, paragraph 5 of Resolution 955 of 8 November 1994 on the Rwandan crisis. Where the sitting considered that: "... this situation continues to pose a threat to international peace and security". As well as paragraph 3 of resolution 1072 of 30 August 1996 on the Burundi crisis.

² - See paragraph 7 of resolution 748 of 31 March 1992.

³ - To refer to the term "terrorism" in general international law and related circumstances:

-G. Guillaume, *Terrorism and International Law*, R.C.A.D.I., 1989, III, p. 229.

- Alain Joxe, a catch-all concept: terrorism, the diplomatic world, April, 1996, pp. 6-7.

⁴ - In this context, see the independent statement of Judge Mohamed Bedjaoui, attached to the Orders of 14 April 1992 concerning the Lockerbie case, p. 41-42.

⁵ - See in this regard the independent statement of the kashri judge in both cases, p. 97.

- This view can also be confirmed by reference to the draft articles on State responsibility, Article 11 of the Act included that the actions of ordinary individuals other than the account of a State were not acts of responsibility. See in this sense: - Dimassi Jamel, D.I.P. (courses given to the students of the 4th year Public), Fac. Law and Economics and Political Sciences of Sousse, A.U. 1995-1996, p. 220: "(...) we note the absence of the responsibility of the National State for the acts attributable to individuals to the extent, all the time, where that State has not contributed by its action or omission to the achievement of damage. The individual is therefore solely responsible for the facts that are alleged and which are in themselves internationally wrongful.

Even if the International Law Commission disagrees between international offenses and crimes (see article 19 of the draft), if we argue that the Libyan government's constant involvement in this case, it does not require punishment in this way because what has been committed does not constitute a crime from a peremptory norm Can not be considered a crime against the international community (as stated in article 19, paragraph 2, of the said draft), but is merely a violation of the provisions of an international convention, namely the 1971 Montreal Convention.

To further differentiate between the two institutions, see: P.M.Dupuy, "Observations on the International Crimes of the State", R.G.D.I.P., pp. 299 and Ss.

took place three years ago, which means that the new event, which might pose a threat to international peace and security, is no longer possible.¹

Following the occurrence of these incidents, the Council did not see any benefit from the intervention and merely made a statement issued by its President for the purpose². Thus, the error in the legal description of the facts that the Council has committed in this case is confirmed and the idea that the Council's recourse to the description contained in article 39 does not always mean that there are facts worthy of inclusion in the prescribed cases is confirmed. It is also a means of demonstrating that this organ has not exceeded its jurisdiction. It is therefore a descriptive purpose, but a method for other purposes³. Perhaps this is the same march that led to the error in describing certain facts as a breach of peace or an act of aggression.

2 . The error in describing the facts as a breach of peace or an act of aggression:

The study of these two cases is interpreted as one element of the Security Council's lack of recourse to them and the difficulty of distinguishing them from the work of the United Nations. First, the error in the legal description of the facts will be presented as a breach of international peace and security. 1 We shall then attempt to show this error in cases where the facts may be described An act of aggression.

a. The error in describing the facts as a breach of international peace and security:

With reference to the preparations for the Charter, the term "breach of international peace and security" appears to be general and impartial, as it does not require the designation of the party responsible for it or its consequences, which applies to all situations in which an armed conflict occurs without any cause being returned or charged with it⁴.

Thus, it can be said that once a party is considered the aggressor or the culprit of this situation, the possibility of describing the incident as a breach of international peace and security is precluded.

Therefore, the mistake lies in the existence of cases of aggression, which the Council refers to one of the parties, but maintains the description - wrong - as a breach of peace. In all the decisions in which he resorted to this description was the result of invasion of the proportions of a particular party and was held responsible for it. In resolution 82, the Council considered that the crossing of North Korean troops by the "latitude 38" and its invasion by South Korea was a breach of peace and not an

¹ - See in this sense:

- The aforementioned independent statement by Judge Mohamed Bedjaoui, *ibid.*, P. 43.

- Dr. Mohammed Sabila, "The New International Order," Legal Legitimacy and the Political Goals of Resolution 731, "Wahda Magazine, No. 90, March 1992, p.

- Dr. Ahmed Abdel-Al, "Preliminary Reading of Security Council Resolution 731, *op. Cit.*, P.

² - This statement was issued on 21 December 1988 by the President of the Council on behalf of the members, in which he condemned the bombing of the aircraft and called upon all States to assist in the arrest and prosecution of those responsible for this criminal incident, not to demand their extradition and did not claim that the incident posed a threat to international peace and security.

³ - Professor P.M. Dupuy expressed this idea by saying: "The recourse to the qualification provided for in Article 39 of the Charter is the instrument by which the Board" (...), taken care not to formally depart from the scope of its statutory powers ". See the above-mentioned intervention in the framework of the Forum in Tunis, see *ibid.*, P. 99.

⁴ - See the intervention of the representative of Australia in the Security Council on the occasion of the Indonesian case in 1947, as was mentioned by Gerard Cohen Honathan in commenting on Article 39 of the Charter. 658.

This idea was expressed by Professor R.J. Dupuy said:

act of aggression. In resolution 502 he considered that the invasion by the Argentine forces of the Malvinas constituted a breach of peace and, in fact, an act of aggression in view of the fact that Argentina was responsible for that. Finally, in resolution 660, I considered Iraq's invasion of Kuwait a breach of peace despite the consensus that the invasion was an unequivocal case of aggression.

Conclusion

The two-pronged policy is not the exclusive preserve of the Security Council. But it is also in the hands of the General Assembly, even though it is considered the most representative space for all countries.¹

¹ - See in this sense: Mita Manouvel, Politics and Law in the resolutions of the General Assembly, The question of the island of Mayotte ,General Review of Public International Law, Vol. 109, No. 3, 2005, pgs. 643-663