



# The Charter of the United Nations between the Requirements of Application and the Need for Amendment

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## Abstract:

This article is related to the study of the Charter of the United Nations 1945, which has become necessary to amend, restructure and reform the United Nations in line with the current international situation. This is due to the great changes that have occurred in the international community imposed by international relations in addition to the changing balance of power in the world. If the Charter is valid at some point, today it has become somewhat incompatible with what is happening in the world of human rights violations, wars and international conflicts, and interferes in the internal affairs of States in front of the silence of the Security Council and its inability to perform its tasks. Therefore, this Charter must be reviewed and brought into line with current international developments.

**Keywords:** United Nations charter, International reform, Global power dynamics, Human rights violations.

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## Introduction:

It is no secret to everyone the role played by the United Nations, which was created after the issuance of its Charter after the Second World War. Since the end of the First World War, 1914-1919, the international community has realized the need to create and create an international organization aimed at preventing the outbreak and outbreak of wars. Despite the establishment of the League of Nations, it failed to achieve the goals for which it came, and a second world war broke out. The international community recognized the urgent need for a global body aimed at bringing about global security and peace.

A number of international efforts were made, as international meetings were held (the United Nations Declaration 1942, the Moscow Declaration 1943, the Debarton Oaks Project 1944) , a number of conferences were held that called for the need to establish a global body aimed at achieving global security and peace (the Yalta Conference 1945, the San Francisco Conference 1945), and the United Nations was eventually established by the San Francisco Conference 1945, which included fifty countries to draft the Charter of the United Nations.

It was drafted in the Charter in various languages, even in Arabic, so that the objectives and principles of the Commission are translated and communicated to various countries of the world in order to create new nations that unite and cooperate in order to ensure the enjoyment of human rights and fundamental freedoms and work to establish security and international peace.

For reference, the United Nations has created organs that help it to perform its functions. These organs are represented in the General Assembly, the Security Council, the Economic and Social Council, the General Secretariat, and the Trusteeship Council. A judicial body has also been established, the International Court of Justice, whose task is to adjudicate international cases submitted to it.

It is no secret to everyone that the United Nations has played a role in resolving international conflicts, and intervening on the occasion of the violation of human rights in many issues, but the United Nations and its charter need to be reconsidered, especially since it has proven its failure and uselessness in some issues such as the Palestinian issue, specifically the failure of the Security Council to adopt a ceasefire resolution in the Gaza Strip since the operation of the Al-Aqsa Flood.

This indicates that there are common, private and conflicting interests among the members of the United Nations that are not served by this decision, so it left the Zionist entity to commit the most heinous crimes in the Gaza Strip, including the genocide of children, all groups of society, the policy of starvation, and preventing the entry of humanitarian aid and others. The United Nations has not taken any step towards everything that is happening, and has also refrained from taking the necessary measures against the Israeli entity and other violations in other countries. Hence, we raise the following question:

What is the benefit of the United Nations as long as it does not take the necessary measures towards what is happening?

Has its charter become inapplicable to the current international situation and therefore needs to be reconsidered?

### **The first Axis: The Charter of the United Nations is a document towards a new international organization**

The Charter of the United Nations is the historical document that contributed to the entry of States into a well-organized international organization that seeks to establish a global international body that all States have the right to join and ratify in order to seek to establish international security and peace, and thus aims to prevent wars and conflicts between States and work to settle them by peaceful means, and try to promote the advancement of their peoples and benefit from previous wars and achieve world peace.

#### **The first section: Introducing the Charter of the United Nations**

The Charter can be considered as collective international treaties. It is the constitutional force in international law for the Member States of the Organization. As for other charters of other international organizations, the constitutional character of the provisions of the Charter appears in that it requires all States to serve the principles of the United Nations whenever necessary to maintain international peace and security. The Charter is a basic document of legal value for current international relations, but what has been stipulated is one thing and what is actually applied is another.

#### **Sub-section one: Circumstances of the UN Charter**

The use of the term United Nations for the first time was to refer to the countries that agreed and responded to the principles of the Atlantic Charter in 1941 following the meeting of both US President Roosevelt and British Prime Minister Churchill, where those countries announced and called themselves.

The United Nations is committed to the provisions of this Charter, and they resolved to make an effort to create a system of collective security and encourage international cooperation in various other economic and social fields<sup>1</sup>.

The term United Nations refers to a new international organization aimed at maintaining international peace and security, where membership is open to all peace-loving countries and membership is on the basis of the sovereign equality of all members<sup>2</sup>, until the unanimous adoption of a draft Charter of the United Nations<sup>3</sup>, which entered into force with the completion of ratifications in 1945.

#### **Subsection two: Content of the Charter of the United Nations**

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- Boutros-Ghali, International Organization, First Edition, Anglo-Egyptian Library, 1956, p. 295 et seq.<sup>1</sup>  
- Mohamed Hafez Ghanem, International Organizations, Third Edition, New Renaissance Library, Cairo, 1976 and beyond.  
- Hamid Sultan, Public International Law in Time of Peace, Fourth Edition, Dar Al-Nahda Al-Arabiya, Cairo, 1969, p. 871.  
- Colliard Cl, Institutions internationales, Paris, 1970, p.395.  
- Boutros-Ghali, op. Cit., P. 296.<sup>2</sup>  
- Mohammed Sami Abdul Hamid, Mohammed Al-Saeed Al-Daqaq, International Organization, University Publications House, 2002, p. <sup>3</sup>

World peace was linked to the drafting of the United Nations Charter on Human Rights, considering that this issue was initiated through it. Therefore, the preamble began by focusing on that the goals of the peoples of the United Nations reaffirm their belief in fundamental human rights, in the dignity and worth of the individual and in the rights of men and women and nations small and large, and raise the standard of life in a greater atmosphere of freedom.

The Charter of the United Nations contains many rules and principles that represent the basic and ideal roots that the international community hopes to achieve, such as the protection of human rights, justice, the right of peoples to self-determination and sovereign equality.

The Charter is a basic document of legal value for current international relations, but what is written is one thing and what is applied in work is another. Human rights are abused. The world has also witnessed a great disparity between countries and peoples in economic and social terms, and wars, armed attacks and others are carried out in full view of all countries<sup>4</sup>.

Article 1/3 of the Charter affirmed that among the purposes of the United Nations is to achieve international cooperation in solving international problems of an economic, social, cultural, and humanitarian character, and in providing respect for human rights, fundamental freedoms for all without distinction as to sex, language, or religion, and to make no distinction between men and women.

Article 56 of the Charter set out the basic duties of States in the United Nations to realize the purposes set forth in Article 55. Article<sup>5</sup> 55 states the principle of equality among peoples and that each of them has the right to self-determination. It affirmed that the United Nations seeks to achieve a standard of living, provide employment for everyone, promote economic and social development, facilitate solutions to international economic, social, health and related problems, promote international cooperation in matters of culture and education, spread in the world, and respect fundamental rights and freedoms for all without discrimination<sup>6</sup>.

As for the legal nature of the Charter, it can be said that it is a legal act of a dual nature<sup>7</sup>:

1/The treaty nature of the Charter: There is no obligation on the State to sign, as it is an international treaty.

2/The basic hierarchy of the charter.

## **The second section: The objectives and principles of the Charter of the United Nations**

The Charter of the United Nations has given the objectives of the United Nations the term purposes and the meaning of this work, which the United Nations takes all necessary measures to work to achieve, such as maintaining international security and peace, working to develop friendly relations and achieve international cooperation in addition to solving problems of an economic and social nature, and making the United Nations a center for coordinating actions of States<sup>8</sup>.

### **Sub-section one: Objectives of the Charter of the United Nations**

The United Nations aims to work to achieve a set of purposes and objectives for which it came. These purposes are as follows:

**First:** To maintain international peace and security. To this end, the Organization shall take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts

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- Gamal Abdel Nasser Manea, International Organization, Dar Al Uloom for Publishing and Distribution, Annaba, Algeria, pp. 176 ,177.<sup>4</sup>

- Hamed Sultan, Public International Law in Time of Peace, Dar Al-Nahda Al-Arabiya, 6th Edition ,1976 ,p. 63<sup>5</sup>

2- Qadri Abdul Aziz, Human Rights in International Law and International Relations, Contents and Mechanisms, Dar Homa,p. 111.

United Nations. (1945). *Charter of the United Nations*, Article 55. <https://www.un.org/en/about-us/un-charter/full-text>.<sup>7</sup>

- Suhail Hussein Al-Fatlawi, International Organization, Encyclopedia of International Law 4, House of Culture, 2009, Jordan, p. 96. <sup>8</sup>

of aggression or other breaches of the peace. It shall seek to settle international disputes or situations which might lead to a breach of the peace by peaceful means, in accordance with the principles of justice and international law.

**Second:** To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace.

**Third:** To achieve international cooperation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and fundamental freedoms for all, without distinction as to sex, language, or religion, and without discrimination between men and women.

**Fourth:** To serve as a center for harmonizing the actions of nations in the attainment of these common ends.

### **Principles of the Charter of the U.N.**

In pursuing the purposes stated in Article 1, the Organization and its Members shall act in accordance with the following principles:<sup>9</sup>

**First:** The Commission is based on the principle of the sovereign equality of all its members. The Charter's recognition of the principle of the sovereign equality of States is an explicit recognition of the sovereignty of each State and the fact that the United Nations is not considered a State above States. This prompted some researchers to describe the United Nations as a consensual system in which States retain their full sovereignty, although the idea of absolute sovereignty is incompatible with the idea of seeking a general organization of the international community.

Some of the international jurisprudence believes that the phenomena of texts should not be deceived. It is true that the Charter is known as the sovereignty of States, but this recognition does not at all mean that sovereignty exists in full and absolute in the fold of the international organization. The Charter itself imposes on Member States multiple obligations that conflict with the enjoyment of full sovereignty. Resolutions issued by the Security Council, for example, by a majority of 9 votes at least, and without objection by one of the five major countries, bind everyone<sup>10</sup>.

**Second:** In order to ensure to all Members, the rights and benefits resulting from membership, they shall fulfill in good faith the obligations assumed by them in accordance with the present Charter.

**Third:** All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered.

**Fourth:** All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purposes of the United Nations.

**Fifth:** All Members shall give all possible assistance to the United Nations in any action it takes in accordance with the present Charter, and shall refrain from assisting any State against which the United Nations takes an act of prevention or repression.

**Sixth:** The Commission shall ensure that non-members follow these principles to the extent required for the maintenance of international peace and security.

**Seventh:** Nothing in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state, nor shall it require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII.

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- Article 2 of the Charter of the United Nations 1945.<sup>9</sup>

<sup>2</sup>- Mohammed Al-Majzoub, International Organization, Al-Halabi Human Rights Publications, 8th Edition, Beirut, Lebanon, 2006, p. 196 ,197.

## **The second axis: Application of the Charter in light of the current international situation**

The circumstances in which the Charter of the United Nations was drafted and issued are completely different from the circumstances of the situation. Let us not forget that this document came with the aim of bringing about a change in the international organization through the establishment of an apparatus that seeks to achieve global security and peace and work to preserve the sovereignty of States and non-interference in the internal affairs of States, and to achieve development in various magazines, but today's circumstances have changed after the balance of power in the world has changed so that the major countries have become racing towards armaments through the development of their nuclear arsenal and expansion at the expense of weak countries after many crises that countries have gone through, such as the Russian-Ukrainian war, and the unauthorized internal crises that some countries are going through. The Charter has found it difficult to apply to these current circumstances.

### **The first section: The compatibility of the Charter with international developments**

The balance of power in the world has changed so that the international arena has been dominated by many and varied developments since the establishment of the United Nations. There are countries that have gained their independence and become sovereign, and there are countries that have got rid of the mandate and guardianship and have become self-governing, and there are countries that are still today under the weight of colonialism. There are countries in which human rights are still exhausted and therefore there is a violation of what is stated in the Charter, such as violating the principle of equality between States, and interfering in the internal affairs of other countries and others.

#### **Sub-section one: The Charter and Human Rights**

The Charter is concerned with human rights and fundamental freedoms. In its preamble, it affirms the belief of their peoples in fundamental rights and the dignity of the individual. It also places these rights at the center of their concerns<sup>11</sup> and works to promote respect for them<sup>12</sup>.

The Security Council is the principal executive organ of the United Nations responsible for the maintenance of international peace and security and, in accordance with Article 24 of the Charter, is empowered by the Charter to determine situations which constitute a breach of the peace or a threat to the peace, or an act of aggression, and to make recommendations and determine the measures to be taken for the maintenance or restoration of international peace and security<sup>13</sup>.

In exercising these powers, the Council can address violations of human rights and fundamental freedoms when they fall within the situations authorized by the Charter in accordance with Article 34 of the Charter<sup>14</sup>.

In addition to its role but not its specific competencies in accordance with the Charter, the Council addressed many topics and problems related to human rights and fundamental freedoms, whether related to the right to self-determination, collective military interventions of a humanitarian nature, the establishment of special international criminal tribunals, and the imposition of international sanctions<sup>15</sup>.

The Security Council has precedents in intervening in cases of violations of human rights and fundamental freedoms related to the above topics. In 1965, the Council appealed to members of the international community not to provide South Africa with weapons and military equipment, to sever its economic relations with it, and to impose a ban on its production of oil and petroleum derivatives.

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- Ahmed Abu Al-Wafa, International Protection of Human Rights within the Framework of the United Nations and Specialized Agencies, Dar<sup>11</sup>

Al-Nahda Al-Arabiya, Cairo, Egypt, 200, p. 25.

.-United Nations. (1945). *Charter of the United Nations*, Article 1, Paragraph 3.

<https://www.un.org/en/about-us/un-charter/full-text><sup>12</sup>

<sup>13</sup>Fleurence Olivier ; La reforme du conseil de sécurité, Bruylant, Bruxelles, 2000, p 213.

<sup>14</sup>- Mohammed Youssef Alwan, Mohammed Khalil Al-Mousa, International Human Rights Law, Sources and Means of Protection, C/1, Dar Al-Thaqafa, Jordan, 2005, p. 54, 68.

- Omar Hafsi Farhati et al., Mechanisms for the International Protection of Human Rights and Fundamental Freedoms - A study in<sup>15</sup>

Global and regional protection agencies and their procedures, House of Culture, Amman, Jordan, 2012, p. 55.

In its resolution No. 1036 of 1996, the Council affirmed its full support for the programme for the respect and promotion of human rights in Abkhazia, Georgia. In its resolution No. 1077 of 1996, the Council endorsed the establishment of an office for the protection of human rights in Abkhazia and considered it part of the United Nations Observer Mission in Georgia (UNOMIG).

In addition to the role played by the General Assembly in the field of human rights and fundamental freedoms, explained earlier, its activities regarding its call for international meetings and conferences to study topics related to human rights and fundamental freedoms, including the two World Conferences on Human Rights and Fundamental Freedoms, the first of which was held in Tehran in May 1968, in the presence of representatives of 48 countries. Thus, a declaration was issued in which the Universal Declaration of Human Rights was considered a commitment on the part of all members of the international community.

Issues of human rights and fundamental freedoms are within the competence of the Economic and Social Council in accordance with Article 62 of the Charter of the United Nations, which states that "the Economic and Social Council may make recommendations with regard to the promotion of respect for and observance of human rights and fundamental freedoms".

Article 68 of the charter also gives him the authority to establish committees for economic and social affairs and for the promotion of human rights and fundamental freedoms, as well as other committees that he may need to perform his functions<sup>16</sup>.

### **Sub-section two: Charter and Armed Conflicts**

The Charter of the United Nations has assigned many competencies to the Security Council, ranging from administrative competencies, to those related to working to achieve global peace and security, and working to take punitive measures that may amount to the use of force to prevent the threat to international security and peace or suppress aggression<sup>17</sup>.

Since the Security Council has the inherent competence to maintain international peace and security in the world<sup>18</sup>,

In the case of the war on Gaza 2023, the Security Council only issued Resolution No. 2728 stipulating a ceasefire on the Gaza Strip. It also called for the need to release the hostages held unconditionally, which was voted by 14 countries, while the United States of America abstained.

### **The second section: Obstacles facing the amendment of the Charter of the United Nations**

What can be noted is that the Charter of the United Nations has faced many difficulties, especially since it has become incompatible with the interests of the major Powers and therefore finds no way to apply it because it conflicts with the requirements of the current international organization, which is the greatest challenge facing the Commission, and therefore the major Powers have used their influence and power to achieve their goals and interests, and apply the Charter to their advantage, so that if any issue is presented to the United Nations, especially to the Security Council, to decide on it, some States may resort in this case to the use of the veto to disrupt each other's interests to find a solution to the issue at hand, and this is of course due to a defect in the structural organization of the Commission or a conflict of interests between the major Powers.

### **Sub-section one: The inability of the Security Council to manage international crises, and the legitimacy of its decisions**

The most important challenge facing the application of the Charter in light of the changing balance of power in the world is its inability to manage international crises such as the Gulf crisis in 1990. The Security Council played a decisive role in the second Gulf crisis that began with the Iraqi occupation of

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- Omar Al-Hafsi Farhati et al., op. Cit., P. 63. <sup>16</sup>

- Mohamed Samy Abdel Hamid, Mohamed El Said El Dakkak, International Organization, University Publications House, Alexandria , Egypt, 2002, pp. 443, 444. <sup>17</sup>

- Article 24, 25, 33 of the Charter of the United Nations of 1945. <sup>18</sup>

Kuwait on 02/08/1990, and over the course of seven months until February 1991, the Security Council issued 13 resolutions<sup>19</sup>.

It was most influential over a period of time not exceeding four months until 29/11/1990, on which the Security Council adopted twelve resolutions, the highest percentage of resolutions adopted by the Security Council towards one crisis in its history during that period, and all of those resolutions were based on Chapter VII of the Charter of the United Nations<sup>20</sup>.

As well as the Libyan Lockerbie case, since the issuance of the Security Council resolutions on sanctions against Libya, namely resolutions 731(1992), 748(1992), 883(1993), which raises a lot of doubts about its legitimacy, which is clear from the jurisprudential studies conducted on this problem, where the opinions of international law scholars have tended towards the illegality of these sanctions<sup>21</sup>, in addition to other international crises such as the events of September 11, 2001.

### **Sub-section two: An imbalance in the structural organization of the United Nations**

There is a structural imbalance in the United Nations, as it is at the level of the General Assembly that weakness manifests itself in many of the issues that it has faced since 1945 to the present day, and although these issues have obtained strict decisions, the mechanism of action and the strict controls of the work of the General Assembly as stated in the Charter have disrupted those decisions, and thus made these decisions in many of those issues outside international legitimacy, and the best evidence of this is the Palestinian issue.

At the level of the Security Council, we note that the current composition is not compatible with the world map and the new balance of power. The membership has also remained based on the major countries in the world that seek to serve their personal interests.

In addition to the imbalance in the voting method within the Security Council, which leads us to talk about the problem of the right of veto, which is a political weapon in the hands of the major powers to protect their interests in the sense that these countries are the ones that prevent the embodiment of the will of the international community, and if this is a prevention of the United Nations, and the weakening of the Council towards carrying out its tasks, some believe that the failure and weakness of the Security Council is due not only to the use of the veto, but also to the reality of the power represented by the veto, they are also responsible for preventing the Council from working<sup>22</sup>.

At the level of the International Court of Justice, it is not granted broader powers so that its mandate is mandatory and not optional and so that each international organization outside the United Nations can hold its referendum without obtaining a license from the General Assembly<sup>23</sup>

### **Sub-section three: The unwillingness of States to amend the Charter and the difference of views.**

"How can the collective security system be activated, while different regions of the world no longer have the same view regarding the things that threaten them<sup>24</sup>," says former Secretary-General Kofi Annan.

Where did it seem clear in the positions and visions of the various actors in the international system? The major developed countries want to introduce amendments to the international organization in a way that

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<sup>20</sup> Harchaoui, Announcing the Legality of Security Council Resolutions in the Light of Contemporary International Law, PhD Thesis, University of Algiers, 2016, p. 18.

- Alan Harshani, Lectures at the United Nations Reform Barometer, Introduction to the second year Master of International Law General, Djelfa, 2020/2021/ p. 36.<sup>20</sup>

- Allan Harshani, Previous reference, p. 44.<sup>21</sup>

- Ziad Mohammed Al-Wahshat, Reforming the United Nations: An Analytical View of Its Problems and Ways to Overcome Them, Journal<sup>22</sup>

Legal Studies and Research, Volume 6, Issue 1, 2021, p. 15.

- Sayel and Sak, The United Nations Towards an International Social Contract, Reports and Documents, Morocco, 2006, p. 2015.<sup>23</sup>

- Ahmed Al-Rashidi et al., The United Nations: The Necessity of Reform after Half a Century: An Arab Perspective, 1st Edition. Beirut:<sup>24</sup>

Center for Arab Unity Studies, 1996, p. 154.

confirms its victory, frees their hand in the management of international relations, and imposes their vision towards the general international system and its regional and subsidiary systems.

It seeks to reformulate the organization according to its intellectual system, consistent only with its interests and objectives, and these countries, especially the United States of America, wish to abandon their pledges to support the countries of the South, demanding support for the private sector, strengthening accountability measures, and eliminating corruption<sup>25</sup>.

Developing countries also demand fundamental reforms that cover more weight for African, Asian and Latin American countries in the international organization, and make the resolutions of the General Assembly with a majority binding, similar to the resolutions of the Security Council.

### **Conclusion:**

The Charter of the United Nations came to emphasize the maintenance of international peace and security, to work to save future generations from the scourge of war, to emphasize human rights and fundamental freedoms, to emphasize respect for international law and to push forward social progress, but what can be noted is that the latter faced a set of challenges that prevented its application, due to the expansion and development of the international community and its immaturity, and the changing balance of power in the world, which made amending the Charter an imperative necessity due to its conflict with the current international reality and according to the above, a set of results and proposals can be reached as follows:

### **First: Results:**

- The increase in the number of members of the Security Council since the establishment of the United Nations from 11 to 15 members, which affected the legitimacy of its decisions and the use of the right of veto.
- The inability of the United Nations, in most cases, to find solutions to the crises it is presented with.
- The General Assembly of the United Nations does not have the right to issue binding resolutions and make them the monopoly of the Security Council.
- The lack of conformity of the Charter of the United Nations with the requirements of the current international situation.

### **Second: Suggestions**

- The need to gradually amend the provisions of the Charter to include all aspects and areas.
- The need to expand the membership base of the Security Council to legitimize its decisions.
- The need to reform the financial and administrative aspect of the United Nations.
- The need to modernize the United Nations system in relation to the economic and social fields.
- Making the Charter an international mechanism through which global security and peace are established across all countries of the world.

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<sup>25</sup> Ziad Mohammed Al-Wahshat, UN Reform: An Analytical View of its Problems and Ways to Overcome It , Journal  
Legal Studies and Research, Volume 6, Issue 1, 2021, p.17.



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