

THE LEGAL AUTHORITY OF UN SECURITY COUNCIL COUNTER-TERRORISM RESOLUTIONS: NORMATIVE FOUNDATIONS AND INSTITUTIONAL CONSTRAINTS

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Abstract

The expansion of the United Nations Security Council's role in counter-terrorism has generated significant debate concerning the legal basis and limits of its authority to impose binding obligations on Member States. This article studies the normative foundations of Security Council counter-terrorism resolutions adopted under Chapter VII of the UN Charter and examines the institutional constraints that affect their implementation. The purpose of the research is to clarify the doctrinal grounds on which the Council generates compulsory obligations of general scope and to assess their position within the structure of international law. The object of the study is the body of Chapter VII resolutions addressing terrorism, with particular attention to their binding force, quasi-legislative characteristics, and monitoring mechanisms. The methodology is based on doctrinal interpretation of the UN Charter (notably Articles 39, 25, and 103), systematic analysis of relevant resolutions, and review of judicial practice, including advisory opinions and regional human rights jurisprudence. The findings indicate that the Security Council's counter-terrorism authority is legally robust in its formal Charter foundation, enabling the creation of binding norms applicable to all Member States. However, its practical effectiveness is limited by decentralized implementation, sovereignty-based discretion, monitoring structures lacking coercive powers, and constitutional review within domestic and regional legal systems. The study concludes that the Security Council occupies a central but structurally constrained position within the contemporary international legal order.

Keywords: UN Charter, Security Council, Chapter VII, counter-terrorism, binding obligations, sovereignty, monitoring mechanisms.

I. Introduction

The legal architecture of the United Nations counter-terrorism regime has undergone a profound transformation since the early twenty-first century, particularly following the adoption of binding Security Council resolutions under Chapter VII of the Charter [4]. While terrorism had long been addressed through sectoral conventions and cooperative mechanisms, the post-2001 practice of the Security Council introduced a qualitatively different mode of regulation: the

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imposition of general and compulsory obligations upon all Member States without recourse to the traditional treaty-making process [17, p. 251–273].

This development raises questions that extend beyond policy effectiveness and enter the domain of constitutional international law. Yet much of the existing scholarship has focused either on political assessments of global counter-terrorism or on human rights critiques of specific sanctions regimes, without systematically clarifying the doctrinal foundations and legal limits of the Security Council's authority as a source of binding norm creation. Against this background, the present study narrows the inquiry to a precise legal problem: on what Charter-based grounds the Security Council is empowered to generate binding counter-terrorism obligations of general scope, and how this authority is situated within the broader structure of the international legal order.

The research question is therefore formulated as follows: does the Security Council's counter-terrorism practice under Chapter VII represent a legally coherent exercise of enforcement power, or does it amount to an expanded, quasi-legislative function whose normative status remains contested? To answer this question, the analysis proceeds through doctrinal interpretation of the UN Charter (in particular Articles 39, 25, and 103), systematic examination of relevant Security Council resolutions, and critical engagement with judicial practice and scholarly debate. This study therefore approaches the issue primarily through an interpretation of the UN Charter and an analysis of institutional competence, rather than through political critique. It contends that although the Security Council's counter-terrorism authority rests on a solid legal foundation within the Charter framework, its practical operation remains limited by the decentralized structure of international law and the constitutional autonomy of Member States.

II. Normative Foundations of Security Council Counter-Terrorism Authority

The question of how the United Nations responds to terrorism cannot be adequately addressed without isolating the institutional locus in which binding authority is concentrated. Although numerous conventions and strategic documents have been adopted within the UN framework, it is the Security Council that has assumed the central role in generating compulsory counter-terrorism obligations. For this reason, the main analysis must be confined to the normative foundations of the Council's authority rather than extended to the broader landscape of UN instruments. The problem under examination is thus narrowed to a doctrinal inquiry: on what legal basis the Security Council is empowered to impose binding counter-terrorism measures upon Member States, and how this authority has been articulated through Chapter VII of the Charter.

1) Chapter VII Powers and Binding Legal Effect:

The legal authority of the Security Council to impose binding counter-terrorism obligations derives primarily from its enforcement powers under Chapter VII of the UN Charter. Article 39 of the Charter of the United Nations,

adopted in 1945 at the San Francisco Conference as part of Chapter VII, was designed to confer upon the Security Council the authority to determine the existence of any “threat to the peace, breach of the peace, or act of aggression” and to decide upon measures necessary to maintain or restore international peace and security [25, art. 39-51]. The provision was intentionally drafted in broad and flexible terms, without an exhaustive definition of what constitutes a “threat,” in order to allow the Council to adapt to evolving forms of instability beyond traditional inter-state war [27]. Although terrorism was not expressly contemplated in 1945, the open-textured formulation of Article 39 enabled the Security Council, particularly after the attacks of 11 September 2001, to classify international terrorism as a threat to international peace and security and thereby activate binding powers under Chapter VII [7]. The legal significance of this development lies in the transformation of terrorism from a matter primarily addressed through sectoral treaties and voluntary cooperation into an issue capable of triggering compulsory obligations imposed on all Member States. Without Article 39, the Security Council would lack the doctrinal gateway required to bring terrorism within the enforcement framework of Chapter VII, and counter-terrorism efforts at the UN level would remain confined to non-binding resolutions, fragmented conventions, and consensual mechanisms lacking universal coercive force.

The legal distinction between Chapter VI and Chapter VII of the UN Charter becomes decisive once the Security Council determines, under Article 39, the existence of a threat to international peace and security [26, art. 39]. Under Chapter VI, the Council is limited to recommending procedures or methods of adjustment, and such recommendations do not create binding legal obligations for Member States. By contrast, once Chapter VII is formally engaged, the Council moves from advisory authority to enforcement competence, and its decisions acquire compulsory character. This transition is anchored in Article 25 of the Charter, which obliges Member States to “accept and carry out” the decisions of the Security Council [23, art. 25]. Although Article 25 is not textually confined to Chapter VII, its binding force has been most clearly operationalized in the context of enforcement measures adopted under Chapter VII [14, p. 270–286]. In counter-terrorism practice, Resolution 1373 (2001) illustrates this shift: adopted under Chapter VII, it imposed mandatory obligations on all states to criminalize terrorist financing, freeze assets, and enhance international cooperation [30]. The legal consequence of this structure is that compliance is no longer dependent on consent through treaty ratification but derives directly from Charter-based authority.

Resolution 1373 (2001), adopted under Chapter VII in the immediate aftermath of the 11 September attacks, is widely regarded in legal scholarship as a constitutional moment in the practice of the Security Council because it departed from the traditional model of case-specific enforcement and instead imposed general and abstract obligations on all Member States. Unlike earlier Chapter VII resolutions that were tied to a particular territorial conflict or sanctions regime, Resolution 1373 required states universally to criminalize the financing of

terrorism, freeze assets of designated persons, deny safe haven, and enhance international cooperation, without being linked to a single defined situation [2]. This normative generality has led many scholars to describe the resolution as “quasi-legislative,” arguing that the Council effectively assumed a law-making function beyond classical enforcement Powers [10]. The precedent was reinforced by Resolution 1540 (2004), which similarly imposed binding obligations of general scope concerning the non-proliferation of weapons of mass destruction to non-state actors [33]. Judicial reactions, particularly in cases such as *Kadi* before the Court of Justice of the European Union [5], further exposed the structural implications of this shift: while the binding force of Chapter VII resolutions was acknowledged, their implementation was subjected to fundamental rights review at the regional level, thereby revealing tensions between global security governance and constitutional legality [18, p. 1015–1024]. In doctrinal terms, Resolution 1373 is therefore understood not merely as a counter-terrorism instrument but as evidence of an expanded interpretative practice under Article 39 and Article 25, through which the Security Council has been perceived to move closer to a centralized normative authority within the international legal system.

When the Security Council adopts counter-terrorism measures under Chapter VII, the obligations imposed upon Member States acquire binding force pursuant to Articles 25 and 103 of the Charter, yet their legal operation depends on domestic incorporation. Resolutions such as 1373 (2001) require states to criminalize the financing of terrorism, freeze funds and other financial assets of designated persons, suppress support networks, and intensify international judicial and law-enforcement cooperation. These duties are framed in mandatory language (“shall”) and are not contingent upon treaty ratification; however, they are not self-executing in most constitutional systems. As a result, compliance is achieved through legislative and regulatory adaptation at the national level, including amendments to criminal codes, banking supervision laws, and procedural rules concerning asset freezing and extradition. This necessity of incorporation situates Security Council decisions within domestic constitutional hierarchies and raises questions regarding their normative rank. While Article 103 establishes the primacy of Charter obligations over conflicting treaty commitments, the relationship between Security Council resolutions and constitutional guarantees (particularly due process and property rights) has generated litigation and doctrinal debate [20, p. 115–140].

Legal controversies surrounding asset-freezing measures adopted pursuant to Security Council counter-terrorism resolutions have centered on the tension between binding obligations under Chapter VII and the protection of fundamental rights within domestic and regional legal orders. Resolution 1267 (1999) and its successor regimes established targeted sanctions requiring Member States to freeze the assets of individuals and entities listed by the Sanctions Committee, often without prior notice or an opportunity to be heard [29]. This framework was judicially scrutinized in the landmark *Kadi* and *Al Barakaat* cases before the Court

of Justice of the European Union (Joined Cases C-402/05 P and C-415/05 P, 2008), where the Court annulled the EU regulation implementing the Security Council sanctions on the ground that it violated fundamental rights, including the right to effective judicial protection and due process [6]. While acknowledging the binding nature of Security Council resolutions under Article 25 of the UN Charter, the Court held that implementation within the EU legal order must comply with constitutional principles. Similar concerns were expressed by the European Court of Human Rights in *Nada v. Switzerland* (2012), where restrictions linked to UN sanctions were assessed in light of human rights guarantees [9]. These precedents demonstrate that although asset-freezing measures derive their authority from Chapter VII, their domestic and regional enforcement remains subject to judicial review, thereby exposing structural limits in the centralized sanctions system and prompting procedural reforms, including the establishment of the UN Ombudsperson mechanism under Resolution 1904 (2009) [34].

2) *The Quasi-Legislative Function Of the Security Council:*

The classical function of the Security Council under the UN Charter has traditionally been situational and reactive: measures adopted under Chapter VII were historically connected to specific armed conflicts, territorial crises, or identifiable threats involving particular states, such as the sanctions imposed on Iraq in 1990 or those relating to the former Yugoslavia. In such contexts, the Council operated as an enforcement body responding to a defined factual situation. Resolutions 1373 (2001) and 1540 (2004), however, represented a structural shift from this traditional model. Rather than addressing a specific territorial dispute or a particular state, both resolutions imposed general and abstract obligations upon all Member States, irrespective of their involvement in a concrete conflict. Resolution 1373 required states universally to criminalize terrorist financing and establish preventive regulatory frameworks [30], while Resolution 1540 mandated domestic legal controls to prevent non-state actors from acquiring weapons of mass destruction [33]. Through these instruments, the Council moved beyond case-specific enforcement and articulated binding standards of conduct of general application. This development blurred the boundary between enforcement and legislation, as binding norms were created without recourse to the consensual treaty-making process. Consequently, the distinction between reactive enforcement and normative rule-making became central to the doctrinal debate on whether the Security Council has assumed a quasi-legislative role within the international legal order.

By imposing obligations that are not tied to a specific dispute or factual situation but instead prescribe general standards of conduct, the Security Council has departed from the traditional structure of international law formation grounded in state consent. Under the classical treaty model, universal obligations arise through negotiation, signature, and ratification, thereby reflecting the express consent of states as required by the Vienna Convention on the Law of Treaties (1969) [28]. In contrast, resolutions such as 1373 (2001) and 1540

(2004), adopted under Chapter VII, have required all Member States to introduce domestic criminal, regulatory, and enforcement measures irrespective of treaty participation or individualized consent. This technique effectively bypasses the consensual treaty mechanism and generates obligations directly through Charter-based authority, relying on Articles 25 and 103 to ensure binding force and normative primacy. Judicial and doctrinal reactions have highlighted the implications of this shift: in *Kadi* (CJEU, 2008), while the binding nature of Security Council resolutions was acknowledged, the Court emphasized that implementation within a constitutional legal order remains subject to fundamental rights review, thereby exposing the tension between centralized obligation-creation and constitutional autonomy [3]. The chain is therefore clear: abstract behavioral standards are imposed universally under Chapter VII; treaty consent is structurally displaced, and binding effect is derived not from ratification but from Charter membership itself, reshaping the mechanics of obligation formation in international law.

The quasi-legislative practice of the Security Council cannot be assessed without examining the structural effect of the veto mechanism under Article 27(3) of the UN Charter, which conditions the adoption of substantive decisions on the concurring votes of the five permanent members [24, art. 27]. Where resolutions of general and abstract scope (particularly those adopted under Chapter VII) generate binding obligations for all Member States, the veto operates not merely as a procedural device but as a structural determinant of which norms enter the international legal order. This concentration of normative gatekeeping authority has contributed to doctrinal debate concerning the legal nature and systemic legitimacy of such resolutions [21]. Although Articles 25 and 103 secure their binding force and primacy over conflicting treaty obligations, their position within the classical sources doctrine remains contested, as they do not fall neatly within Article 38(1) of the Statute of the International Court of Justice [12, p. 125–134]. Judicial practice has both affirmed and qualified their authority: in the *Namibia Advisory Opinion* (1971), the ICJ recognized that Security Council decisions adopted within competence may create binding legal obligations [15], while in *Al-Dulimi and Montana Management Inc. v. Switzerland* (ECtHR, Grand Chamber, 2016), the European Court of Human Rights held that domestic courts must ensure at least minimal judicial review when implementing UN sanctions, even where Chapter VII obligations are involved [8]. The interaction between veto-based norm production and subsequent judicial scrutiny thus underscores the continuing controversy over whether Security Council resolutions constitute a distinct normative category within international law or remain exceptional enforcement measures whose systemic effects approach legislative authority.

III. Institutional Constraints and Implementation Limits

Even where the Security Council's authority under Chapter VII is legally well established, the effectiveness of counter-terrorism measures does not depend solely on their formal binding force. The implementation of such resolutions unfolds within a decentralized international system structured by state sovereignty, political interests, and institutional limitations. As a result, the translation of abstract obligations into uniform practice is neither automatic nor consistent.

1) Sovereignty, Political Selectivity, and Fragmentation:

Article 2(1) of the UN Charter affirms the sovereign equality of all Member States, while Article 2(7) protects domestic jurisdiction by prohibiting the United Nations from intervening in matters essentially within the internal affairs of states, subject to the enforcement powers provided in Chapter VII [22]. This structural design reflects a dual logic: sovereignty is preserved as a foundational principle of the international order, yet it is not absolute where international peace and security are at stake. When the Security Council determines, under Article 39, the existence of a threat to international peace, the limitation contained in Article 2(7) yields to Chapter VII enforcement measures [35, p. 60–83]. The International Court of Justice has repeatedly emphasized the centrality of sovereignty, notably in the Nicaragua case (1986), where non-intervention was characterized as a corollary of sovereign equality; however, the Court has also acknowledged, in the Namibia Advisory Opinion (1971), that binding decisions of the Security Council adopted within its competence may create obligations for Member States [16]. The relationship is therefore hierarchical but conditional: sovereignty remains the default organizing principle of the Charter system, yet it is legally circumscribed where collective security mechanisms are lawfully activated. The tension emerges not from the formal supremacy of Chapter VII, which is doctrinally secured by Articles 25 and 103, but from the practical interpretation of what constitutes a “threat to the peace” and how far Security Council measures may intrude into regulatory domains traditionally regarded as internal.

The implementation of Security Council counter-terrorism resolutions is significantly shaped by the absence of a universally agreed definition of terrorism in international law, which creates interpretative space at the domestic level. Although resolutions such as 1373 (2001) impose binding obligations under Chapter VII, they do not provide a comprehensive legal definition of “terrorism,” leaving states to define the scope of criminalization within their national legislation. This structural indeterminacy allows Security Council obligations to be interpreted expansively or restrictively under the rubric of national security, often justified by reference to sovereign discretion preserved under Article 2(1) of the Charter. In practice, this has enabled states to broaden the designation of “terrorist” to encompass political opponents or non-violent groups, raising concerns under international human rights law, particularly regarding due process and freedom of association. The risk of politicized designation is compounded at

the international level by selective approaches of powerful states, including Western actors, in determining when and how counter-terrorism frameworks are activated or emphasized. While Chapter VII decisions are formally binding on all Member States, enforcement and diplomatic pressure have not always been uniform, leading to accusations of double standards. That is why, the absence of a precise legal definition, combined with sovereignty-based interpretative discretion and geopolitical selectivity, generates fragmentation in the application of counter-terrorism obligations within the international legal system.

A distinction must be drawn, within a legal compliance framework, between formal compliance and substantive compliance in the implementation of Security Council counter-terrorism resolutions. Formal compliance occurs where a state adopts the necessary legislative or regulatory measures required by Chapter VII decisions (such as criminalizing terrorist financing or establishing asset-freezing procedures) thereby satisfying the textual obligations imposed under Article 25 of the Charter. Substantive compliance, however, requires that these measures be effectively enforced in practice, producing the material outcomes intended by the resolution [19]. The decentralized structure of the UN system means that the Security Council lacks direct enforcement authority over domestic execution; implementation remains mediated through state institutions, investigative bodies, and judicial systems. Although monitoring mechanisms such as the Counter-Terrorism Committee and reporting procedures exist, they function primarily through review and dialogue rather than coercive oversight. As a result, as in *A and Others v. HM Treasury* (No. 2) [2010] UKSC 2, the effectiveness of Security Council measures ultimately depends on state political will and administrative capacity [1]. Judicial scrutiny at the domestic or regional level, including cases addressing asset-freezing and due process guarantees, has further demonstrated that even formally compliant regimes may be substantively deficient if procedural safeguards or effective enforcement mechanisms are absent. The chain is therefore structurally clear: binding obligation under the Charter generates legislative action; legislative action satisfies formal compliance; but meaningful implementation depends on sovereign execution, which introduces variability and exposes the limits of centralized enforcement within international law.

2) Monitoring Structures and Compliance Gaps:

Even where binding obligations are clearly articulated under Chapter VII, their effectiveness depends on the capacity and limits of the monitoring structures established to oversee state compliance. In this regard, the Counter-Terrorism Committee (CTC) was established by Security Council Resolution 1373 (2001) as a subsidiary organ under Article 29 of the UN Charter, with the mandate to monitor the implementation by Member States of the binding obligations imposed under Chapter VII. While Resolution 1373 created substantive counter-terrorism duties (such as criminalization of terrorist financing and enhancement of international cooperation) the CTC was designed to supervise compliance through the examination of state reports and the facilitation of dialogue. However, the

Committee itself was not endowed with enforcement powers; it cannot impose sanctions or compel legislative change, and its authority remains supervisory rather than coercive. To strengthen its technical capacity, the Security Council established the Counter-Terrorism Executive Directorate (CTED) through Resolution 1535 (2004), later refining its mandate in subsequent resolutions [32]. CTED functions as the expert body assisting the CTC by conducting country assessments, analyzing implementation gaps, coordinating technical assistance, and engaging in on-site visits with state consent. Legally, both bodies operate within the framework of Chapter VII oversight but without independent normative authority; their role is evaluative and facilitative rather than adjudicative.

Under Security Council Resolution 1373 (2001), Member States are required to submit periodic reports to the Counter-Terrorism Committee detailing the measures adopted to implement the binding obligations imposed under Chapter VII [30]. While the obligation to report is mandatory in form (deriving from a Chapter VII decision and thus falling within the scope of Article 25 of the UN Charter) the Committee's review of such reports does not result in legally binding determinations or sanctions for non-compliance. Accordingly, the reporting mechanism functions primarily as a supervisory and evaluative tool rather than as a coercive enforcement procedure, reflecting the distinction between binding substantive obligations and recommendatory oversight within the institutional framework established by the Security Council.

The sanctions regime established initially by Resolution 1267 (1999) and subsequently modified by Resolutions 1989 (2011) and 2253 (2015) created a listing system targeting individuals and entities associated with Al-Qaida and later ISIL, requiring Member States to implement asset freezes, travel bans, and arms embargoes under Chapter VII authority [11, p. 1144–1175]. The listing procedure, conducted by a subsidiary sanctions committee of the Security Council, operates through designation proposals submitted by Member States and approved by consensus, thereby producing binding obligations without prior judicial process at the international level. Legal challenges, particularly in *Kadi* (CJEU, 2008) and related jurisprudence, exposed due process deficiencies in the original framework, leading to the establishment of the Ombudsperson mechanism under Resolution 1904 (2009) to provide an independent review process for delisting requests [34]. Although the Ombudsperson strengthened procedural guarantees by introducing structured dialogue and reasoned recommendations, the mechanism remains administrative rather than judicial and does not transform the sanctions committee into a court-like body. The legal limits of monitoring thus become apparent: while sanctions committees exercise delegated authority under Chapter VII and generate binding effects pursuant to Articles 25 and 103 of the Charter, their procedural safeguards are constrained by their political character and by the absence of fully independent adjudicative review within the UN system, leaving ultimate rights-based scrutiny to domestic or regional courts.

Within the counter-terrorism framework of the Security Council, “naming and shaming” operates as a reputational enforcement technique rather than a formally coercive legal mechanism. Although Chapter VII resolutions are binding under Article 25 of the UN Charter, monitoring bodies such as the Counter-Terrorism Committee lack direct sanctioning authority in cases of insufficient implementation; instead, compliance pressure is often exerted through public reporting, evaluative summaries, and the exposure of implementation deficiencies [13, p. 82–105]. The legal effectiveness of this mechanism is therefore indirect: it relies on diplomatic accountability, peer review, and the reputational costs associated with being publicly identified as non-compliant. However, this technique intersects with international human rights mechanisms, particularly where counter-terrorism measures affect due process, property rights, or freedom of movement. Bodies such as the Human Rights Council and treaty-monitoring committees have emphasized that counter-terrorism obligations must be implemented consistently with international human rights law, a position reflected in Security Council Resolution 1456 (2003), which affirms that states must ensure that measures taken to combat terrorism comply with international law, including human rights, refugee, and humanitarian law [31]. The coordination between security monitoring and human rights oversight thus introduces a dual accountability structure: reputational pressure at the Security Council level and normative scrutiny under human rights treaties. Nonetheless, the absence of an integrated adjudicative mechanism within the UN system limits the legal enforceability of such coordination, leaving the effectiveness of “naming and shaming” contingent upon political sensitivity rather than judicial compulsion.

IV. Conclusion

The preceding analysis has shown that the contemporary UN counter-terrorism regime is not primarily defined by the proliferation of conventions or policy strategies, but by the Security Council’s capacity to generate binding obligations through Chapter VII. That capacity rests on a deliberately flexible constitutional architecture: Article 39 functions as the legal gateway through which terrorism is juridically constructed as a “threat to the peace,” while Article 25 translates Council decisions into a compliance duty for Member States, reinforced by the primacy rule of Article 103 in cases of normative conflict.

From this standpoint, the distinctive legal development after 11 September 2001 was not merely institutional activism but a structural shift in the method of obligation-creation, most clearly illustrated by Resolution 1373 (2001) and supported by the broader quasi-legislative trajectory exemplified by Resolution 1540 (2004). The Security Council’s move from case-specific enforcement to the articulation of general and abstract standards has therefore placed it in an ambivalent position within the international legal system: its outputs are formally binding and practically central, yet they sit uneasily within classical sources

doctrine and are normatively filtered by the veto configuration, which inevitably raises questions of systemic legitimacy and representativeness.

Judicial practice has consistently affirmed the binding nature of Security Council resolutions adopted under Chapter VII, as reflected in the Namibia Advisory Opinion and subsequent jurisprudence recognizing their legal effect under Articles 25 and 103 of the Charter. At the same time, cases such as *Al-Dulimi* demonstrate that their domestic and regional implementation remains subject to minimum standards of judicial review and fundamental rights protection, thereby confirming that Security Council authority, while hierarchically superior in the international legal order, is not insulated from rule-of-law scrutiny within constitutional systems.

At the same time, the legal authority of these resolutions should not be conflated with their uniform effectiveness. Implementation remains structurally decentralized and constitutionally mediated: binding duties concerning criminalization, asset-freezing, and cooperation often require domestic legislative transformation, and the resulting measures are then tested against constitutional guarantees and human-rights standards, as demonstrated by rights-based judicial scrutiny of sanctions implementation and the procedural reforms that followed, including the Ombudsperson mechanism. Monitoring structures such as the CTC and CTED strengthen coherence through reporting, assessment, and technical coordination, but their supervisory design reveals a deeper constraint: the Security Council can obligate, but it cannot directly execute, and the line between formal and substantive compliance is ultimately determined by state capacity and political will.

The practical picture that emerges is therefore a legal regime with high normative density but uneven operational traction, where indeterminate definitional boundaries, sovereignty-based interpretive discretion, and geopolitical selectivity produce fragmentation, and where “naming and shaming” operates as a reputational substitute for coercive enforcement. In doctrinal terms, the central contribution of this inquiry is to clarify that the Security Council’s counter-terrorism authority is best understood as a Charter-based mode of centralized norm production operating within a system that remains institutionally decentralized and constitutionally plural; the enduring challenge is to preserve the effectiveness of Chapter VII action while strengthening procedural legality and rights-compatibility so that counter-terrorism governance does not derive its authority from security necessity alone, but from demonstrable conformity with the rule-of-law requirements that the UN itself is committed to uphold. Whether the existing Charter-based enforcement model is sufficiently equipped to respond to the complexities of the emerging global order remains an open and pressing legal question.

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BMT TƏHLÜKƏSİZLİK ŞURASININ TERRORİZMƏ QARŞI MÜBARİZƏ QƏTNAMƏLƏRİNİN HÜQUQİ SƏLAHIYYƏTİ: NORMATİV ƏSASLAR VƏ İNSTİTUSİONAL MƏHDUDİYYƏTLƏR

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Xülasə

Birləşmiş Millətlər Təşkilatı Təhlükəsizlik Şurasının terrorizmə qarşı mübarizədə rolunun genişlənməsi Şuranın üzv dövlətlər üçün məcburi öhdəliklər müəyyən etmək səlahiyyətinin hüquqi əsası və həddləri ilə bağlı əhəmiyyətli mübahisələrə səbəb olmuşdur. Bu məqalədə BMT Nizamnaməsinin VII fəslə əsasında qəbul edilən Təhlükəsizlik Şurasının terrorizmə qarşı mübarizə üzrə qətnamələrinin normativ əsasları araşdırılır və onların icrasına təsir göstərən institusional məhdudiyyətlər təhlil edilir. Tədqiqatın məqsədi Şuranın ümumi xarakterli məcburi öhdəliklər yaratmasının doktrinal əsaslarını aydınlaşdırmaq və bu öhdəliklərin beynəlxalq hüquq sistemi daxilindəki mövqeyini qiymətləndirməkdir. Tədqiqatın obyektı terrorizmlə mübarizəyə yönəlmiş VII fəsil çərçivəsində qəbul edilmiş qətnamələr toplusudur. Bu çərçivədə xüsusilə həmin qətnamələrin məcburi hüquqi qüvvəsinə, kvazi-qanunvericilik xarakterinə və monitoring mexanizmlərinə diqqət yetirilir. Tədqiqatın metodologiyası BMT Nizamnaməsinin, xüsusilə 39, 25 və 103-cü maddələrinin doktrinal şərhinə, müvafiq qətnamələrin sistemli təhlilinə və məhkəmə təcrübəsinin, o cümlədən məsləhət xarakterli rəylərin və regional insan hüquqları üzrə məhkəmə təcrübəsinin araşdırılmasına əsaslanır. Tədqiqatın nəticələri göstərir ki, Təhlükəsizlik Şurasının terrorizmə qarşı mübarizə sahəsində səlahiyyəti Nizamnamədəki formal

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hüquqi əsası baxımından kifayət qədər möhkəmdir və bütün üzv dövlətlər üçün tətbiq olunan məcburi normaların yaradılmasına imkan verir. Bununla belə, bu səlahiyyətin praktiki effektivliyi qeyri-mərkəzləşdirilmiş icra mexanizmləri, dövlətlərin suverenliyinə əsaslanan diskresion səlahiyyətləri, məcburedici vasitələrdən məhrum monitoring strukturları, habelə milli və regional hüquq sistemlərində həyata keçirilən konstitusion nəzarət ilə məhdudlaşır. Tədqiqatın nəticəsinə əsasən, Təhlükəsizlik Şurası müasir beynəlxalq hüquq qaydasında mərkəzi, lakin struktur baxımından məhdudlaşdırılmış mövqe tutur.

Açar sözlər: BMT Nizamnaməsi, Təhlükəsizlik Şurası, VII fəsil, terrorizmə qarşı mübarizə, məcburi öhdəliklər, suverenlik, monitoring mexanizmləri.

ЮРИДИЧЕСКАЯ СИЛА РЕЗОЛЮЦИЙ СОВЕТА БЕЗОПАСНОСТИ ООН ПО БОРЬБЕ С ТЕРРОРИЗМОМ: НОРМАТИВНЫЕ ОСНОВЫ И ИНСТИТУЦИОНАЛЬНЫЕ ОГРАНИЧЕНИЯ

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Резюме

Расширение роли Совета Безопасности Организации Объединённых Наций в борьбе с терроризмом вызвало дискуссию о правовых основаниях и пределах его полномочий по установлению обязательных требований для государств-членов. В статье исследуются нормативные основы резолюций Совета Безопасности, принятых в соответствии с главой VII Устава ООН, и ограничения их реализации. Цель исследования заключается в выявлении доктринальных оснований формирования Советом Безопасности обязательств общего характера и их места в международном праве. Объектом исследования выступают резолюции, принятые в рамках главы VII Устава ООН для противодействия терроризму, с особым вниманием к их юридической силе, квазизаконодательному характеру и механизмам мониторинга. Методология основывается на толковании статей 39, 25 и 103 Устава ООН, системном анализе резолюций и судебной практики, включая консультативные заключения и практику региональных судов по правам человека. Результаты показывают, что полномочия Совета Безопасности в борьбе с терроризмом имеют прочную правовую основу в Уставе ООН, позволяя

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создавать обязательные нормы для государств-членов. Вместе с тем их эффективность ограничивается децентрализованной реализацией, дискреционными полномочиями государств, принципом суверенитета, механизмами мониторинга без принудительных полномочий и конституционным контролем в национальных и региональных системах. В заключение делается вывод, что Совет Безопасности занимает центральное, но структурно ограниченное положение в современной системе международного правопорядка.

Ключевые слова: Устав ООН, Совет Безопасности, глава VII, борьба с терроризмом, обязательные обязательства, государственный суверенитет, механизмы мониторинга.

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