

An Analysis of the Security Council Procedures in Managing Severe Violations of the International Human Rights

Abdolsamad Doulah¹ & Mirshahbiz Shafee¹

¹ Department of Environmental Law, Law Faculty, Shahid Beheshti University, Tehran, Iran

Correspondence: Mirshahbiz Shafee, Department of Environmental Law, Law Faculty, Shahid Beheshti University, Tehran, Iran. E-mail: Mirshahbiz@hotmail.com

Received: November 6, 2015 Accepted: July 23, 2016 Online Published: September 29, 2016

doi:10.5539/jpl.v9n8p33

URL: <http://dx.doi.org/10.5539/jpl.v9n8p33>

Abstract

The UN Security Council is primarily in charge of maintaining international peace and security. There has been raised various debates on how the Security Council manage international crises in the world, particularly severe violations of international human rights law. On the one hand, the traditional view to international peace has altered and the Security Council is also in charge of observing the standards of the international human rights . On the other hand, the international community has faced inconsistencies in the use of the veto by its permanent members on the international human rights violations .However, many analysts believe that the Security Council could take timely action to prevent violations of international human rights law. At that time, they fell into the trap of politics and proved insufficient. This article is in response to this important issue, indicating that the management of the Security Council has been fair in the case of international human rights violations. This study also aims to investigate whether the Security Council has been successful in adopting a procedure independent from the interests of its permanent members.

Keywords: severe violations, Security Council, veto, the International Human Rights

1. Introduction

Permanent membership of the five major powers and unjustified possession of the power of veto is not only a debatable aspect for the Security Council but also has become a major issue in the reform process. As mentioned, a majority of UN member states considers the power of veto as a political issue which violates of the sovereign equality of States emphasized in the Charter of the United Nations. In this case, the veto should have an appropriate compensation through which such an inequality between states can be explained. The representative of the United States of America at the San Francisco conference stated: "The victorious powers are capable of maintaining international peace as long as they are united...If there is a difference among them and they are not united, they would not sustain world peace. The victorious powers have at their disposal every means necessary for the unity to achieve their objectives because they do not want to destroy the lives and property of millions of people in another war "¹. He warned that death of the veto power means the death of the UN charter.

Despite the crisis management by the Security Council, it seems that, of 11 international conflicts in 2014, nine cases (Afghanistan, Congo, Central African Republic, Iraq, Libya, Somalia, South Sudan, Syria and Ukraine) were placed on the agenda of the Security Council; however, the council did not gain much success. For example, at the beginning of tensions in Syria, the Security Council held meetings and tried to control the situation through laying down a resolution and prevent from the instability in Syria; however, China and Russia as the main ally of this country prevented the adoption of a resolution in this regard. The first resolution on Syria tension goes back to 2011 with the proposal of Germany, Great Britain, and Portugal. In this resolution, an immediate end to the severe violations of human rights, the full implementation of human rights and fundamental freedoms, and the return of refugees to their homes were stressed. However, Russia and China prevented the adoption of this resolution. Two other resolutions were also proposed in 2012, which were not passed because of disagreements of these two countries. In addition, the latest Resolution dates back to 2014 with the proposal of more than 20 UN member states, where the emphasis was on referring Syria to the

¹ Document 936, III/1/45, June 12, 1945 (also found in Summary Report of Eighteenth Meeting of Committee III/1, Document 936 III/1/45, compiled in *Documents of the United Nations, Conference on International Organization, San Francisco, 1945, Vol. XI, at 474*).

International Criminal Court. However, it also failed and intercepted by vetoing these two countries. Syria is another example of the inability of the Security Council to make decisions without considering the interests of the permanent members of the Security Council.

In order to analyze the procedures taken by the Security Council on serious violations of international human rights, it is first necessary to get familiar with the concept severe violations of international human rights law. To this end, the first section of this article which consists of two parts is to identify and distinguish the severe violations of international human rights from other concepts. Moreover, in this section, the benchmarks to identify severe violations of the international human rights are analyzed. Then, in the second section, the procedures adopted by the Security Council in cases of severe violations of the International Human Rights are explained. The first of this section is on the management of the Security Council in these cases and in the second part of the permanent members of the Security Council has been questioned with regard to their accountability. As we know, the permanent members of the Security Council have a tool as a veto power at their disposal which authorizes them to oppose the topic and decisions in accordance with Chapters VI and VII of the Charter of the United Nations Security Council. Hence, since severe violations of the international human rights include issues that are of high sensitivity to the world, they may even cause internal conflict in the use of the veto in cases of severe violations of international human rights and responsibility to protect people exposed to these severe violations. Thus, these two important questions rise: Is the procedure adopted by the Security Council international against severe violations of human rights fair? Does the Security Council fundamentally have the potential to make the permanent members of the Security Council decide on these issues, regardless of their interests?

2. Identifying and Detecting Severe Violations of International Human Rights Law

Regarding their degree, severe violations are against the violations of the international human rights. Violations of international human rights may occur on a daily basis around the world, and the international community unfortunately ignores it as a normal and negligible phenomenon. For example, not hearing defenses in a court by a judge or non-compliance with the principle of correspondence are considered as violations of human rights; however, they are not severe. In contrast, severe violations are non-negligible and people cannot remain silent in these cases. In fact, the term severe or serious here refers to the seriousness of the offense in order not to undermine the breach of commitment. Therefore, the term severe or serious does not refer to any violation of important obligations.² It can be said that the extent of the violation is concerned; i.e. the violations with explicit nature and constitutes an invasion of values considered to be the rule. The intention on violating the rule and the number of violations are its consequences for those harmed³.

2.1 The Concept of Serious Violations

Serious violations refer to the systematic violation of some, not all, human rights. As it was previously explained, some human rights such as apartheid, racial discrimination, slaving, crime and genocide are of high importance so that today they can be considered as international norms. The United Nations made lots of efforts to define the severe violations.⁴ According to the Regulation "1503" of the United Nations on serious violations of human rights, it seems that the serious violations include the violations of civil, political, economic, social and cultural rights in a part of the world, even in conditions of armed conflict, threat to the peace, and violations of international humanitarian law. For example, the apartheid policy perfectly matches with this definition⁵.

International practice suggests that the term "serious violations" could then be interpreted from various perspectives. On the one hand, violation of any human right can be considered as a serious violation. On the other hand, the impact of interpretive guide on the corporate responsibility published by the United Nations; High Commission for Human Rights claims that: "Although there is no single definition on serious violations of human rights in the international law, these cases can be considered as serious violations: Genocide, slavery, torture, arbitrary detention, summary execution and systematic discrimination. "Moreover, it is also mentioned in this guide that other violation of human rights, including violations of economic, social and cultural rights, if serious and systematic e.g. target a certain population groups or applied on a large scale, can be considered as

² Madani, Z. A., "International responsibility of government to guarantee observing the human rights", *Bar Association Journal*, 208 & 209, 2010.

³Gasser, Hans P., "Ensuring Respect for the Geneva Conventions & Protocols: the Role of 3rd States & the UN", p.191.

⁴ Conde, Victor H., *IA Handbook of International Human Law Terminology*, University of Nebraska, USA, Vol.8, 2004, p.103.

⁵ ONCHR, Human Rights Council Complaint Procedure,

<http://www.ohchr.org/EN/HRBodies/HRC/ComplaintProcedure/Pages/FAQ.aspx#ftn2>, last seen: 3/15/2016

serious violations⁶.

Guidelines issued by the United Nations in support of security forces affiliated to the United Nations, a mixed definition is accepted and three different legal regimes - international humanitarian law, international human rights and refugee law are combined. Thus, serious violations include torture, deliberate disappearance, slaving, rape, summary executions and unlawful killings⁷.

In a study conducted by Professor "Theo van Boven" on severe violations, it was argued that the term "severe" is describing violations (referring to the serious nature of violation) and the type of human rights being violated⁸. In this regard, the reference is made to the Article 3 common to the Geneva Conventions where the minimum humanitarian standards are stipulated and observing them in any time and at any place is of essence⁹. Professor Boven concluded that if the concept "serious violation" is thoroughly understood, nothing remains vague in this regard. Therefore, it is suggested that an applicable formula is used for the violation of human rights: "In the international law, when any violation of any human right results in an enforceable right to compensation for the victim, particular attention should be paid to severe violations of human rights which are as follows: genocide, slaving, summary execution, torture, inhuman treatment or punishment, forced displacement, systematic discrimination, particularly based on race and gender."¹⁰

Moreover, some specialists have considered four elements associated with the severe violations: (1) the quantity, (2) time, (3) quality (type of the violated right and nature of the act) and (4) planning. It is also stipulated that the quality could be a combination of three factors mentioned. Hence, we have: 1. type of the violated right, 2. features of the violation and 3. victims' specifications¹¹.

In other words, procedure analysis and the definition of severe violations by the Security Council can be useful. In the literature of the Security Council, the adjectives serious, severe and egregious are used for the violation of human right. It seems that they are willing to know them equivalent. For example, in paragraphs 12 and 13 of the Resolution No. 2000 dated 27 July 2011, the words severe¹² and serious¹³ are for violation of Human Rights in a same sense. Of course, the mere use of the phrase human rights violations in the literature of the Security Council does not indicate that violations are not severe. For example, during the adoption of the Resolution No. 2000, the serious violations of human rights in Ivory Coast were stated and actions such as the use of children in war, unlawful killings and arbitrary detention were pointed out. However, in the Resolution No. 2062 dated 2013, the same actions committed in Ivory Coast are mentioned with the difference that the chosen title is the violation of human rights. It seems that the Security Council considers the situation of victims to assess the severity of

⁶ OHCHR, "The Corporate Responsibility to Respect Human Rights: An Interpretative Guide", UN, 2012, UN doc. HR/PUB/12/02, p.6, At: http://www.ohchr.org/Documents/Publications/HR.PUB.12.2_En.pdf. Last seen: 01/01/2016.

⁷ UN, 'Human Rights Due Diligence Policy on UN support to non-UN security forces (HRDDP)', 2011, p. 3, para. 12.

⁸ Boven, Theo van, Study Concerning the Right to Restitution, Compensation and Rehabilitation for Victims of Gross Violations of Human Rights and Fundamental Freedoms, UN doc. E/CN.4/Sub.2/1993/8, 2 July 1993, paras. 8-13.

⁹ If armed conflicts are not international and occur in the territory of one of the contracting states, each of the hostile parties are obliged to observe the following points:

1. Those who do not participate directly in the war, including gunmen who laid down their guns or those who do not take part in war due to illness or injury or imprisonment or any other cause in all circumstances shall be treated humanely without discrimination caused by race, color, creed, or wealth, or any other reason.

The following acts will be prohibited against these persons in any time and at any place:

(A) Damage to life or physical integrity including murder in all its forms, injury, violent treatment, torture and harassment;

(B) Hostage;

(C) Damage to personal dignity, including humiliating and discounts;

(D) Being sentenced and executed without the order of a court properly held and includes judicial guarantees made necessary by the civilized nations.

2. The wounded and sick must be collected and nursed. An unbiased and neutral organization such as the International Committee of the Red Cross may offer its services to the hostiles. In addition, the hostiles will try to implement all or parts of the other provisions of this Convention through special agreements in a timely manner. "

¹⁰ *Ibid.*

¹¹ Quiroga, Medina, *the Battle of Human Rights, Gross, Systematic Violations and the Inter-American System*, Martinus Nijhoff, Dordrecht, the Netherlands, 1988, p.16.

¹² In order to participate in the promotion and protection of human rights in Ivory Coast, with special attention to the severe violation of human rights"

¹³ Serious violation of human rights and international humanitarian law, which have occurred during the post-election crisis, including unlawful killings, arbitrary detention, the use of children in armed conflict, especially in Abidjan are condemned.

human rights violations. This can be recognized after the adoption of the Resolution and the establishment of monitoring and reporting¹⁴ mechanisms¹⁵.

2.2 Benchmarks of Severe Violation

When observing international human rights has been recognized as an international commitment, its violation results in an illegitimate action and allows international organizations and governments to react it in the context of international law. On the other hand, the severe violation of international human rights has led the world to react and international organizations to resort to various measures to ensure respect for international human rights¹⁶. Now, we got familiar with the concept severe violations of international human rights. Now, the question to be addressed is: How is it possible to identify and detect severe violations? In this section, the criteria to identify severe violations are explained.

A. International institutions: international institutions and organizations play a major role in identifying severe violations of international human rights. In this context, the United Nations as one of well-known international organizations can be mentioned. Part of the responsibility of this organization is to obligate governments to respect human rights. In this way, they employ two means: 1. Approving some conventions and resolutions and establishing contract requirements to implement human rights standards. 2. Internationalizing some of the concepts and practices of international human rights to ensure their observations by the states¹⁷.

Adopting Resolutions by the various organs of the United Nations is one of the effective tools to manage critical aspects of human rights violations and to direct the parties. For example, the Resolution A / RES / 60/170 dated 2005 adopted by the United Nations General Assembly stipulates that "in the occupied Palestinian territories, Covenant on Civil and Political Rights, the Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of the Child should be observed and asks Israel as an occupying state to stop activities which result in violating the human rights of Palestinians... "

One of the positive features of international organizations in the field of human rights is that they are less susceptible to political considerations; however, states are always having considerations in this regard. As a result, international organizations have focused more effort on promoting human rights. Of course, since the executive power of the United Nations is granted by member states and these states are independent and do not accept the intervention of foreign powers in their governance, it seems that attracting the cooperation of the member states to observe the human rights standards without resorting force and pressure is among the major UN activities in the field of human rights¹⁸.

The general mechanism of international monitoring agencies is that member states must deliver a report on the measures and actions adopted for certain provisions of the treaty, including laying down necessary laws, reforming existing laws and judicial and administrative practices and their problems, to the UN Secretary-General and address him. These reports are primarily reviewed in the committee, and the state representatives are asked to explain and the committee gives its opinion on the obtained developments to the government, relevant organizations of the United Nations and member states¹⁹.

(B) Non-state organizations: Non-state organizations can be considered as the main actors in the fields of human rights of regional and universal programs. For example, they even play a role in drafting the Universal Declaration of International Human Rights, Covenant on civil and political rights as well as on social, cultural, and economic rights, Convention against Torture, Convention on the Rights of the Child and in monitoring the implementation of these conventions. It seems that, in many cases that international rules have emerged, international unions or a group of individuals in non-state organizations have taken fundamental activities in order to convince others about the importance and value of new norms. These cases include issues such as

¹⁴ This mechanism was established in 2005 with the adoption of the Resolution 1612. The purpose of its establishment was monitoring and reporting severe violations against children in armed conflict. In fact, this mechanism collects objective and correct information and presents the Security Council. Retrieved from: <https://childrenandarmedconflict.un.org/our-work/monitoring-and-reporting/> ret: at April 30, 2016

¹⁵ Karimova, Takhmina, "What amounts to 'a serious violation of international human rights law'? An analysis of practice and expert opinion for the purpose of the 2013 Arms Trade Treaty", Briefing No.6, Geneva Academy of International Humanitarian Law and Human Rights, 2014, p.26.

¹⁶ Khozeh Jil, A. "The responsibility of international governments against human rights violations", translated by E. Beig Zadeh, *Legal Research*, Issue 29-30, 2000, p. 275.

¹⁷ Mehrpour, H., (1998) "The international human rights system", Etelaat Press, Tehran.

¹⁸ Mehrpour, H., "International mechanisms and inhibition of human rights violations", *Foreign Relations*, No. 4, 2009, p. 25.

¹⁹ Mehrpour, H., "International mechanisms and inhibition of human rights violations", *Foreign Relations*, No. 4, 2009, p. 27-28.

apartheid, women's votes, and elimination of violence against women²⁰.

With the help of non-state organizations, human rights violations can be monitored, recorded, and terminated. Furthermore, the activities of those violating human rights are clarified through observation and data collection and this information result in the cases which may lead to the behavior modification of states violating the human rights²¹.

Basically, non-state organizations employ three methods to collect evidence and documents on the international human rights violations: (a) interviews with refugees, local authorities, medical staff and providing reports on this information for the important international actors, (b) recording international human rights violations and reflecting them in public opinion. (C) collecting information from local groups in societies where human rights have violated and publishing it²².

This question may put forward: Is the presence of representatives of non-state organizations at the time of human rights violations necessary or not? The answer to this question is No because the reports are prepared based on the claims of the witnesses monitoring human rights violations. This type of report is so-called shadow reports which are documented better than official government's reports²³. For example, individuals involved in genocide are witnesses. After reviewing these reports, non-state organizations convert this information into reports. Thus, non-state organizations prepare their reports without having to be present at the scene of human rights violations²⁴.

International Committee of the Red Cross is one of the most influential organizations in providing information on serious violations of human rights and humanitarian rights. The committee reports and statements on human-crisis arising from armed conflicts can be regarded an effective action to inform the world. For example, the International Committee of the Red Cross in a report on the crisis in Syria wants the parties involved to respect the humanitarian law, including civilian access to medical aid, no destruction of infrastructures and humanitarian principles in the case of prisoners²⁵.

Although the ways to identify the violations of international human rights law are presented in this section, it must be noted here that some of the authors have objected the mechanism of issuing declarations and instructions at the time of war adopted by the International Committee of the Red Cross and points out to their failure in relief activities in many international conflicts. In fact, the authors suggest that the International Committee of the Red Cross should use new mechanisms in the international conflicts such as the use of public opinion, the mass media and its status at the United Nations as an observer member and modify its²⁶ traditional literature.

(C) Public opinion: Today, this belief is promoted that the international human rights law is universal and operates beyond the mechanisms of the governments. These rights form a part of the discourse which affects elite, leaders, and institutions and the oppressed²⁷.

The behaviors of the states are not affected by the national values anymore. However, they are affected by the basic human values. In other words, as no state can violates the rights of other states or nations, it also cannot ignore the obligations of the international human rights of their citizens just due to locality principal²⁸.

The emergence of concepts such as "universal common good", "international peace and security", "preservation of human dignity", "common heritage of mankind" and "environmental protection" addresses the universal spirit and this also requires a new international legal order²⁹.

With regard to the public opinion, "Machiavelli" states that: People are the most powerful element of society and the states should always pay special attention to it." According to "Hobbs", the world is within the domination of public opinion. "Temple" believes that the theory of power should be based on public opinion. "Jean-Jacques

²⁰ Sharifi Taraz Kuhi, H., (2011). Human Rights (values and facts), Mizan, Tehran.

²¹ Steal, B. J. and Amorue, J., (2007) "Benefits and limitations of panopticism of human rights in non-state organizations and in monitoring Genocide ", translated by M. R. Golshan Pazhooh, *Rahbord*, 250-251.

²² Spis, K. K., (2002), "Human Rights and international organizations", *Rahbord*, 23, 254.

²³ Olivier De Schutter, *op. cit.*, p.800.

²⁴ Spis, K. K., (2002), "Human Rights and international organizations", *Rahbord*, 23, 254-255.

²⁵ ICRC Emergency Appeal, Syrian Arab Republic, available at: https://app.icrc.org/files/2015-emergency-appeals/.../2015_ea_syria.pdf, last seen: 03/23/2016.

²⁶ Morovat, M., (2011) "The role of the International Committee of the Red Cross in the support of war victims", *Public Law Research*, (32).

²⁷ Sharifi Taraz Kuhi, H., (2011). Human Rights (values and facts), Mizan, Tehran, p. 268.

²⁸ Aramesh, R., (2010) "legal dominance on true values", *Written Judgments*, 6, p. 4.

²⁹ Sharifi Taraz Kuhi, H., *ibid.* P. 17.

Rousseau" also speaks of public will and knows this will as the guideline for all powers and states³⁰.

Public opinion has crossed national boundaries and become international. This phenomenon has come to the extent of integrity and objectivity that it is mentioned as a new political actor or force. Public opinion is different from common thoughts because common thoughts are attitudes or judgments fairly wide but without dynamism; however, the public opinion is forming collective force and is also associated with pressure³¹.

Due to globalization, sovereignty is increasingly affected by how a government treats its citizens. Now, observing human rights standards and adherence to the democracy principles and rules prevents from the vulnerability of governments against foreign decisions and guarantees the country's independence in a world where interdependence is one of its components. In the contemporary world, governments possessing national legitimacy should also have the moral legitimacy. Otherwise, they face with the pressure of international public opinion influenced by human rights declarations of official international bodies and other governments. This pressure, if other conditions can also be provided, can oblige the violating state to respect human rights and regulations³².

3. Security Council on the Path towards the Management of the International Peace and Security Threatening Crisis

Weschler (2004) claimed: "No one seriously questions the relationship between human and the Security Council and the need for access to human rights information and the council's performance analysis." In fact, everyone agrees with its findings³³. Comparing the severe violations of international human rights and decisions of the Security Council in this regard reveals that human rights issues in the Security Council are not the same as human rights issues for international law experts. According to some experts, "the Security Council has adopted the least amount of stability in his decisions and reactions in terms of implementing international human rights standards."³⁴ Although the Security Council was initially established to respond to conflicts among nations, the council gradually expanded its legitimacy under the Charter of the United Nations to the mechanisms of mediation in civil wars, investigations, sanctions, peacekeeping operations and employing military forces. Hence, the Security Council became the main actor in the international crisis management system.

3.1 Managing Severe Violations of International Human Rights by the Security Council

In most cases, the unity of the permanent members of the Security Council on the response to a crisis rarely leads to their decision to manage their primary differences in a conflict, in spite of the fact that the Charter of the United Nations has emphasized the preventive role and emergency response of the Security Council. Article 99 of the Charter states: "the Secretary-General can draw the attention of the Security Council to issues which, he believes, may become a threat to international peace and security." However, concerns about the country's sovereignty, interests of the permanent members and fears of possible violence impede the UN Security Council from the instant reactions. Even little efforts to strengthen the Council's ability to predict the crisis have faced its members with many difficulties. As a result, Chesterman says: "The efforts made by United States of America, China and Russia to have exclusive control over the Council show the reason of twice explicit referring to the Article 99 of the Charter; however, it was implicitly referred to."³⁵

In order to manage the severe violations of the international human rights, the Security Council based on the defined mechanisms uses force, imposes sanctions and peacekeeping operations or referral to the International Criminal Court. In this section, these four measures will be described.

(A) Use of force: If we take a look at the potential legal authorities which the Chapter VII of the Charter, we will realize that the Security Council lacks independence which should be based on the borrowed strength and move in line with the political will and the understanding created. For example, when "Laurent Gbagbo", the Ivory Coast president, in 2010 rejected the election results and violence flared, the Security Council with the guidance of France tried to manage the situation. The Security Council first took action with diplomacy and peacekeeping

³⁰ Asadi, A., (1996), "What is public opinion?" *Eighth art*, 2, 36-37.

³¹ Ghafari, M. and Kamali, Y., (2010) "Public opinion and public policymaking (a theoretical reflection)", *Journal of Political Science at Tehran University, Faculty of Law and Politics*, 40 (2), p. 172.

³² Shaygan, F. et al., (2003). Strengthening international cooperation in the case of human rights, Publication Center of faculty of law and political science at Tehran University, Tehran, p. 236

³³ Weschler, Malone (ed), *The UN Security Council: From the Cold War to the 21st Century*, 2004, P. 55.

³⁴ E. C. Luck, *UN Security Council: Practice and Promise*, Abingdon: Routledge, 2006, p.86.

³⁵ Simon Chesterman, "Relations with the UN Secretary-General," in: von Einsiedel, Malone, Stagno Ugarte (eds), *The Security Council in the 21st Century*.

and finally placed on its agenda serious actions including the use of the Economic Community of West African peacekeepers and French troops. However, in reality, the Security Council failed to effectively protect civilians and act against systematic attacks on Gbagbo forces.

It should be noted that humanitarian intervention of the Security Council is with no cost. According to Reisman, "there should be capacity and will to directly contribute into the war. We are not talking about 500 troops from Fiji and 1,500 blue-helmeted soldiers from Canada to create secure and civilian areas; however, we are talking about the activities which take the direct participation of the developed countries."³⁶

On the other hand, citizens of these countries are reluctant to pay heavy costs against violations of human rights until their national interests are not supplied. For example, in 1938, when the Prime Minister of Great Britain was asked about the Czechoslovakia crisis, he replied: "To what extent this crisis is terrible and unbelievable that we have to dig bunkers and take along our weapons and go to the middle of the conflict between those people about whom we do not have any information!"³⁷

(B) Imposing sanctions: Some administrative activities of the Security Council are civilians based on multiple imposed sanctions. Of course, the UN Security Council, after having comprehensive sanctions against the regime of Saddam- which imposed a lot of suffering for the Iraqi people according to the UNICEF and ICRC, has tried to be cautious in order to be the minimum harm to the citizens in imposing sanctions. In fact, the Security Council should not violate the international law and international human rights principles while imposing sanctions³⁸. Hence, the Security Council used smart and targeted sanctions to merely punish the individuals and entities involved in severe violations of international human rights. Although the sanctions imposed against the Congo, Serbia, Sierra Leone, Sudan and Liberia did not lead to major changes, they at least revealed the international concerns about international human rights violations. It can be said that imposing sanctions is standing between diplomatic discussions and military actions. Therefore, imposing sanctions is of more interest to the permanent members of the Security Council because it is difficult to agree on military operations and legitimacy.

(C) United Nations peacekeeping operations: Over the past decade, UN peacekeeping operations have become the most important means of peace and security. In some cases, the United Nations implements the Security Council peacekeeping operations of Chapter VI of the Charter. Though, this was mainly derived from the creativity of the decades 40 and 50 AD not the Charter prediction. This type of military diplomacy is not entirely based on force and the blue-helmeted UN soldiers are between the parties of the conflict and monitor their activities or provide reports on about International human rights violations for the Council. The use of peacekeeping forces primarily shows the lack of political will on the direct intervention of the Security Council in cases of severe violations of international human rights. For example, genocide continued in Sudan's Darfur in spite of the presence of peacekeepers and multiple reports in this regard did not convince the Security Council to take actions under the Chapter VII of the Charter of the United Nations³⁹.

It seems, peacekeepers not only have security function but also reinforce good governance, promote international human rights, improve humanitarian aids, monitor the process of disarmament, and provide grounds for national dialogue or compromise⁴⁰.

(D) International Criminal Court: It seems that, in failing to respond adequately to the situation in Darfur, the Security Council urged the international criminal law. In 2005, the Security Council passed a rule that the Western Sudan situation should be referred to the International Criminal Court⁴¹. Another means is the use of international criminal law by the Security Council in the case of severe violations of international human rights. To this end, the Security Council used the temporary tribunals such as the former Yugoslavia and Rwanda courts

³⁶ W. Michael Reisman, "the Constitutional Crises in the UN", 87 AM. J. international, L, 83, 1993, note 49.

³⁷ Winston Churchill, the 2nd World War: the Gathering Storm 315 (1948) (quoting Prime Minister Neville Chamberlin addressing the English nation during a radio broadcast. on Sept. 27, 1938).

³⁸ Bardo Fassbender, *Securing Human Rights? Achievements and Challenges of the UN Security Council*, Oxford University Press, 2011, p.75

³⁹ David P. Forsythe, "The UN Security Council and Human Rights State Sovereignty and Human Dignity", *International Policy Analysis*, Friedrich Ebert Stiftung, 2012, p.7

⁴⁰ Sebastian von Einsiedel, David M. Malone & Bruno Stragno Ugarte, *The UN Security Council in an Age of Great Power Rivalry*, United Nations University Working Papers, 2015, p.11.

⁴¹ The draft was passed by 11 council members' positive votes and negative votes of 4 countries including United States of America, Algeria, Brazil and China. An important point is the negative vote of the United States of America (the country does not agree to the jurisdiction of the International Criminal Court), which paved the way to put pressure on Sudanese leaders.

and criminal courts such as Sierra Leone and Lebanon or refers the issues to the International Criminal Court. Referral to the Court is in accordance with its Statute⁴².

Some researchers interpret the fundamental system of the Security Council, i.e. the collective security, as selective security. In this system, there is no objective criterion for determining whether and how the Security Council must get involved in a crisis; however, profit-loss calculations for each of the permanent members of the council, their allies, the countries candidate for sending peacekeepers and countries involved in the crisis determine the extent of the involvement of the security Council. That's why the Security Council issued resolution only in 10 cases of 25 military conflicts in the world since the Cold War⁴³.

3.2 Accountability of the Permanent Members of the Security Council in the Case of Severe Violations of International Human Rights

In order to assess the accountability of the permanent members of the Security Council in the case of severe violations of international human rights, the principals of the accountability to protect must be investigated. Protection accountability is a concept that is based on three principals:

A. Accountability of any government to protect citizens against genocide, war crimes and crimes against humanity.

(B) Accountability of the international community to encourage and assist governments to take responsibility and empower to provide the appropriate support of the people.

(C) Accountability of the international community in collective actions under the Charter of the United Nations in cases where these actions are insufficient and the government fails to support people against genocide, war crimes and crimes against humanity.

On behalf of all members of the UN, the Security Council is committed to maintain international peace and security. Since the permanent members of the Security Council with regard to their financial and military capabilities could bring each regional to the chaos, the veto power prevents these tragedies. However, since the beginning of the Security Council performance, little success was achieved due to reasons such as excessive and inconsiderate use of the veto by permanent members and the council could not efficiently handle its solemn responsibilities.

However, unchanging factor is that for political reasons, the drafts of the Resolutions which lack the human rights violations in the United States of permanent members face with the veto risk of permanent members. For this reason, military measures of the Security Council, peacekeeping operations and the jurisdiction of the International Criminal Court only hinders small and weak states which are not considered as the allies of permanent members. Even the efforts to reform the UN Charter may face with the veto of the permanent members. Thus, there will be double standards in the case of issues of severe violations of international human rights. For example, if Russia attacks Chechnya and Georgia or China welcomes Omar Bashir who is under the prosecution of the International Criminal Court, the Security Council cannot be expected. In this regard, one of the researchers said: "double standard exists. The order is not necessarily equal to fair. In the Security Council, a powerful state imposes what it can and a weak state imposes what it should⁴⁴."

The first decades of the UN Security Council performance was associated with a competition among big powers and this manifest itself in the excessive use of the veto power. After the Cold War, the practical use of his veto power was declined; however, the threat to use it remained in negotiations of the members. This was called "hidden veto power⁴⁵". This hidden veto power was against the real veto power and as its result, many decisions supported by the majority of the Council was completely blacked out⁴⁶. The impact of the hidden veto power was to the extent that the Security Council could react appropriately in response to serious violations of international human rights in numerous occasions. For example, in Rwanda because of hidden veto power of the United States of America and France, the world closed its eyes on the genocide of more than 800,000 people. The independent report commissioned by the United Nations in 1999 has repeatedly pointed out that the United Nations had direct responsibility of the genocide because it was empowered by the reluctance of the permanent

⁴² David P. Forsythe, op. cit., pp.9-10.

⁴³ Peter Wallensteen and Patrik Johansson, "The UN Security Council: Decisions and Actions," in: von Einsiedel, Malone, Stagno Ugarte (eds), *The Security Council in the 21st Century*, 2015, p.31.

⁴⁴ D. Malone, *The UN Security Council: From the Cold War to the 21st Century*, Boulder, CO: Lynne Rienner Publishers, 2004, p.614.

⁴⁵ Gasimova Shafa, "The Security Council's Endless Enlargement Debate", *Central European Journal of International and Security Studies*, vol.6, Issue 4, 2012, pp. 274-275.

⁴⁶ Navazani, B., *The UN Charter and fundamental reforms in the United Nations. international and political approach*, Issue 28, 2011, p. 130.

members of the Security Council. "There was no strong political will among the permanent members of the Security Council on taking or not taking a decisive action. Lack of political will had affected the response and decisions of the Security Council⁴⁷ ..."

Furthermore, the measures adopted by a number of permanent members of the Security Council with regard to severe violations of international human rights which were beyond the framework of the Security Council and its license can be a response attributed to the lack of political will. For instance, it was observed in 1999 in the case of severe violations of international human rights in Kosovo and the NATO bombed Serbia⁴⁸. In addition, concerning Libya, the Security Council for the first time agreed to use force to protect civilians; however, the country has been a member of the United Nations. NATO interpretation of the license was beyond the no-fly zone and resulted in more extensive military operation and the fall of the Gaddafi regime. Several factors influenced this dual approach and such an action to protect the civilians is rare⁴⁹.

Although this procedure is not always realized because the responsibility of the permanent members on the severe violation of international human rights highly depends upon their cost-benefit approach. For instance, some researchers believe that, even in the absence of Russia and China's veto in the Syria crisis, the Security Council wouldn't take measures affecting events in the region and leading to change. It was partly because of the reluctance of the United States of America to have military intervention in the crisis. United States of America had a similar experience in Iraq and, despite warnings of "Colin Powell", military operations were carried out in that country, regardless of the fact that when you disorder something, you will be its owner too. It was also partly because of the different objectives of the United States of America (changing the regime), China and Russia⁵⁰. On the other hand, when Sri Lankan government initiated military operations against the Tamil separatists and led to the deaths of nearly 40,000 civilians, the Security Council failed to hold an official meeting because of the opposition from Russia, China and non-permanent Asian members of the Security Council.

Moreover, military invasion of the United States of America and Great Britain to Iraq in 2003 showed the capability of these two countries to ditch the Security Council. This war was launched with disagreement of many countries and without the consent of the Security Council. Earlier, the resolution 1441 was adopted and the Iraqi government was charged with the breach of the obligations contained in resolution 678. However, according to the Permanent Representative of the United States of America, "John Negroponte," the resolution was not a license for the use of force against Iraq⁵¹. It should also be said that the Security Council failed to condemn such operations and irresponsibility of its permanent members. Although it is difficult to estimate damages arising from the veto of the Resolution draft by the permanent members of the Security Council and to establish a causality relationship, it seems that permanent members have gotten aware of the public opinion and media and the use of the veto power by alternative methods has been done more wisely.

4. Conclusion and Recommendations

As mentioned, if the permanent members of the Security Council continuously use the veto power in order to protect national interests and preferences at the expense of neglecting serious violations of human rights, their credibility and the credibility of the Security Council will be under question. This problem promotes the activists to circumvent the Security Council and pursue the challenging policies beyond the UN. However, it would not always be realized. Therefore, in order to manage serious violations of international human rights, independent mechanisms should be adopted within the Security Council to encourage the permanent members to make decisions based on international peace and security.

Hence, in order to have a fair and pragmatic management of the Security Council in the case of severe violations of international human rights, the French government proposal seems to be helpful. France has proposed that the veto power should not be considered as a privilege. The veto power entails certain responsibilities and duties specified by the UN Charter for the permanent members. In fact, the veto power is to strengthen cooperation among permanent members, resolve international disputes, guarantee compliance with international law, and

⁴⁷ Report of the Independent UN Inquiry into the actions of the UN during the 1994 genocide, in Rwanda, commissioned by Secretary General Kofi Annan to the president of the Security Council, (S/1999/1257), 15 December 1999, <www.un.org/Docs/sc/letters/1999/sglet.htm>, visited 21 December 2014.

⁴⁸ David P. Forsythe, *op. cit.*, p.12.

⁴⁹ Alex J Bellamy and Paul D Williams, "The new politics of protection? Cote d'Ivoire, Libya and the responsibility to protect", *International Affairs*, Volume 87, Number 4, 2011, p.840.

⁵⁰ Sebastian von Einsiedel, David M. Malone & Bruno Stragno Ugarte, *op. cit.*, p.8.

⁵¹ United Nations Security Council, Security Council 4644th meeting, created 8 November 2002, Security Council Documents,

protect civilians⁵². As a result, the veto power at least shall not be used in cases of severe obligations of the International Human Rights and it is fair that the permanent members of the Security Council as non-permanent members only announce their positive or neutral comments.

References

- Aramesh, R. (2010). legal dominance on true values. *Written Judgments*, 6.
- Asadi, A. (1996). What is public opinion? *Eighth art*, 2.
- Bellamy, A. J., & Williams, P. D. (2011). The new politics of protection? Cote d'Ivoire, Libya and the responsibility to protect. *International Affairs*, 87(4). <http://dx.doi.org/10.1111/j.1468-2346.2011.01006.x>
- Boven, T. (1993). Study Concerning the Right to Restitution, Compensation and Rehabilitation for Victims of Gross Violations of Human Rights and Fundamental Freedoms.
- Conde, V. H. (2004). A Handbook of International Human Law Terminology, University of Nebraska, USA, Vol.8.
- Einsiedel, S. von, Malone, D. M., & Ugarte, B. S. (2015). The UN Security Council in an Age of Great Power Rivalry, United Nations University Working Papers.
- Fassbender, B. (2011). *Securing Human Rights? Achievements and Challenges of the UN Security Council*. Oxford University Press. <http://dx.doi.org/10.1093/acprof:oso/9780199641499.001.0001>
- Forsythe, D. P. (2012). The UN Security Council and Human Rights State Sovereignty and Human Dignity. International Policy Analysis, Friedrich Ebert Stiftung.
- Ghafuri, M., & Kamali, Y. (2010). Public opinion and public policymaking (a theoretical reflection). *Journal of Political Science at Tehran University, Faculty of Law and Politics*, 40(2).
- Karimova, T. (2014). What amounts to 'a serious violation of international human rights law'? An analysis of practice and expert opinion for the purpose of the 2013 Arms Trade Treaty, Briefing No.6, Geneva Academy of International Humanitarian Law and Human Rights.
- Khalidi, W. (1978). Thinking The Unthinkable: A Sovereign Palestinian State. *Foreign Affairs*. <http://dx.doi.org/10.2307/20039986>
- Khozeh Jil, A. (2000). The responsibility of international governments against human rights violations. translated by E. Beig Zadeh, *Legal Research*, (29-30).
- Luck, E. C. (2006). UN Security Council: Practice and Promise. Abingdon: Routledg.
- Luck, E. C. (2012). *The Corporate Responsibility to Respect Human Rights: An Interpretative Guide*. Retrieved January 1, 2016, from http://www.ohchr.org/Documents/Publications/HR.PUB.12.2_En.pdf
- Madani, Z. A. (2010). International responsibility of government to guarantee observing the human rights. *Bar Association Journal*, 208 & 209.
- Mehrpour, H. (1998). *The international human rights system*. Etelaat Press, Tehran.
- Mehrpour, H. (2009). International mechanisms and their inhibition of human rights violations. *Foreign Relations*, (4).
- Michael Reisman, W. (1993). the Constitutional Crises in the UN. 87 AM. J. international, L, 83.
- Morovat, M. (2011). The role of the International Committee of the Red Cross in the support of war victims. *Public Law Research*, (32).
- Quiroga, M. (1988). the Battle of Human Rights, Gross, Systematic Violations and the Inter-American System, Martinus Nijhoff, Dordrecht, the Netherlands.
- Shafa, G. (2012). The Security Council's Endless Enlargement Debate. *Central European Journal of International and Security Studies*, 6(4).
- Sharifi Taraz Kuhi, H. (2011). *Human Rights (values and facts)*. Mizan, Tehran.
- Shaygan, F. et al. (2003). Strengthening international cooperation in the case of human rights, Publication Center of faculty of law and political science at Tehran University, Tehran.

⁵² <http://www.diplomatie.gouv.fr/en/french-foreign-policy/united-nations/france-and-the-united-nations/article/why-france-wishes-to-regulate-use>, last seen: June 03, 2016.

- Spis, K. K. (2002). Human Rights and international organizations. *Rahbord*, 23.
- Steal, B. J., & Amorue, J. (2007). Benefits and limitations of panopticism of human rights in non-state organizations and in monitoring Genocide. translated by M. R. Golshan Pazhooh, *Rahbord*, 43.
- UN. (2011). Human Rights Due Diligence Policy on UN support to non-UN security forces (HRDDP).
- Wallensteen, P., & Johansson, P. (2015). The UN Security Council: Decisions and Actions. In von Einsiedel, Malone, Stagno Ugarte (Eds.), *The Security Council in the 21st Century*.
- Weschler, M. (Ed.). (2004). *The UN Security Council: From the Cold War to the 21st Century*.

Copyrights

Copyright for this article is retained by the author(s), with first publication rights granted to the journal.

This is an open-access article distributed under the terms and conditions of the Creative Commons Attribution license (<http://creativecommons.org/licenses/by/4.0/>).