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# United Nations Security Council's extrajudicial measures and responsibility towards fundamental human rights

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***Abstract---*** *The Security Council of the United Nations, after the end of the Cold War and especially since the 1990s, has expanded its activities in many other areas, such as support for human rights and related obligations, through transforming the traditional concept of peacekeeping and security making in accordance with paragraphs one and two of Article 24 of the UN Charter. The main challenge has been with the Security Councilmeasures and decisions with reference to Chapter Seven and the unlawfulness and incompatibility of some of its decisions and measures with the Charter and human rights obligations as well as international law and human rights judicial procedures. The present paper studies the difficulties related to the admission of the Security Council as an extrajudicial institute and compliance with its international obligations and responsibilities towards grave human rights violations concerning Chapter Seven and humanitarian interventions. The findings suggest that despite the efforts of the council to support human rights and its mechanisms, there seems to be a clear violation its managerial performance and treatment. In other words, some of the Security Council decisions and measures have failed to prevent human rights violations and in fact resulted in more breaches and inefficiency of the council. Researchers recommend reforms in some the council's procedures and behavioral patterns through imposing regular supervisory mechanisms.*

***Keywords---*** *Security Council, human rights, international responsibility, United Nations, international peace and security.*

## I. INTRODUCTION

The Security Council as the main pillar of the United Nations is considered a political organ with limited competency. Except in special cases, the authorities and responsibilities of the council are related to maintaining international peace and security. In this respect, the UN member states have delegated extensive authorities to the council to make decisions which are considered binding for the members[1]. Even though Paragraph 1 of Article 24 of the UN Charter assigns the council with the main task of maintaining international peace and security, its interpretation of the nature of this mandate and the necessary tools required for its enforcement has changed in recent decades[2]. The council exercises legislative, judicial and executive authorities and is supposed to act based upon some legal and abiding arrangements related to control and

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[1]See Wood. Michael.c" The Interpretation of Security Council Resolutions", Max Plank Yearbook of United Nations Law,( 2007), Volume 11,pp. 77-78
[2]See Mertus.Julie A., "The United Nations and Human Rights" A guide for a new era, 2nd edition, by Routledge, published ,(2009),pp.98-99

confrontation, thus making it an extrajudicial and unrestricted institute[3]. In one hand, the main restrictions stipulated in paragraph 2 of Article 24 are based on the ground that the council should act solely in accordance with the goals and principles of the United Nations. However, the goals and principles described in articles 1 and 2 of the Charter include the fundamental goal of peacekeeping while also reflecting human and humanitarian rights as well as economic and social concerns of the United Nations. Additionally, such tasks are not static and are evolutionary and should therefore reflect the changes made in the international legal system since 1945[4]. Although threats against international peace and security may result in the violation of human rights and consequently international law, these two concepts are not necessarily compatible. In other words, when the council acts to maintain international peace and security according to its mandate, it has no obligation to respond to the violation of international law and even the breach of the UN Charter. In fact, some believe that the extensive authority granted to the council for safeguarding international peace and security means the council is exercising "a law unto itself" which could and should act beyond the law. While the political nature of the council is undeniable, it does not necessarily mean the council should or should not ignore the rule of law. The relationship between the council and the law is complex and multifaceted as the council, in one hand, is acting as a political agency which makes decisions in an extensive range while in the other hand, it is an organ whose measures are considered binding as per the authority bestowed legally by the UN member states,and is empowered to act militarily or otherwise to maintain peace and security with deep legal repercussions. In this way, the council has been located significantly in the position of link between law and politics in international affairs[5]. Therefore, today, one of the main challenges of the council in the past two decades has been the way it performs its roles and intervenes to remove human rights concerns and prevents its violation. A remarkable question is therefore: can the council be basically concerned with human rights violations and are the good efforts of the council in line with the goals and principles of the UN or emanated from threat against international peace and security. Even though human rights and respect to human dignity and decency are considered the most significant issues of the UN Charter in view of international legal order and have been underlined and supported as inviolable principle for all the UN organs including the Security Council, studies indicate that the council, during recent decades, and despite developed interpretations of the Charter and expansion of extraordinary authorities and competence as per Chapter 7 and the close correlation between peace/security and human rights, has failed to remove human rights violation concerns and has in fact ended in more violations the consequences of which have been imposed on governments and non-civilians. On some occasions, the council has resorted to such coercive measures through military means and economic sanctions and has obligated the UN members to comply with them in accordance with articles 25 and 103 of the Charter. In such cases, while the council has been totally informed of human rights considerations and the necessity to observe such obligations, it has failed to consider them properly. This is significant in the sense that the council, after the end of the cold war and particularly since the 1990s, has considered a broad interpretation of its unique competence and authorities in fulfilling its responsibilities according to the UN Charter and has therefore taken decisions and actions which have resulted in the further violation of human rights through military means, use of force and imposition of economic sanctions on civilians and governments.

The present paper seeks to present an analytical framework of international law to investigate the present challenges of the international order under the measures and decisions taken by the UN Security Council to establish global peace and security with resort to extraordinary authorities which have resulted in the further violation of human rights. Although

[3]Whittle, Devon, "The Limits of Legality and the United Nations Security Council :Applying the Extralegal Measures Model to Chapter VII Action",EJIL,(2015).Vol.26 No.3,p.672
[4]Debbas.VeraGowlland,"Security Council Enforcement Action and Issues of State Responsibility"
The International and Comparative Law Quarterly, Vol. 43, No. 1 (Jan., 1994), p.91, Published by: Cambridge University Pressat available: https://www.jstor.org/stable/760823
[5]Farrall,JeremyMatam ," United Nations Sanctionsand the Rule of Law" Cambridge University Press, (2007),pp.16-17

numerous researches have been conducted by previous scholars on the issue, this study has adopted a human rights approach concerning the measures and decisions of the Security Council which is different from previous literature. The present paper also analyzes the legitimacy of the council using the capacity of non-governmental international human rights organizations and studies the impact of council decisions on human rights considerations.

## 1. The nature of Security Council authorities and its effectiveness in the collective security system

The Security Council of the United Nations has been mandated based on the UN Charter to defend international peace and security. According to the dominant international law theory of legal positivism, the governments are obliged tocomply with the instructions of the council as per the UN Charter. Therefore, any change in the mandate or authorities of the council should be primarily endorsed by the governments as UN members. Notwithstanding, while the Charter technically restricts the authorities of the council towards aggression and response to peace threats and violations, the council has failed in most cases to act in this framework. Instead, its effective and important measures since the 1990s have been in areas beyond the authorities provided to it by the UN Charter[6].

The establishment of the council guarantees the principle of collective security through cooperation of big powers and mobilization of governments to prevent war and conflicts as the Second World War within the framework of the UN Charter structures. This requires a delicate balance to encourage big powers through the entrust of veto power and extensive authorities to abide by the UN system and at the same time ensure the UN members of respect to their interests within the framework of the principles and goals of the UN as described in articles 1 and 2 of the Charter and of course within the restrictions considered for the measures and decisions of the Security Council as per paragraph 2 of Article 24 of the Charter[7]. Under such an approach, the Charter has considered extensive authorities and functions for the council to decide whether or not various conditions could constitute a violation of peace and security and consequently take appropriate decisions and measures to be complied by member states to preserve or maintain peace and security. Moreover, the council has been empowered to resort to political, economic and even military tools to guarantee the implementation of its decisions. In this respect, the Charter has not introduced any institute to supervise the performance of the council and has not even obligated the council to comply with its procedures. The functions and authority of this political and security institute is so vast that some consider them as being absolute[8].

## 2. Review of opponents and proponents of the Security Council as a global legislator

It has been a long discussion whether the council has been sufficiently authorized to act as a global legislator or empowered to take necessary measures to keep international peace and security in accordance with the functions and authority considered beyond Chapter 7 of the UN Charter. After the end of the cold war, a critical question has been always posed as to whether or not there is any legal or political restriction on the quality and quantity of the council's authority as per Chapter 7 even though various and different approaches have been presented by the opponents and proponents[9]. Here, some of such approaches are presented.

Some believe that the council has been empowered with legislature in order to be able to enforce the general commitments of the governments as it has been considered by the UN Charter to be the organ of crisis management. Therefore, the council is authorized to legislate rules and regulations as per Chapter 7 and articles 24 and 25 of the UN

[6]Bruce Cronin and Ian Hurd."The UN Security Council and the Politics of International Authority" First published (2008) Routledge,London and New York
[7]Whittle, Devon.op.cit., p.673
[8]De Wet, Erika." The Chapter VII Powers of the United Nations Security Council ", EJIL, Oxford: hart publishing (2004), p.135
[9]Rosand, Eric, "The Security Council As "Global Legislator": Ultra Vires or Ultra Innovative? "Fordham International Law Journal, Volume 28, Issue 3,(2004),p.552

Charter and such legislature does not require approval or consensus of the governments. Notwithstanding, according to this theory, the council has been obligated to make a law only under three conditions: first, legislature shall be passed only on issues which threaten global peace and security; second, the legislation shall be in accordance with the principles and goals of the United Nations; and third, that International Law is respected. [10] In this regard, proponents believe that each UN organ is the judge of its own competence and therefore the council is authorized to enact legislature within the framework of resolutions. This has been already enforced in some cases such as the establishment of a criminal tribunal for Rwanda and former Yugoslavia, border demarcation between Iraq and Kuwait, Iraq disarmament, Geneva convention on the occupation of Palestinian territories and the imposition of economic sanctions.

The UN is a living organization co-existing over a long period, in a changing world and likewise and therefore its Charter should be interpreted in an evolutionary manner as later procedures play the key role in UN activities and interpretation. This could be established through a closer link between the goals and principles of the UN and the later procedures. The goals of the Security Council to maintain peace mean the non-proliferation of violence, therefore, the Security Council should be adopting new methods to combat threats to global peace and security and this is a natural evolution based on the UN Charter. In the other hand proponents of the developed interpretation of Chapter 7 believe that the UN Charter has not defined "threat to peace" and therefore a developed interpretation of the authorities of the council could empower it with legislature rights and judicial authority to make decisions and take measures to identify threat to peace and act any necessary measures to eradicate it.

There is a lot of reasoning to confirm the outcome that the council has acted beyond its functions and authority. First, even though the council does not claim it has not acted beyond the law, it has actually done so. Such reasoning has been based on the approach that a state cannot be limited by law unless it is given the opportunity to participate in the development. Therefore, in general, it is clear that there is no assembly in the global community. This means there is no institute in the world which is able to pass binding laws to be directly exploited for international law issues. Such an approach has been endorsed by the International Court of Justice. Therefore, if the UN is going to act as a legislator, it could be better if it is passed by its founders to the General Assembly other than the Security Council as the assembly is obliged to develop international law. Therefore, it is better if legal international gaps are filled with the participation of all the UN member states and not the Security Council which only reflects the determination of its limited members. This has been recognized in international law that international organizations cannot create a legal concept or principle and it is exclusively within the competence of states to manifest their determination through agreements, treaties and conventional law or the recognition of the general principles of law. Also, considering the interpretation of Article 25 of the UN Charter, granting authority to the council to impose law is beyond the intention of the authors of the UN Charter. In the international legal system, the international law has been established with the determination and concept of states. So entrusting the council with the power to legislate is in contradiction with this principle. Since the UN follows the international law, so, it is committed to observing such laws, especially compelling law or *jus cogens*. Therefore, the council is also obligated to observe such laws unless otherwise stated in the UN Charter. In other words, neither the letter nor the spirit of the Charter endorses the council to be immune from legal commitments or *legibussolutus.*[11] Therefore, as it has been held in the appeals court verdict, granting the council with the power to make decisions which are binding for the states does not necessarily mean the council can go directly or indirectly beyond its competence[12] .

[10]Bydoon, Maysa, Al-own,Gasem M.S," The Legality of the Security Council Powers Expansion"International Journal of Humanities and Social Science,Vol. 7, No. 4; April 2017,p.223
[11] Ibid, pp.224-226
[12]SeeICTY, Appeals Chamber, Prosecutor v. DuskoTadic, 1995: para. 28.

### 3. Restrictions on the authorities of the Security Council

Although the council decisions are supposed to be valid and binding, their binding power or documentation may be rejected if they fall outside the scope of authorities and UN Charter[13]. Some believe that no legal principle can restrict the functions and authority of the council in maintain global peace and security. Such reasoning is basically rooted in political reservations of the authors of the UN Charter that believe it is necessary to grant unlimited power only to one UN institute to overcome any imaginable threat to global peace and security to ensure human sustainability[14].

#### 3.1. Restriction due to the regulations of the UN Charter

Paragraph 1 of Article 1 of the UN Charter describes the first and most important goal of the UN which is to "maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law". The term "justice and international law" refers to the treaties, conventional law and general principles of law (as per Article 38 of the Statute of the ICJ) and establishes a link with natural rights[15]. Therefore, peace should be maintained on the basis of justice and not imposed on the basis of expedience[16]. Some lawyers such as Kelsen believe this cannot be generalized to the coercive measures of council but is only dependent on the measures and decisions of the council as per Chapter 6 of the UN Charter on international settlements[17]. Kelsen is of the opinion that council's coercive measures according to Article 39 of the Charter does not aim to maintain or uphold the law but to maintain and restore peace and therefore cannot be necessarily compatible with law[18]. But the concept of peace, as defined in the Charter, views the

international order as merely the juxtaposition of black boxes (States) and does not take into account transborder legal obligations to the human person. Such a view cannot be compatible with contemporary approaches to human rights in which the commitments of states are considered beyond human rights. Kelsen's view was rejected vehemently by Laterpakht who believes any interpretation of the Charter which allows UN member states to overlook the law and violate human rights and fundamental freedoms is in contravention of the main principles of interpreting treaties as well as the legal and ethical authorities of the UN Charter[19].

In this respect, some legal experts believe that the council considers no limit in enforcing its decisions in accordance with Chapter 7 of the Charter. They believe that paragraph 1 of Article 1 of the Charter on the peaceful settlement of differences and establishment of international peace and security is related to the necessity of compatibility of the council measures with the principle of justice and international law; however, the council is not obligated to uphold international law when it comes to the enforcement of the provisions of Chapter 7[20]. But justice Gerald Fitz Maurice in his explanation of the Namibia case and the UNSC resolution holds that the UN pillars are considered to act upon international law and are therefore obligated to respect the principles of international law in enforcing their decision[21].

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[13]Bowett, Derek," The Impact of Security Council Decisions on DisputeSettlement Procedures" European Journal of International Law, Issue Vol.5,(1994), No.1,p.93
[14]See Davidsson, Elias,"Legal Boundaries to UN Sanctions" The International Journal of Human Rights", Vol.7, No. 4(Winter 2003),p.2
[15]Assadi, Fallah, Mehdad "ShorayeAmniyateSazmaneMelal: TahrimvaHoqooqe Bashar" (The Security Council of the United Nations: Sanction and Human Rights), ShahreDanesh Publications, First Publication,( 2015), pp.59-60
[16]Shaygan, Farideh, "ShorayeAmniyateSazmaneMelalvaMafhoomeSolhvaAmniyateBeinolmelal" (The United Nations Security Council and the Concept of International Peace and Security), University of Tehran Publications, First Publication, (2001), p.26
[17]Kelsen,Hans."The law of the United Nations: A critical Analysis of its Fundamental Problems", Frederick A. Praeger, Publisher New York,(1951),p.295
[18]Ibid,p.294
[19]Davidsson, op.cit.p.19
[20]Kennedy's, Libya V "United States ,The International Court of Justice and the power of ,judicial Review" ,33 Vancouver Journal of International Law,(1993),p.906
[21]ICJ,Reports,1971,p.249

### 3.2. Restrictions on the council's authorities as per articles 24 and 25 of the UN Charter

Paragraph 1 of Article 24 stipulates that the UN member states agree the council to act on their behalf until the council fulfills its responsibilities in maintaining international peace and security. It therefore seems that the council should not have extensive authorities beyond what has been entrusted by the states. However, this is not acceptable. The general view is that the council is an organ of the United Nations whose authorities derive from the UN Charter and not entrusted by the member states and therefore it does not seem logical for the member states to refer to the council measures under its political status. This does not mean that the council is completely beyond the law. Notwithstanding, the link between the council and the international law is limited[22]. Paragraph 2 of Article 24 of the UN Charter is the beginning point for many analyses related to the restrictions of the council. Such restrictions seek to determine legal principles for the use of the council and its credibility and behavior vis-à-vis them. For example, according to Daivid Schweigman's interpretation, Paragraph 2 of Article 24 of the Charter guarantees the observation of norms such as human rights principles, self-determination and goodwill. As Erika De Wet recognizes extensive powers for the council, he believes that such powershave been restricted by *jus cogens* as well as the goals and principles of the United Nations[23]. Therefore, it is not correct to equalize the council decisions' commitments with those described in the Charter as the decisions of the council are not conventional commitments and states are obligated to follow the provisions of the Charter while having no general commitment to the council decisions[24].

According to Article 25 of the Charter, the United Nations members agree to accept and carry out the decisions of the Security Council in accordance with the present Charter. This means the Security Council resolutions are binding for the member states only when they are in compliance with the substantive and formative regulations. In other words, such decisions should be lawful[25].Notwithstanding, some believe that the provision of Article 25 is merely related to the binding resolutions under Chapter 7 of the Charter. However, the International Court of Justice rejects this. In the advisory opinion on Namibia case, the ICJ holds that Article 25 of the Charter is not limited to the decisions of the Security Council on coercive measures but on the decisions which have been approved as per the Charter. Additionally, this article has not been mentioned in Chapter 7 but has been stipulated immediately after Article 24 on the functions and powers of the Security Council. If Article 25 was going to be merely related to the Security Council decisions as per articles 41 and 42 of the Charter on the binding of the decisions, then Article 25 should have been redundant because the binding nature of the decisions has been guaranteed by articles 48 and 49[26]. The second issue related to Article 25 is whether the term "according to this charter" refers to the decisions of the council or the commitments of the member states for its admission and enforcement. Such term is full of ambiguity and any resort to primary works shall not resolve this ambiguity. Notwithstanding, it is generally assumed that it refers to the council decisions, which means decisions in compliance with the Charter are considered binding[27]. Professor Ian Brownlie believes only if the Security Council takes its decisions within its legal limits, the UN members are committed according to Article 25 of the Charter to implementing them[28].

### 3.3. Security Council restrictions as per the public international law

[22]Lowe,Vaughan,Roberts,Adam,Welsh,Jennifer,Zaum,Dominik.(Ed),"The United Nations Security Council and War": The Evolution of Thought and Practice Since 1945, Oxford University Press,(2008),p.35
[23]Whittle,op.cit.p.675
[24]Bowett, Derek," The Impact of Security Council Decisions on Dispute Settlement Procedures" European Journal of International Law, Issue Vol.5,No.1,,(1994),p.92
[25]Tomuschat,Christian. "The Lockerbie case before the international court of justice",International Commission of Jurists,the Review No.48,(1992), p.44
[26]I.C.JReport,1971:52-53
[27]Schweigman,David," The Authority of the Security Council Under Chapter VII of The UN Charter" Legal Limits and the Role of the International Court of Justice,Published Kluwer Law International The Hague / London / Boston,,(2001),pp.32-33; Also seeICJ Reports, 1971,para.116
[28]Brownlie , Ian," Principles of public international law" Oxford University Press,7th edition,(2008), p.158

It is supposed that the United Nations and its organs act within the framework of law and not beyond or outside it. Therefore, they are obligated to general legal principles which are considered to be one of the sources of law employed by the ICJ in its proceedings as described in Article 38 of its statute. Such principles basically complement the law as a collateral source and are used extensively in international tribunals in cases in which there is lack of specific treaty or convention. According to Akande, the Security Council is obligated to avoid violating the public international law unless permitted specifically by the UN Charter[29]. In this respect, a number of ICJ judges have emphasized it in a separate opinion. For example, Judge Weeramantry holds in the Lockerbie case that the history of the UN Charter confirms that it envisages an open restriction on the powers of the Security Council which he believes should be based on the recognized principles of the international law[30]. The International Criminal Tribunal for the Former Yugoslavia confirms this clearly in the Tadiccase that the Security Council is obligated to observe the international law and if the council acts arbitrarily or covertly, is could be considered outside of the powers delegated by the Charter[31].

### 3.4. Jus cogens of the normal restriction of the Security Council in international legal order

Jus cogens is another area which imposes legal restrictions on the decisions and measures of the Security Council[32]. The emergence of the concept of jus cogens in the second half of the twentieth century indicates that all the rules and norms of the international law are not equal in status. Some of these rules are supporting important values and common interests of the international community. [33] On such a basis, there is hierarchy of rules and norms in a way some are prioritized and qualified as jus cogens in international law.[34]

As the states are never permitted to violate the jus cogens of international law, the institutes established by the states should be accordingly obligated to respect such restrictions[35]. In general, it has been admitted in international law that jus cogens norms are prioritized over other norms including the commitments made as per the Charter of the UN. Most legal norms could be found in the charter itself. The human rights provisions of the Charter could be considered as jus cogens as described in the Charter[36]. Article 53 of the 1969 Vienna Conventions also presents a general definition of jus cogens. It stipulates that "a peremptory norm of general international law is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character"[37].In fact, jus cogens are positive law and it is the common determination of the international community which determines that states are not permitted to violate a specific rule. Such determination should be respecting as a principle of public international law and considered inviolable by the states[38].

Decisions of international organization like the other norms of the international law should be also compatible with the jus cogens. In case the decisions of an international organization are in contradiction with jus cogens, they are considered

[29]Davidsson,op.cit.p.8
[30]ICJ Reports, 1992,(Libya v.UK) p.65
[31]Prosecutor v. TadicCase,(ICTY),1995. No.IT-94-1-T
[32]Orakhelashvili,Alexander."The Impact of Peremptory Norms on the Interpretation and Application of United Nations Security Council Resolutions" *The European Journal of International Law Vol. 16 no.1,*,(2005),p.59
[33]Pauwelyn,Joost "the nature of WTO Obligations",Jeanmonnetworking paper No 1/o2 , Published,NYU School of Law,(2002),p.21
[34] De Wet, Erika and Jure Vidmar, "Hierarchy in International Law The Place of Human Rights", translated by Seyyed Hamed Safavi, Firsr Publication, Shahre Danesh Publications, 2016, pp.313-314
[35]See Orakhelashvili,op.cit.p. 37
[36]Birkhäuser,Noah." Sanctions of the Security Council Against Individuals – Some Human Rights Problems"Available at:https://esil-sedi.eu/wp-content/uploads/2018/04/Birkhauser.pdf,(2018),pp.12-13
[37]See Art.53 Vienna Convention on the Law of Treaties 1969 (VCLT)
[38]Zamani, Qasem (1998), "Jaygaheqavaedeamerehdarmiyanemanabehoqooqebeinolmelal" (The status of jus cogens in the sources of international law), International Law Journal, No. 22, pp.324-325

null and void[39]. Therefore, the Security Council cannot deprive itself or any UN member state from such a principle under the pretext of adopting coercive resolutions or sanctions under Chapter 7 of the Charter[40].

The International Court of Justice and other tribunals have recognized jus cogens in many cases since 1970 related to resort to force, genocide, crimes against humanity, fundamental international humanitarian law and trade prohibition laws[41]. This was followed by the ICJ which in Corfu Channelcase (United Kingdom v. Albania) describes them as fundamental norms[42] and later as essential humanity reservations and inviolable principles of international law in the case related to the legitimate or threatening application of nuclear weapons[43].

### 3.5. Security Council restrictions as per ergaomnes

In addition to jus cogens, there are other international concepts and obligations in the international law which indicates the supreme status and value of human rights as well as its observation by the states and the international community in whole. Such obligations are in fact the same ergaomnes. Even though issues related to ergaomnes and jus cogens are different in nature, it seems they share closer examples and cases. In fact, there is common denominator of jus cogens and obligations towards the international community[44]. In other words, examples provided by the International Law Commission for jus cogens are the same examples used for issues related to drafting the Law of Treaties Convention as jus cogens[45]. James Krawford describes this as ergaomnes obligation which refers to multilateral laws and obligations in favor of and concerning to the international community, guaranteeing the legal interest of each member of the international community. Other feature of this principle related to collective interests is its universality which means they apply to all the states[46]. The International Court of Justice uses such concepts for the first time in the case concerning Barcelona Traction. The Court also presents similar examples which suggest obligations originating from the prohibition of the imposition of force and genocide as well as support for fundamental rights such as the right to be supported against slavery and racial discrimination[47]. Therefore, such obligations are related to all the states which will then support them[48].

The International Court of Justice in the case of East Timor considers the right to self-determination as an ergaomnes obligation and one of the fundamental principles of the contemporary international law and therefore, the international community is obligated to admit and respect such obligations[49].

## 4. 4Coercive measures of the Security Council based on Chapter 7 of the UN Charter

Chapter 7 of the UN Charter outlines the most extensive powers of the Security Council in maintaining international peace and security to confront any threat against peace either through cessation or aggression. The system designed in Chapter 7 is very simple per se. Under such a system, the council should first make a decision as to whether a specific situation requires action (Article 39). If such a situation occurs, the council may propose recommendations (Article 39) or take temporary measures (Article 40) or decision as to act without military force in order to improve the situation (Article

[39]Pauwelyn,op.cit.p.146
[40]Wolfrum, Rudiger." The Max Planck Encyclopedia of Public International Law",Published under the auspices of the Max Planck Institute for Comparative Public Law and International law,OUP,Vol.IX,,(2012),p.10
[41]See Crawford, James," State Responsibility The General Part" Published in the United States of America by Cambridge University Press, New York,(2013),p.380
[42]Corfu Channel caseICJ,Rep.1949,para.22
[43]Advisory Opinion,I.C.J.Rep,1996,para.79
[44] ILC YearBook,2001,part,2,P.111
[45]Ibid.p.112
[46]Crawford, James.op.cit.p.362
[47]Barcelona Traction, 1970,p.32
[48] Wallace, Rebecca M.M.,Orttega "International law"Published in London, Sweet and Maxwell Limited,Fifth Edition,( 2005),p.194
[49] See East Timor Case ,1995,p.90

41). And if the council considers these non-military measures as ineffective, then it can resort to force, intimidation or cessation of peace (Article 42)[50].

### 4.1. Determination as per Article 39 of the Charter and its deficiencies

Challenges related to Article 39 of the Charter and its deficiency in describing and identifying the three conditions ie "threat to the peace, breach of the peace, or act of aggression" (ambiguity in determining the benchmarks to identify them, ambiguity in words such as "recommendation" and "decision-making" and identifying criminal implementation guarantees related to articles 41 and 42) have created a lot of obstacles for the Security Council as the main source of identifying these conditions while strengthening its political and legal nature and developing its authorities in an illegal manner. [51]

Article 39 suggests that the Council, in order to propose a recommendation or taken an action in accordance with articles 41 and 42, shall first prove that a threat to the peace, breach of the peace, or act of aggression has occurred. Notwithstanding, it may be asked how international peace and threats to international peace or its violation should be defined. The Charter is silent on this intentionally. During the United Nations Conference on International Organization in San Francisco, participants raised serious issues as to what constitutes threat against international peace and security. However, it was decided that the council is responsible as to identify what constitutesthreat to the peace, breach of the peace, or act of aggression in international peace and security. Therefore, according to Article 39, the council decides what constitutes a threat to international peace. The International Criminal Tribunal however in the Tadic Case held that the Security Council does not have impartial power to identify what constitutes threat against peace. Notwithstanding, in the Kanyabashi Case, the International Criminal Tribunal for Rwanda held that the Security Council has plenipotentiary power of assessment as per Article 39 and such power is not judicially investigable[52]. The more important issue is related to the level of freedom of the council in deciding whether or not an act or situation is regarded threat to the peace, breach of the peace, or act of aggression. For example, in the case of Libya, the council held that the lack of cooperation by the Libyan government to extradite bombing suspects to the US and UK and its failure to accept Resolution 731 (1992) constitute a threat to the peace. Some questioned the credibility of such a decision which resulted in the adoption of resolution 748.[53]

### 4.2. Non-military coercive measures as per Article 41 of the Charter

While any resort to military action is basically attributed to Article 41 of the Charter, Article 41 authorizes the council to adopt measures not involving the use of armed force to give effect to its decisions. Such measures are considered to be an act of holding operation or cooling off without violation of rights, claims or situation of the parties. Since such measures aim at preventing the intensification of situation, they are usually related to the cessation of conflicts, withdrawal of forces and termination or joining ceasefire. For example, in Resolution 660of 2 August 1990 , the council acted in accordance with Article 40 and urged Iraq to immediately and unconditionally withdraw all its forces from Kuwait to the location of 1 August 1990[54].Article 41 in fact describes guarantees for the non-military enforcement of decisions of the council and presents a list of probable measures. From the viewpoint of Oscar Schachter et al. Article 41 is inclusive enough to allow any measure except military force. As the International Criminal Tribunal for Former Yugoslavia held,

[50]Schweigman,op.cit. pp.33-34
[51]SeeFalsafi, Hedayat, (1992), "ShenakhteManteqiyeHoqooghеBeinolmelal" (The logical understanding of the international law), Legal Research Journal of ShahidBeheshti University, Spring and Summer, p. 185
[52]Farrall,Jeremy Matam.," United Nations Sanctions and the Rule of Law"Cambridge University Press, ,(2007),pp.70-71
[53]See Schweigman, op.cit. p.185
[54]See De Wet, Erika."The Chapter VII Powers of the United Nations Security Council ",EJIL, Oxford: hart publishing( 2004),pp.178-179

Article 41 suggests which measures cannot be adopted... Therefore, when the council determines that there is a special situation which threatens international peace and security, it has necessary powers to adopt the most appropriate measures to combat it. The council's need for effective action against threat to the peace supports this view[55]. Even though the council enjoys extensive power to adopt non-military measures, the main restriction of Article 41 is that the council cannot resort to military force[56]. In this case the council resorts to the most prevalent enforcement measures such as adopting binding sanctions resolutions, imposition of collective economic embargo and similar measures.

### 4.3. Imposition of economic sanctions by the council and its legitimacy as per the international law

Economic sanctions have been widely used by the UN throughout history. They aim at not only punishing individuals but also changing the behavior of governments[57]. Governments targeted by sanctions claim that the imposition of economic sanctions on states violate the principle of non-intervention as well as the sovereignty of states as per paragraph 7 of Article 2 of the UN Charter. This means that economic sanctions is in contravention of the national sovereignty and domestic authority of the states targeted by sanctions.Notwithstanding, the UN Secretary General released a report in 1999 suggesting that s can use economic sanctions against other states considering international norms[58]. On the other hand, there are no recognized international norm in contravention of economic sanctions even if they violate the national sovereignty of independent states. With the termination of the Cold War and since 1990s, the council was permitted to use economic sanctions extensively against states. Due to the principle of the prohibition of resort to force in the UN Charter, states have unilaterally or collectively used economic sanctions against other countries in order to resolve their differences while the International Court of Justice has not recognized economic sanctions as a violation of non-interference arising from international norms[59]. Therefore, in general, there is no consensus as to whether economic sanctions constitute violation of national sovereignty of states targeted by sanctions[60].

### 4.4. Imposition of collective sanctions by the Security Council and destructive impacts on civilian population

While discussing collective imposition of economic sanctions in accordance with the international law, people cite the UN Charter provisions which prohibits resort to military force. Such sanctions have been originated from Chapter 7 of the UN Charter and specifically Article 41 which allows the council to resort to non-military means to enforce its decisions and request the UN member states to abide by such decisions. Measures used to enforce such decisions may include the partial or total cessation of economic ties, rail, marine and aerial connectivity, post and telegraph and radio and other means of communication and severance of diplomatic relations. Article 41 does not specify under which circumstances sanctions are to be imposed. It only provides instructions for the type of measures to be adopted while decision makers are basically from inside the council[61]. Since the punishment systems under Article 41 of the UN Charter have turned into a

[55]See Rosand,op.cit.p. 555 ,Also see Prosecutor v. Tadic, Case IT-94-1-AR72, [1995] Int'l Crim. Trib. Former. Yugoslavia(Appeals Chamber), *reprinted in* [1996] 35 I.L.M. 32, 44
[56]See Simma,"The Charter of the United Nations : ACommentary",OUP Press,FirstPublished,(1995),p.624
[57] Suk Baek,Buhm." Economic Sanctions Against Human RightsViolations" *Cornell Law School Inter-University Graduate Student Conference Papers. Paper 11*.,(2008),p.3 http://scholarship.law.cornell.edu/lps_clacp/11
[58] Ibid,p.25 Also See"Unilateral Economic Measures as a Means of Political and Economic Coercion Against Developing Countries": Report of the Secretary-General, U.N. GAOR, 54th Sess., Agenda Item 97(c), at 4, U.N. Doc. A/54/486 (1999).
[59]Ibid,p.26
[60]Military and Paramilitary Activites.Judgment.1986,ICJ.14,138
[61]Jana Ilieva et al, "Economic Sanctions in International Law"UTMS Journal of Economics 9 (2),(2018),p.203

tool against states, the council procedures do not create a space for such issues in relation with the other players of the international law[62].

Therefore, the approach of the security council reflects the extensive understanding of what may constitute threat to the peace or violation of the peace which could result in justifying the imposition of economic sanctions. For example, with regard to Sierra Leone, the council decided to impose economic sanctions to end the military coup and re-establish order and democracy. In the same way, the council imposed economic sanctions on Rwanda to stop hostilities and violence and restore peace[63].

The council used economic sanctions only twice during the Cold War—both against the while minorities in Africa. Sanctions were imposed on goods such as oil against Rodzia i1966 (SCR 253) and on arms trade against South Africa in 1977 (SCR 418).However, after the Second World War, the council imposed numerous sanctions against both state and non-state actors[64].There are a lot of restrictions for imposing economic sanctions. First, they may not always create the changes desired by the states which impose them. Many regimes may continue violating international law. And there is no proper mechanism for assessment. The majority believe that sanctions have been relatively successful against Iraq, former Yugoslavia (on Bosnia), Libya, Serbia, Cambodia and Sierra Leone. However, they have had little impact on Haiti, Somalia, Sudan, Liberia, Rwanda, former Yugoslavia (on Kosovo) and Afghanistan[65].

Moreover, economic punishments under Chapter 7 of the Charter are functions of definite and inviolable norms; in particular, fundamental humanitarian rights such as the principles of proportionality and necessityshould not be deprived from civilians in the form of impeding their access to necessary goods for survival. Therefore, any type of economic punishment should consider humanitarian norms such as the supply of food, water, sanctuary, medicine and medical care. Notwithstanding, the UN Charter is silent as to what legal criteria should be used for measures under Chapter 7. Therefore, the council use of economic sanctions is a reflection of an abandoned understanding of restrictions explained above[66].

### 4.5. Imposition of unilateral sanctions as counter measure of Chapter 7 goals

Unilateral sanctions are usually imposed under an excuse for retaliation and reciprocity by a specific state. In special cases, sanctions can the enforced through international organizations or a group of states in the form of intra-governmental cooperation in which case are called unilateral organized sanctions[67]. Some believe that in the age of globalization, unilateral sanctions can rarely be successful. This means multilateral cooperation and support is necessary for the success of sanctions.[68]

Unilateral sanctions are usually employed by big powers such as the US which resort to unilateral coercive measures as a tool to advance its foreign policy.[69]The US government is pioneer in imposing sanctions on target states for various reasons. They often impose unilateral sanctions or participate in the imposition of multilateral sanctions in order to promote a variety of their foreign policy goals such as military adventurism, obstruction, disruption in the military capability of other states and destabilizing foreign governments[70].

[62]Birkhäuser,Noah."Sanctions of the Security Council Against Individuals – Some Human Rights Problems"Available at:https://esil-sedi.eu/wp-content/uploads/2018/04/Birkhauser.pdf,(2018),p.1
[63] SeeMarossi,AliZ.Bassett,Marisa R. Editors,Economic Sanctions underInternational LawUnilateralism, Multilateralism, Legitimacy, and Consequences,Published by T.M.C. Asser Press, The Hague, The Netherlands,,(2015),p.111
[64]Frederking , Brian,"The United States and theSecurity Council"Collective Security sincethe Cold War,First published by Routledge,London,(2007),p.61
[65] Ibid,p.63
[66]Marossi, Bassett,op.cit.p.111
[67]See Ibid,pp.73-75
[68]Jana Ilieva, and etal,op.cit.p.204
[69]Marossi, Bassett,op.cit.p.75
[70]Jana Ilieva, and etal,op.cit.p.204

European and American economic sanctions against Iran during the past several years are a good example of such retaliatory measures which have been taken without considering international commitments of states and are in violation of fundamental human rights and jus cogens. For example, the US has sanctioned the Central Bank of Iran in a calculated and purposeful manner. The US Senate, in line with increasing pressures and sanctions on Iran, has adopted for the first time a supplement act to enable the US government to further sanction the Central Bank of Iran and the buyers of the Iranian oil. The fact of the matter is that after the enforcement of multilateral sanctions in 2012 which targeted all sectors of Iran's economy including the oil industry as the main source of revenue, the situation changed remarkably. These sanctions even prohibit the transfer of goods which fall openly outside the framework of sanctions[71]. Idriss Jazairythe Special Rapporteur of Human Rights of the UN states in his recent statement on the negative impact of unilateral coercive measures that they hinder the right to development and enjoyment of human rights while all states and individuals are entitled to access equal opportunities. If this is the case, can these measures be legitimate? The Security Council strongly oversees the human impacts of sanctions in terms of being lawful and in accordance with the charter. Some of the items which are set aside include resort to comprehensive sanctions which may be replaced to respect human rights….Unilateral coercive measures or laws are in violation of international law, humanitarian law, charter and norms and principles governing peaceful relations among states[72].

He also refers to Iran's nuclear program and its connection to comprehensive sanctions as several countries are adopting similar decisions and may consider that gap between access to the goals of the Islamic Republic of Iran and imposed comprehensive sanctions in the area of non-proliferation of nuclear weapons has no relation. Here we need caution against confusing sympathy for reasoning because many factors have helped economic pressure against the Islamic Republic of Iran in particular, global oil price reduction which resulted in replacement oil export markets by Western countries.[73]

### 4.6. Article 42 of the Charter and military action by the council: a justification for violation of human rights, humanitarian intervention and resort to force

According to the Charter of the United Nations, the Security Council, theoretically, enjoys a variety of functions and responsibilities. The main responsibility of the council is to maintain international peace and security. As against the General Assembly of the UN, in principle, decisions taken by the council could be considered binding for all the UN member states[74]. Based on Chapter 7 of the Charter, the council can resort to force in order to maintain international peace and security. Such exceptional power of the council has raised many concerns and sensitivities. Recently, the increasing intervention of the council in the affairs of states has been criticized while its members have been accused of transgressing from their power and authority. Such criticism could go even beyond accusing the council of violating the charter[75]. Although the charter has not presented a definition of resort to force, Brownlie believes it constitutes a covert or overt promise of a state to resort to force in case its special demands are not accepted[76]. This suggests that war is an exceptional

[71]Anabestani, Ablohasan (2013), "Tahrimhaye eqtesadi va hoqooq bonyadin ebashar" (Economic sanctions and fundamental human rights), Shahr-e danesh Publicationsp.92
[72]SeeGA. "Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights"18th session of the Working Group on the Right to Development, byStatement,Idriss Jazairy,4 April 2017,Geneva
[73]GA.A/70/345,Report of the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights, Idriss Jazairy,28 August 2015 ,At 18/61
[74]Lowe,Vaughan,Roberts,Adam,Welsh,Jennifer,Zaum,Dominik.(Ed),("The United Nations Security Council and War": The Evolution of Thought and Practice Since 1945, Oxford University Press,(2008),p.1
[75]Solhchi, Mohammad (2009). "Nezaraeqazaeenesbat be tasmimateshorayeamniyatesazmanemelal" (Judicial supervision over the decisions of the Security Council of the United Nations), Research Week Proceedings Journal, Faculty of Law and Political Sciences of AllamehTabatabaei University, p. 107
[76]SeeBrownlie, Ian, "International Law and the Use of Force by States",Oxford: Clarendon Press. (1963),p.364

issue which could legitimize the violation of commitment by a state towards prohibiting threat or resort to force in accordance with the provisions of Chapter 7 of the UN Charter and Article 51[77]. On such a basis, many of the aggressions in recent decades under the title of humanitarian interventions could be considered illegitimate from the legal point of view even if they may have save people from calamities such as genocide and crimes against humanity.

That the Security Council can resort for force on the basis of Chapter 7 does not mean that the council (or any state) could ignore the principled prohibition ofresort to force. If the permit to resort to force is issued based on compatibility with the principle of proportionality, then it could be considered legal. Such an approach is based on the rationality of providing collective security. Legalizing resort to force is dependent onidentifying threat or violation of peace and coercive measures are merely considered to be necessary only if they are taken to restore peace and security. The concept of peace and security cannot be secured only with resort to force. But human and humanitarian security would be influential in supporting humanity in times of war and conflict. In fact, violation of humanitarian rights cannot be accepted as a necessity for maintaining international peace and security as the council procedures also confirm that the violation of humanitarian rights is per se a threat against international peace and security. Therefore, one cannot endanger peace and security in order to maintain peace and security[78]. In this respect, Kofi Annan, the then Secretary General of the UN presented the Human Security and Intervention Vision in Upcoming Century in the 54th General Assembly of the UN in September 1999 in which he recounted the failures of the council in Rwanda and Kosovo and urged member states to find a common ground for supporting the Charter and act in defense of humanity. Moreover, in his millennium report to the General Assembly in 2000, he repeated the challenges of the present century and said humanitarian interventions are in fact an unacceptable violation of the sovereignty of states: So how can we respond to the clear organized breach of human rights in Rwanda and former Yugoslavia[79]?Here we face a real contradiction. There are a few people who oppose that defense of both humanity and sovereignty should be supported. It is regrettable that they did not tell us which principle should prevail in terms of conflict (war).[80]

It seems the full authority of the council in imposing military mechanisms may result in destructive consequences. For the administration of international justice, authorities of the council should become effective based on two main conditions of necessity and proportionality. The council should study if any military action is really necessary and proportionate with the violation of the states concerned[81].

### 5. Main challenges of the council regarding human rights obligations arising from Chapter 7 measures

In recent decades, nearly all international, regional and global organizations have adopted human rights norms and reacted to human rights violations through creating compensation mechanisms for people whose rights have been violated without being compensated in domestic law. Consideration of human rights issues have spread to all the agencies and institutes of the United Nations including the Security Council which has identified serious human rights violations as a threat against peace[82]. Therefore it seems that in recent decades, a conceptual link is being formed between human rights and international peace and security. What is significant in these important developments is that making a link between

[77]Hilderbrand, R. C. "Dumbarton oaks: the origins of the UN andthe search For post war security", Chapel Hill, NC: University of North Carolina press,(1990),p.34
[78]Saed, Nader, "HoqooqeBashardoostanehvaselahayehastee" (Human rights and nuclear weapons), ShahreDanesh Legal Research and Studies Institute, 2007, pp.260-261
[79] See Thakur, Ramesh and Tomas G. Weiss "From Idea to Norm- and Action?", In: The Responsibility to Protect: Norms, Laws and the Use of Force in International Politics, New York: Routledge.(2010), p.134Also see Kofi A. Annan, "We the Peoples: The Role of the United Nations in the Twenty-First Century", General Assembly, 2000 (A/54/2000), para.217 (available at http://www.un.org/millennium/sg/report/full.htm
[80] UN DOC,GA/A/54/2000,Para.218
[81]Sartipi, Hossein (2007) "Modakheleyebashardoostanehazteori ta amal" (Humanitarian intervention from theory to practice), Strategic Research Center, Autumn 2007

[82]SeeShelton,Dinah."Remedies In International Human Rights Law" OUP,Third Edition Published,,(2015),p.1

international peace and security and human rights will leave no place for doubt that the Security Council should consider itself committed to international human rights law and found its decisions and measures including imposition of purposeful sanctions against legal and personal entities based on respect to fundamental human rights.[83]

While some human rights groups give priority to human rights, human dignity, human security and humanitarian urgency, some UN member states are acting against it. In this respect, the Security Council is facing two sets of challenges: first, the definition and approach of each member towards national and regional interests of itself and its allies. And second, the outcome of domestic elections and sensitivity of public opinion in any member state especially France, UK and US on measuring human rights across the world. On the first challenge, a historical review of the measures and resolutions of the Security Council indicates that the council does not act on all human rights cases. Such avoidance of intervention is sometimes due to the application of veto power by the permanent members of the council. In other words, if Western governments are not interested in entering a conflict and support human rights, the opposite party makes an objection. In other cases, there is difference of opinion in the council as to which party or force has violated human rights. When the council is engaged in peace and justice issues, national and delicate interests are rarely ignored[84]. In other cases of human rights violations in parts of the world, none of the permanent members of the council showed the necessary sensitivity for intervention. For example, the council has not taken any measure with regards to human rights violations in Bahrain. Sometimes, the specific sensitivity of some non-permanent members has impeded such a process of investigation. For example, in the case of Libya in 2011, India and Brazil walked out of the meeting of the council and impeded voting on the creation of no-fly zone in Libya[85].In this way, if the case of human rights violation is related to one of the permanent members of the council or their main allies, they use veto power to withdraw the case from the agenda of the council[86].

### 6. Basis of responsibility of the council in support of human rights: primary or secondary responsibility

According to Paragraph 1 of Article 24 of the Charter, the Security Council is primarily responsible for maintaining international peace and security. On such a basis, several significant instruments and agreements in support of such a responsibility have recognized the council as a legal power to fulfill the responsibility of providing collective peace and security and have delegated such duty to the council. Notwithstanding, it is not clear whether or not such responsibility of the council is compatible with the Charter. While the Charter speaks about "primary responsibility" for maintaining international peace and security, and considering that each independent states is also primarily responsible for protecting its population, the international responsibility of support has been considered as "secondary responsibility" although the quality of the responsibility of support of the council cannot be studied without considering various concepts of the primary responsibility of the council as per the Charter[87]. The Security Council was going to introduce serious human rights violations under special circumstances against international peace and security so that it could adopt measures within the framework of Chapter 7 of the United Nations against offender countries. However, since there was a major gap between theory and practice, the Security Council measures resulted in regretful outcome especially in Rwanda and former

[83]Zamani, Qasem, Hosseini Akbarnejad, Hooriyeh (2015). "Ofoole doctonie namahdood boodan ekhtiyarate shoraye amniyat dar ayeneye orooje divan dadgostariye oroopa" (The fall of the doctrine of unrestricted authority of Security Council in view of the rise of the European Court of Justice), Comparative Law Journal, 104, Vol. 11, no. 2, p. 170
[84] Forsythe,David.P,"The UN Security Council and Human Rights State Sovereignty and Human Dignity" International policy Analysis,(Friedrich Ebert Stifung) available at: library.fes.de/pdf-files/iez/09069.pdf,(2012),p.4
[85]Ibid.pp.6-7
[86]Ibid.p.13
[87]See Nasu,Hitoshi.The UN Security Council's Responsibility andthe "Responsibility to Protect"Max Planck Yearbook ofUnited Nations Law, Volume 15,( 2011), p.390

Yugoslavia. Additionally, humanitarian intervention has been always considered as a concept which could be adopted against some countries but was a matter of dispute due to weakening of sovereignty of states.[88]

## 7. The possibility of review and oversee the council's human rights decisions and measures

The end of the Cold War coincided with the absence of supervision over the measures of the council concerning the framework of a threat to peace or violation of peace within the meanings of Chapter 7 of the Charter. The main question was: Should the Security Council be totally abandoned without control[89]? It seems that the council in terms of enjoying a high status and position as the highest political organ of the UN after the Cold War and especially in recent decade has adopted a different and remarkable approach in its measures and activities and has expanded its scope to even legislative work in some issues within the framework of international treaties. This has not been fully welcomed by some states as the main beneficiary of the international community. Notwithstanding, recently, a procedure has been formed in some of the most important international judicial tribunals and courts such as the International Criminal Court, the European Court of Justice and non-governmental international human rights institutes parallel to the judicial organ of the UN (ie the International Court of Justice). Such a procedure has underlined the necessity of reviewing the decisions of the council in cases in which any violation or breach has taken place.

### 7.1. Reviewing the text of the UN Charter and the Statute of the International Court of Justice

One main question is whether the UN Charter and Statute of the International Court of Justice are supporting judicial supervision. Even though the UN Charter and the statute enjoy fundamental features, they are indeed treaties the interpretation of which falls within the principles of the law of treaties[90]. There is in fact no provision in the UN Charter to suggest a system for reviewing the measures of the Security Council[91].In other words, neither the UN Charter nor the Statute of the court directly deal with the issue of judicial supervision. Chapter 5 of the Charter gives the power to the council to adopt binding decisions on all the states which are in accordance with the international law as well as the goals and principles of the UN Charter; however, it is silent as to whether the International Court of Justice can supervise and investigate the decisions of the council vis-à-vis the goals and principles of the Charter[92]. The absence of a clear choice to review the UN Charter is not determining. What is more important is the absence of a clear prohibition of judicial intervention. Since the UN Charter does not openly reject judicial review of the council's decisions by the International Court of Justice, a judicial review mechanism could be developed through related procedures[93].

### 7.2. Global competence of the International Court of Justice and its procedure in reviewing the council's resolutions and decisions

The International Court of Justice as the judicial organ of the UN has been founded on the principle of equality of the right to national sovereignty even though until recently, the ICJ had a minor role in promoting human rights. However, the significance of the ICJ is in its entity as a special legal structure with global competence[94].

[88]Feller, Erika "The Responsibility to Protect". (2005), Retrieved March 13, 2014, available at: http://www.unhcr.org/admin/ADMIN/43a692122.html
[89]Marossi,Bassett,op.cit.p. 226
[90]Watson, Geoffrey R."Constitutionalism, Judicial Review, and the World Court" Harvard International Law Journal,v.34,1,(winter 1993),p.3
[91]SeeFassbender," Securing Human Rights: Achievements and Challenges of the UN Security Council" Published to Oxford Scholarship Online: Jan-12,(2011)
[92]See Watson,op.cit. pp.4-5
[93]Marossi,Bassett,op.cit. p.228
[94]SeeStacy,HelenM,"Human Rights for the 21st Century" Sovereignty,CivilSociety,Culture.Stanford University Press Stanford Colifornia,.(2009),p. 56

As with the competency of the ICJ in identifying the legality of the decisions of the council, it is a complex issue for which there exists no proper solution yet. The Charter has not openly and clearly mandated the ICJ to investigate the legality of the council decisions. One conservative interpretation of the text and primary works of the UN Charter does not clearly support such a mandate for the ICJ. However, this does not necessarily mean the Charter has prevented the court from assessing the credibility of the political organ of the UN wherever appropriate[95]. For example, the ICJ was mandated to investigate any costs incurred as the result of inclusion in resolutions in response to the request of the General Assembly in 1961 on whether the allowed costs in resolutions are considered UN costs with the conceptual framework of Paragraph 2 of Article 17 of the Charter. And the court held that such costs have been in line with realizing the main goal of the UN ie promotion of the peaceful settlement of conflicts[96]. Notwithstanding, the ICJ rejected any opinion that it has the authority of judicial review[97]. The ICJ in its advisory opinion in the Namibia case held that the court without doubt does not enjoy the authority to review or judicially appeal the decisions taken by UN organs[98]. Notwithstanding, given the request of the council and despite Resolution 270 (1970) on the legal consequences of the continued presence of South Africa in the Southern and Western Africa and the French and South African reasoning that guardianship has ended, the ICJ held that the decisions of the Security Council have been adopted in accordance with the principles and goals of the UN Charter and articles 24 and 25[99].In another example, the ICJ in the case of military and paramilitary activities in and against Nicaragua rejected the reasoning that it is only the Security Council which could judge in cases of resort to force and confirmed its own role in settling hostilities. In the same case, the ICJ said it had been prohibited from acting in view of Chapter 7 as per the Charter or Statute although it usually intervenes within the framework of Chapter 6[100].

In the case of Lockerbie however the ICJ, as against its previous verdicts in Nicaragua and hostage taking cases, considered the Security Council decisions under Chapter 7 as an obstacle for issuing modus vivendi. In the hostage taking case, the ICJ held that even after the decision as per Article 39, there is no obligatory contradiction between the council measure and the court investigation[101]. Such examples suggest that there is no hierarchy of power among the political and judicial organs of the UN and even where the ICJ investigation falls within the main domain of responsibility of the council, the court is not obligated to refer it to the council[102].

### 7.3. Possibility of judicial supervision of the European Court of Justice over the council

The European Court of Justice believes that the UN laws are binding for the EU and therefore the EU laws should be compatible with the laws of the UN. However, the independence of the UN laws and EU have been underlined. Therefore, there should be a difference between the independence of the legal system of Europe on one hand and the commitments created by the Security Council resolutions on the other. Therefore, while the UN member states are fully obligated to enforcing the Security Council resolutions, they may be exempt from implementing parts of such resolutions if they contradict with the European laws on fundamental human rights. Therefore, in case of contradiction between the council resolutions and fundamental human rights under the European Convention of Human Rights, neither Europe nor its member countries are allowed to enforce resolutions which may result in the violation of fundamental human rights

[95]Marossi,Bassett,op.cit. p.227
[96]ICJ, Rports,1962,p.168
[97]See Advisory Opinion. ICJ,Reports,1971,16.45
[98]Advisory Opinion .ICJ,Reports,1950,para. 128
[99]See Marossi,Bassett,op.cit. p.229
[100]Shaygan, Farideh, Ibid, pp.54-55
[101]ICJ,Reports, 1984,p.432,Para.90
[102]Gowlland-Debbas, Vera, "The Relationship between the Security Council and the Projected International Criminal Court", *The American Journal of International Law*, vol. 88, No. 4,(1998),p.112

recognized by EU laws[103]. These laws include the laws stipulated in the European Convention of Human Rights, Charter of Fundamental Rights of the European Union (EU Charter) and paragraph one of Article 6 of the Treaty on the Functioning of the European Union. Therefore, in cases of Yasin Abdullah Kadi and the Al Barakat International Institute against the council and commission (Kadi I.ECJ), the European Court of Justice revoked the European Commission resolution No. 881/2002 of 27 May 2002.

according to which restrictive measures had been imposed on individuals and entities connected with Osama bin Laden, Al Qaeda and the Taliban as they had violated the fundamental rights of Mr. Kadi and Al Barakat as per the EU laws. As against the primary verdict of the court in Kadi and the Al Barakat International Institute against the council and commission (Kadi I/CFI/GC), the European Court of Justice clearly reserves the right to deal with the legality of all the measures of society in view of the fundamental rights of individuals as an indispensable part of the general laws of society[104].

### 7.4. Supervisory methods of human rights NGOs as actors of civil society

Non-governmental international organizations and networks, coalitions and movements insist on attracting the opinion and expedience of people[105]. If a human rights non-governmental organization is seeking to promote and support human rights, it should enjoy qualifications which would prevent it from government and political pressures and pave the way for supporting the victims of gross human rights violations. At the present time, the civil society actors have become significant in global politics. Organizations such as the Human Rights Watch and the Amnesty International contribute to the program of work of international politics in connection with human rights. These organizations identify and report any violation of human rights and standard human behavior as recognized by the international community. They have remarkable influence on the government and UN activities as well as international treaties.[106] For example, concerning resolutions 1422 and 1487, on peacekeeping operation in Liberia, the Human Rights Watch considered them as a distortion of Article 16 of the Rome Statute and believed that the Security Council had amended an international treaty outside its powers and functions.[107] A similar position was adopted by the Amnesty International which held that such UNSC resolutions violate the UN Charter as well as other international rules and regulations such as equality before law[108].

## II. CONCLUSION

Even though one of the main goals of the United Nations is to maintain international peace and security, proper tools should be employed to realize such a noble objective based on the principles of justice and international law. The United Nations Security Council as the main UN organ is responsible for maintaining international peace and security while enjoying special powers and competence based on Chapter 7 of the UN Charter in confronting threats to international peace and security. The Security Council decisions and measures should be a function of international law and jus cogens particularly respect to fundamental human rights and norms which are binding for all the members of the international

[103]HosseiniAkbarnejad, Hooriyeh (2014) “Shivehayehalletaarozqavaeddarpartoyehoqooqebeinolmelalbashar”, (Methods of resolving conflict in rules in view of international human rights), PhD Thesis of Public International Law, AllamehTabatabaei University, p.258
[104]Marossi,Bassett,op.cit. p.186
[105]Stacy,op.cit. p.117
[106] SeeWalling,.op.cit.pp. 25-26
[107] Sharifi Tarazkoohi, Hossein and Modarrese Sabzevari, Sasan. (2013) “Zaroorat va emkane nezarate qazaee bar amalkarde shraye amniyat dar nezame hoqooqi melale motahhed” (Necessity and possibility of judicial supervision on the performance of the Security Council in the legal system of the United Nations), Journal of International Organizations, Firs Year, No. 4, Winter, pp.31-32
[108]See Amnesty International, "The Unlawful Attempt by the Security Council to Give US Citizens Permanent Impunity from International Justice”: (May2003),pp.79-80 Available at: http://www.iccnow.org/documents/Amnesty1422May2003.pdf.

community. Given that many human rights principles are binding and the council faces legal restrictions as per the UN Charter, imposition and enforcement of sanctions in violation of human rights fall outside the power and competence of the council while having negative impacts on the target countries and individuals who are considered as the main victims of the destructive and catastrophic decisions and measures of the council.

Even though the UN member states, according to Article 25 of the UN Charter,have admitted the measures of the Security Council if they are compatible with the Charter, any violation of the Council from its legal power would allow member states to ignore and even confront them. This encourages international organizations as legal entities to fulfill their international responsibility of respecting and safeguarding fundamental human rights and compensate any damages in this regard. Therefore, despite numerous capacities and Security Council procedures and extraordinary powers to keep international peace and security, it cannot be considered an extrajudicial institute with no legal boundary. Therefore, it is necessary that Security Council performance and functions are monitored within the framework of the UN Charter and the governmental and non-governmental legal mechanisms recently recognized at the international level especially for observing human rights. Such mechanisms could be employed to further encourage the Security Council to respect and observe human rights principles and standards as well as promote international peace and security as complementary elements of international law.

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