

The Role of Security Council Sanctions to Enforce International Law through Tackling Threats to International Peace

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Abstract

The Security Council has included in its primary competence of maintaining international peace and security the task of implementing the rules of international law to protect human rights and maintain peace and security by addressing threats to international peace, and has relied on the powers granted to it under the United Nations Charter and on international and humanitarian principles. To ensure respect for and implementation of these rules, the Security Council has issued resolutions involving the imposition of economic sanctions and the use of armed force on the one hand, and the activation of international criminal sanctions on the other hand. International law and the rule of law are the foundations of the international system. Clear and foreseeable rules and a system to prevent or sanction violations of these rules are essential preconditions for lasting peace, security, economic development and social progress. The United Nations is undertaking many efforts to strengthen the rule of law in supporting the special role of the Security Council in this regard. It is the most powerful multilateral institution that has grown well beyond its initial important legal functions. Traditionally, this included determining those acts that threaten to the international peace, breach of the peace, or act of aggression had occurred and prescribing specific legal binding obligations on member states under Chapter VII of the UN Charter. Nowadays and concretely after the end of Cold War, it is quite visible that the activity of the Security Council is showing a variation to the traditional conception of the international system. The reactivation of the Security Council has resulted in increasing use of its powers under Chapter VII of the Charter and the adoption of measures against a number of state and non-state entities. The notion of a threat to the peace has now come to encompass violations of fundamental norms of international law such as human rights and humanitarian law. Therefore, Security Council embraces establishing complex regimes to enforce its decisions

and passing resolutions in order to enforce rules of international law. This research will examine whether Security Council sanctions are only imposed to tackle any threats to international peace or they may achieve goals without having a direct relation with restoring international peace and security. Then, it will explain that UN Security Council sanctions are not free from international law limitations.

I. Introduction

During the eighteenth and nineteenth centuries, states were practicing 'self-help'. It means that when a state breached one of its obligations, the harmed state or states of such a breach could take measures, forcible or non-forcible, against the violator state (Nigel White and Ademola Abass, 2010: 531). After establishing the UN, the matter of dealing with breaches of international law or remedies to international wrongful acts was basically given to the UN. One of the purposes of the UN 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, adjustment or settlement of international disputes or situations which might lead to a breach of the peace' (The UN Charter 1945, Article 1(1)).

According to the above-mentioned statement, the UN has been given the power to take measures for the purpose of maintaining international peace and security. The Security Council (or the Council), as an organ of the UN, has been empowered to take measures (sanctions) for the purpose of tackling any threats to, or breaches of international peace under Chapter VII of the UN Charter. For this purpose, the Council has imposed a broad variety of sanctions, ranging from comprehensive sanctions to simple measures which target specific items or particular activities. Sanctions have been employed on states, rebel groups, individuals and terrorist organizations such as Al-Qaida (Jeremy Matam Farrall, 2009: 4).

This research aims to answer two questions. First, whether sanctions, which are imposed by the Security Council, are only to tackle threats to international peace or they can also be employed for the purpose of enforcing international law. Second, whether such sanctions are free from the constraints of international law or not. In so doing, a brief overview of sanctions will be provided and then it turns to discuss what has been considered as a threat to the peace. After that, imposing sanctions for the enforcement of international law will be discussed and the last part of the research addresses the limitations or constraints of international law on sanctions regime. This research, basically, relies on the relevant literature, the UN Charter, the Security Council's resolutions and cases.

II. The Security Council's Sanctions in General and Their Purposes

Sanctions can be defined as actions which are taken by members of the international community in the case of an infringement of the law. Either this infringement is actual or threatened (Nigel White and Ademola Abass, 2010: 550). Furthermore, Zoller points out that, sanctions are measures which have final effects, punitive and exemplary character directed at other countries. This is in contrast to countermeasures which have temporary effects and coercive character and are not directed at other states (Nigel White and Ademola Abass, 2010: 549).

Sanctions can be seen as a tool to separate the target from the rest of the international community and prevent it from taking benefits of international intercourse. Therefore, different sanctions will be imposed depending on their purpose and aiming to prevent the wrongdoer from continuing breaches. For example, they can be in the form of moral or diplomatic sanctions to isolate the target diplomatically or they will be in the form of economic sanctions which affect the economy of the target by imposing some economic tactics such as asset freezes, embargoes or financial transaction restrictions. Furthermore, they may be in positive forms which encourage the target to stop infringing such as offering increased flows of foreign aid and economic inducements (Christopher C Joyner, 1991: 1).

Comprehensive sanctions that have targeted certain states and that were binding on all member states have proliferated since the end of Cold War. Such comprehensive sanctions have been used in a number of cases such as sanctions against Rhodesia (1966-79) and the arms embargo against South Africa (1977-94) (Nigel White and Ademola Abass, 2010: 552). However, comprehensive economic sanctions have had negative effects on the population of the target states, such as in Haiti and Iraq (W Michael Reisman and Douglas L Stevick, 1998: 86). In addition, as a result of imposing such economic sanctions, the economies of those states which have traditional trading links with targeted states have suffered financially (Matthew Graven, 2002: 43).

The Security Council shifted from the use of comprehensive sanctions to impose targeted sanctions or smart sanctions (Mary Ellen O'Connell, 2002: 63). These sanctions are imposed on certain individuals or entities instead of the whole targeted state. They include arms embargoes, freezing assets of individuals or companies, travel restrictions on the leaders of a sanctioned state and trade restriction on specific goods (Joy Gordon, 2011: 315).

According to the UN Charter, when the Security Council determines that there is a threat to the peace, breach of the peace or act of aggression, it calls parties involved 'to comply with such provisional measures as it deems necessary or desirable' (The UN Charter 1945, Article 40). In cases of failure to comply with such provisional measures, the Security Council shall make recommendations or decide on measures that should be taken in order to maintain or restore international peace and security (The UN Charter 1945, Article 39).

In the latter case, the Security Council may decide to employ measures excluding the use of armed force such as complete or partial interruption of economic, diplomatic or communication relations to enforce its decisions and call the Member States to apply them (The UN Charter 1945, Article 41). However, if these measures are inadequate, it may decide to use either air, sea or land forces (The UN Charter 1945, Article 42).

As far as there are threats to, or breaches of the peace, the Security Council can deal with them even if they do not constitute internationally wrongful conduct (Nigel White and Ademola Abass, 2010: 550). Further, according to Article 24(1) of the UN Charter, the Security Council has primary responsibility for maintenance of international peace and security. However, determining actions or conducts which constitute threats to or breaches of

international peace and security is not an easy task (Mary Ellen O'Connell, 2002: 63) since there is no definition to determine what constitutes 'any threat to the peace'.

Thus, it is pointed out that when the drafters of the Charter did not determine what can be considered as a threat, they agreed to give the Security Council discretion to determine whether there is a threatened situation or not as stated in Article 39 of the Charter (Eugenia Lopez-Jacoiste, 2010: 14). It is argued that the only real check on this discretion is found in the voting procedure (Mary Ellen O'Connell, 2002: 64).

Regarding determination of the existence of a threat to the peace, breach of the peace or act of aggression before taking necessary measures in accordance with Article 39 of the Charter, it is argued that the Security Council should make a clear determination before establishing a new sanctions regime in order to avoid any doubts about the legality of its resolutions (Jeremy Matam Farrall, 2009: 83-85).

Generally, the existence of threats to the peace which may lead to sanctions being imposed by the Security Council can be classified into two types: those which have a clear international dimension and those arising from domestic national crises. As far as threats with an international dimension are concerned, they can be categorized into four situations. First, when a state has an aggressive foreign policy and intends to produce or possess mass destruction weapons, this can be considered as a clear threat to international peace and security (Jeremy Matam Farrall, 2009: 86). The Security Council determined the existence of threat on this basis in a number of cases such as sanctions against South Africa (UNSC Res 418 (4 November 1977) UN Doc S/RES/418, paras. 1, 5 and 6), Iraq (UNSC Res 687 (3 April 1991) UN Doc S/RES/687, preamble para. 17), and North Korea (UNSC Res 1718 (14 October 2006) UN Doc S/RES/1718, preamble para. 9). Second, engaging or supporting international terrorism has been determined as a threat to the peace either if the target is a state, an entity or individuals such as the cases of Libya (UNSC Res 731 (21 January 1992) UN Doc S/RES/731, preamble para. 2.) and Taliban (UNSC Res 1267 (15 October 1999) UN Doc S/Res/1267 preamble para.5). The third is when two states engage in an international conflict, such as the case of Eritrea and Ethiopia. Fourth, if a state interferes in the affairs of another state, it is considered a threat to the peace such as the case of Federal Republic of Yugoslavia (Serbia and Montenegro) (Jeremy Matam Farrall, 2009: 90-92).

In terms of threats arising from internal crises, the Security Council determined threats to international peace as a result of domestic crises in a number of cases. In this regard, an expanded view regarding determining what constitutes threats to international peace and security has been taken by the Security Council. For instance, preventing the majority from the right of self-determination by a racist minority (Southern Rhodesia, UNSC Res 326 (23 November 1979) UN Doc S/RES/326, para. 3.) practicing a policy of apartheid by a government, general civil war and the use of military force against a government by a rebel group accounted to as a threat to the peace (Jeremy Matam Farrall, 2009: 92-100). Further, in 1991, repression of Kurdish civilians in northern Iraq and the subsequent massive flow of refugees were considered as a threat to international peace and security (UNSC Res 688 (5 April 1991) UN Doc S/REC/688, preamble para. 3.). In a later resolution, the Security Council stated that magnitude of human suffering in Somalia during the conflict of 1992 was considered as a threat to international peace and security (UNSC Res 794 (3 December 1992) UN Doc S/RES/794, preamble para. 3.). Regarding whether the Security Council imposes sanctions only to tackle threats to the peace or to enforce international law as well, it can be argued that the primary responsibility of the Council under Chapter VII is to maintain and restore international peace and security. However, the Council sometimes may also impose sanctions to enforce international law. On the one hand, the Council's main responsibility - maintenance of international peace and security- shall be done in accordance with purposes and principles of the UN (The UN Charter, 1945, Article 24 (1 and 2). It is noteworthy that solving humanitarian problems and respecting human rights are among these purposes (The UN Charter, 1945, Article 1(3). Any sanctions taken by the Council are binding on all the member states. Therefore, it can be said that the Council, through imposing sanctions enforces human rights and humanitarian law as they are part of international law. For example, in the case of Sudan, the Council took measures under Chapter VII because of the on-going humanitarian crises and widespread of human rights violations in the Darfur region and condemned these violations by the parties to the crises (UNSC Res 1556 (30 July 2004) UN Doc S/RES/1556, Preamble para. 7.). Furthermore, the Council imposed an arms embargo on Côte d'Ivoire for a resumption of hostilities and repeated violations of human rights in the territory (UNSC Res 1572 (15 November 2004) UN Doc S/RES/1572, preamble paras. 4 and 5.) . Moreover, in the case of the Federal Republic of Yugoslavia, the Council imposed sanctions even before an initial determination of a threat to the peace because of the violation

of human rights and humanitarian law such as use of force against civilians and supporting terrorism in Kosovo (UNSC Res 1160 (31 March 1998) UN Doc S/RES/1160, preamble para.

3.).

On the other hand, the Council may give effect to the judgement of the International Court of Justice against a state that has failed to perform its obligations under the judgement (The UN Charter, 145, Article 94 (2). In this case, it can be argued that the Security Council imposes executive sanctions. Thus, it acts as a law-enforcing agency which enforces international law because at that situation the Council imposes sanctions in absence of any threat to or breach of the international peace and security.

However, when the Security Council determines threats to or breaches of international peace and security, it is bound by some legal standards. These will be discussed in detail below.

III. International Law Constraints on Sanctions

The question arises here as to whether the Security Council is bound by the standard of proportionality or any other standards of international law when it imposes sanctions or not. Some argue that since there is nothing in the Charter explicitly binding the Security Council to meet any general requirements of international law to maintain or restore international peace and security, the Council is not bound legally by any international standards in imposing sanctions. Moreover, they assert that the Council is only bound by the provisions of the Charter in Chapter I not general principles of international law otherwise the work of the Council might be hindered (Mary Ellen O'Connell, 2002: 63). As they assume that, according to Article 25 of the Charter, all member states 'agree to accept and carry out the decisions of the Security Council in accordance with the present Charter'. Furthermore, since Article 103 provides for prevailing obligations under the UN Charter on treaty obligations of the member states such as human rights treaty obligations, the Security Council resolutions prevail on these obligations as well (Eugenia Lopez-Jacoiste, 2010: 290).

However, others argue that the Security Council has very broad powers under Chapter VII but they are subject to certain limitations. Thus, there should be a balance between these broad powers and human rights standards (Eugenia Lopez-Jacoiste, 2010: 289). On the one hand, member states of the Security Council have never had the view that the Council's conduct is not regulated by principles of international law (Mary Ellen O'Connell, 2002: 65). On the other hand, the International Criminal Tribunal for the former Yugoslavia stated that 'neither the text nor the spirit of the Charter conceives of the Security Council as *legibus solutes* (unbound by law)' (*Prosecutor v Dusko Tadic a/k/a 'Dule'*, Case No. IT-94-1-AR72, 2 October 1995, para. 28.).

Therefore, it can be said that sanctions as conduct of the Security Council are not free from certain limitations. These limitations will be discussed below in terms of human rights, humanitarian law and the principle of proportionality.

IV. Human Rights

One of the main limitations on the Security Council's power to impose sanctions is the concept of human rights. Some would argue that Article 103 of the Charter permits overriding any treaty obligations in order to implement obligations under UN Charter. However, it is asserted that Article 103 does not allow a decision of the Security Council to prevail the core human rights obligations such as the prohibition of the genocide and torture or other inhumane treatment because they are considered as part of *jus cogens*. Moreover, they state that according to Article 24, read together with Articles 1 and 2 of the Charter, the Council's decisions must be in accordance with the purposes and principles of the UN. Promoting and encouraging of human rights and fundamental freedoms are among these purposes (Eugenia Lopez-Jacoiste, 2010: 289).

As mentioned before, comprehensive sanctions affect the fundamental rights of the civilian population of the target state. For this reason, UN sanctions have been criticized and some express them as a 'silent holocaust', 'the UN's weapon of mass destruction' and a 'genocidal tool' (Jeremy Matam Farrall, 2009: 224). Therefore, nowadays, the international community aims to maintain international peace and security on the one hand and protect human rights on the other (Eugenia Lopez-Jacoiste, 2010: 277).

As analyzed before, protecting human rights is among the principles and purposes of the UN. Therefore, the Security Council must not violate human rights when it decides to impose sanctions in order to work in accordance the principles and purposes of the UN. Therefore, the fundamental human rights must be considered in sanctions, and most importantly, the right to life which cannot be derogated and constitutes *jus cogens* status.

Moreover, in 1997, the Committee on Economic, Social and Cultural Rights (ESCR) gave an opinion which stated that basic economic, social and cultural rights must be taken fully into account when designing sanctions regimes and they should not be violated. Additionally, the targeted state and the international community do everything possible to protect the core content of these rights of the population of that state (Committee on Economic, Social and Cultural Rights, General comment No. 8 'The relationship between economic sanctions and respect for economic, social and cultural rights' (1997) UN Doc E/C.12/1997/8 para. 7.).

In 1999, the Security Council imposed targeted sanctions on individuals, groups, entities or undertakings associated with Al-Qaida or the Taliban, and those controlled by their associations (UNSC Res 1267 (15 October 1999) UN S/RES/1267, para. 4.). These individuals and groups, which are included on a consolidated list of the 1267 Committee, were subject to financial sanctions, travel restrictions and an arms embargo. Further, apart from its resolution to fight against terrorism, the Security Council imposed travel and financial restrictions as well as arms embargoes against entities and individuals in a number of instances such as in the situations of Somalia, (UNSC Res 1844 (20 November 2008) UN S/RES/1844 para. 11.) Liberia, (UNSC Res 1521 (22 December 2003) UN S/RES/1521 para. 21.) Sudan (UNSC Res 1591 (29 March 2005) UN S/RES/ 1591 para.3.) and Iraq-Kuwait (UNSC Res 1518 (24 November 2003) UN S/RES/1518, para. 1.).

Even after developing sanctions regime by imposing targeted sanctions or smart sanctions instead of comprehensive sanctions, there is still the possibility of violating individual human rights such as lack of an adequate process by which individuals or entities can be removed from the list (Eugenia Lopez-Jacoiste, 2010: 277). As a response to criticisms of the de-listing procedure, in 2006, the Security Council directed Secretary-General to establish a 'focal point' for the receipt of petitions for de-listing directly from individuals and entities (UNSC Res 1730 (19 December 2006) UN S/RES/1730 para.1.). Further, in 2009, the

Council established an office of the Ombudsperson to assist the Sanctions Committee in the de-listing process (UNSC Res 1904 (17 December 2009) UN S/RES/1904, para. 20.).

It is argued that there are not sufficient legal safeguards in ‘focal point’ for de-listing and its procedure is also political and based on consensus. In addition, when the Sanctions Committee decides to list any entity or individual, any member state can block its removal, even if a national court affirmed that this person or entity is innocent (Helen Keller and Andreas Fischer, 2009: 257).

One of the most recent cases regarding the problem of wrong listing and insufficient procedures of the de-listing is the joined case of Kadi and Al Barakat v Council of the European Union and Commission of the European Communities (Joined Cases C-402/05 P and C-415/05 P, *Yassin Abdullah Kadi and Al Barakat International Foundation v Council of the European Union and Commission of the European Communities* [2008] ECR 6351; see also *NADA v. SWITZERLAND – 10593/08 – HEJUD* [2012] ECHR 1691 *Sayadi and Vinck v Belgium* (2009) 16 IHHR 427.). Both Mr. Kadi and Al Barakat International Foundation assets were frozen in accordance with the Council Regulation 881/2002 to implement the Security Council’s Resolution 1267 (Taliban/ Al-Qaida sanctions regime). The claimants commenced proceedings and argued for annulment of the Council Regulation 881/2002 before the Court of First Instance. They claimed that the Council was not competent to adopt that regulation and that the regulation violated several of their fundamental rights. The Court of First Instance dismissed their claim for the reason that the UN Charter requires member states to comply with the Security Council resolutions (Joined Cases C-402/05 P and C-415/05 P, *Yassin Abdullah Kadi and Al Barakat International Foundation v Council of the European Union and Commission of the European Communities* [2008] ECR 6351).

They appealed this decision before the European Court of Justice. The European Court of Justice overruled the decision of the Court of First Instance and held that the Communities instrument which gives effect to sanctions imposed by the Security Council anti-terror resolution (Resolution 1267) infringed certain fundamental rights of Mr. Kadi under European Community law, namely the right to be heard, the right to an effective legal remedy and the right to property. It also held that the regulation should be redrafted (Joined Cases C-402/05 P and C-415/05 P, *Yassin Abdullah Kadi and Al Barakat International Foundation v Council of the European Union and Commission of the European Communities* [2008] ECR 6351).

V. The Principle of Proportionality

Another limit on the Security Council's discretion is proportionality. The roots of this principle stretch back to the practice of countermeasures by states. Although there is no specific provision in the Charter so as to take the measures in any order, the Council is bound by this principle when it decides to take measures of any nature (Eugenia Lopez-Jacoiste, 2010: 289). This principle is linked to the principle of necessity (Elias Davidsson, 2003: 1). Article 42 of the Charter states that 'Should the Security Council consider that measures provided for in Article 41 would be inadequate or have proved to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security'. This means that the measures taken by the Council must be necessary and appropriate for the removal of the threat, i.e., if the action is not necessary to maintain or restore international peace and security, the Council may not take it (Nicolas Angelet, 2001: 72).

Further, it is submitted that even if the action is necessary to be taken, it may not affect other legitimate interests of the target to a disproportionate extent compared to the advantage obtained. For example, the advantage intended to be obtained by a sanction must justify the negative consequences it causes (Boris Kondoch, 2001: 267). Moreover, it is indicated that proportionality of sanctions means that the coercive consequences of these sanctions on civilian populations, individuals and third states must remain in proportion to the harm caused by the target and consistent with the overall objectives of the sanctions (Jeremy Matam Farrall, 2009: 42).

The principle also is one of the essential rules of the law of armed conflicts (Elias Davidsson, 2003: 2). It is argued that the Security Council must not override the customary principles of international humanitarian law including necessity, proportionality and distinction when decides to the use of force and when the uses the authorized force. Distinction means that civilians may not be targeted (Mary Ellen O'Connell, 2002: 63-79).

VI. Humanitarian Exemption Clauses and Humanitarian Law

Basically, it requires the distinguishing of legitimate targets from illegitimate ones, and humane techniques or tools from the inhumane (Matthew Graven, 2002: 43). When the Security Council exercises its power to impose sanctions, alongside with protecting human rights, it must consider the humanitarian exemptions. The Council has emphasized that more must be done to minimize the humanitarian impacts of sanctions since the aim of sanctions is not to harm or punish civilian populations (Jeremy Matam Farrall, 2009: 141).

Further, there should be no restriction on the provision of humanitarian relief. Therefore, the right of civilians to obtain basic foodstuffs and other necessary materials must be respected even in wartime as stated explicitly that 'Each High Contracting Party shall allow the free passage of all consignments of medical and hospital stores and objects necessary for religious worship intended only for civilians of another High Contracting Party, even if the latter is its adversary. It shall likewise permit the free passage of all consignments of essential foodstuffs, clothing and tonics intended for children under fifteen, expectant mothers and maternity cases' (The Fourth Geneva Convention 1949, Article 23.).

Regarding prevailing UN Charter obligations on other treaty obligations which have a humanitarian character, the International Court of Justice in the Namibia case held that 'the obligation contained in the Resolution could not be applied to certain general conventions, such as those of a humanitarian character, because the non-performance of these treaties might adversely affect the people of Namibia [...] The Court's decision is generally interpreted to mean that the Security Council's decision to forbid treaty relations with South Africa could not be applied to humanitarian treaties because such treaties embody *jus cogens*, which the Council cannot override' (Elias Davidsson, 2003: 3).

The practice of the Security Council shows that the Council exempts some humanitarian items or supplies when imposes comprehensive economic sanctions such as foodstuffs (In all comprehensive sanctions. For example, see: UNSC Res 253 (29 May 1968) UN S/RES/253, para. 3(d); UNSC Res 661 (6 August 1990) UN S/RES/661, para. 3(c) and UNSC Res 917 (6 May 1994) UN S/RES/917, para. 7(a).) clothing (UNSC Res 943 (23 September 1994) UN S/RES/943, para. 3; UNSC Res 988 (21 April 1995) UN S/RES/988, para. 13.) medical supplies (All comprehensive sanctions. For example, see: UNSC Res 757 (30 May 1992) UN S/RES/757, para. 4(c) and UNSC Res 820 (17 April 1993) UN S/RES/820, para. 12.), educational and informational materials (UNSC Res 253 (29 May 1968) UN S/RES/253, para. 3(d)). Furthermore, the Council stated that it is necessary that sanctions contain adequate and effective exemptions to avoid adverse humanitarian consequences on the population (UNSC Res 1333 (19 December 2000) UN S/RES 1333, preamble, para. 17.). A number of studies have sought to determine humanitarian effects of sanctions on the population of the targeted state. In particular, the humanitarian impact of sanctions upon Iraq (Jeremy Matam Farrall, 2009: 224). Although there is nothing in the Charter that provides expressly to the respect of humanitarian law when armed forces are used, the UN acknowledged that it is constrained by general principles of humanitarian law when acting under Chapter VII of the Charter (Mary Ellen O'Connell, 2002: 69). It is argued that even targeted sanctions sometimes have direct or indirect effects on the humanitarian conditions of a civilian population and a serious negative impact of the development capacity of the targeted countries. Therefore, the Security Council should take the economic and social effect of sanctions on individuals by providing appropriate humanitarian exemptions in order to minimize negative effects (Eugenia Lopez-Jacoiste, 2010: 304). Although there is no explicit provision of the Charter requires the Security Council to comply with humanitarian law, it is acknowledged that general principles of humanitarian law are binding the United Nations when acting under Chapter VII in relation to the use of armed force (Mary Ellen O'Connell, 2002: 71). This statement was stated in Section 1 (1) of the Secretary-General's Bulletin in 1999 (UN Secretary-General's Bulletin 'Observance by United Nations forces of international humanitarian law' 1999 UN Doc ST/SGB/1999/13, Section 1 (1.1).

VII. Conclusion

The task of implementing and ensuring the application of international law has been linked to the task of maintaining international peace and security, as most of the rules of international law are peremptory norms, and the obligations that fall on states in this area towards the international community as a whole are collective and reciprocal obligations (Omnes Erga) such as the obligations arising from the elimination of the crime of aggression and genocide, as well as the rules and principles related to the fundamental rights of individuals. As a result, the Security Council has contributed to some extent to the protection of human rights and ensuring the implementation of the rules of international law.

Under the UN Charter, maintaining and restoring international peace and security is considered as a primary responsibility of the Security Council. Therefore, and in so doing, the Council takes necessary measures to tackle any threats to or breaches of the international peace and security and also against any aggressive actions. However, sometimes, the purpose of the Council's sanctions is not mainly to tackle threats to or breaches of the international peace but to enforce international law such as in cases of human rights violations and humanitarian crises.

Further, the Council is allowed to impose sanctions to enforce judgements of the International Court of Justice in accordance with Article 94 (2) of the Charter. This means that when the court holds a decision against a state and that state does not comply with the judgment, the Security Council has power to impose sanctions on that state in order to force it to accept the judgement. In these cases, it can be said that sanctions enforce international law rather than only restoring international peace and security.

Although, sanctions imposed by the Security Council are not totally free from constraints of international law. In exercising its powers, the Council must consider the necessity and proportionality of the taken sanction. Since the core components of human rights and international humanitarian law are considered as part of *jus cogens*, the Security Council must take them into account when take measures under Chapter VII of the UN Charter. Recent practice by the Council recognizes that it is bound by human rights and humanitarian law by implementing its resolutions. For instance, it is asserted that 'States must ensure that any measure taken to combat terrorism comply with all their obligations under

international law, and should adopt such measures in accordance with international law, in particular international human rights, refugee, and humanitarian law' (UNSC Res 1456 (20 January 2003) UN S/RES/1456, para.6.)

However, the Security Council's reliance in its description of threats to international peace and security is based on political assessments rather than legal criteria, as the Security Council intervenes in some areas rather than others in order to implement the rules of international law. The evidence for this is its position on Israel's violations of international rules and agreements, especially regarding the Palestinian issue and other countries in which these rules are violated, for example Syria and Yemen.

VIII. Recommendations

1- All states and organizations must make strenuous efforts to prevent resorting to war and to use peaceful methods and means to prevent the outbreak of armed conflicts

2- It is necessary to change the membership of the Security Council and the decision-making center in a more democratic manner either by increasing the number of permanent members to ten members or canceling it completely and adopting the majority voting mechanism equally among the member states within the Council to express the opinion of the majority of the organization's members, and to make achieving the principles of humanity and justice above all else.

3 Activate the role of the Security Council in maintaining international peace and security, suppressing violations of international law, keeping the Security Council away from the control of political considerations, submitting to the will of the five permanent member states, and issuing effective decisions in this area.

4- The idea of universal criminal jurisdiction must be strengthened as an alternative in cases where the Security Council is unable to achieve its mission to deter and stop violations of the rules of international law.

5- Provide the Security Council with effective mechanisms to monitor the proper implementation of Security Council resolutions to prevent their misuse by major powers to achieve political goals instead of implementing international law.

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پوخته

ئەنجومەنی ئاسایش لە چوار چۆنەیی تایبەتمەندییەکانی که خۆی دەبینیتۆه لە پاراستنی ناشتی ئاسایشی نیودەولەتی هەڵدەستی بە جێبەجێ کردنی رێساکانی یاسای نیودەولەتی بۆ پاراستنی مافەکانی مرۆف و داوین کردنی ناشتی و ئاسایشی نیودەولەتی ئومێش لە رێگەی بەرچ دانەوهی ئەو هەمەشانهی که دەرکرتە سەر ناشتی نیودەولەتی، وە بۆ ئەم مەبەستەش پشتی بوستوو بە دەسەلاتانەیی که پێی بەخشر اوو بە پێی ميثاقی نەتۆه یەگەر تووکان هەروەها بنەما نیودەولەتی و مرۆبیهکان. وە لەپێناو گەرەنتی ریزگرتن لەم رێسایانە و جێبەجێ کردنیان ئەنجومەنی ئاسایش چەندین برباری دەرکردوو سەبارەت بە سەپاندنی سزای ئابووری و بەکارهینانی هیزی چەکداری لە لایەکەوه، وە چالاک کردنی سزا تاوانکارییە نیودەولەتییهکانی لە لایەکی ترهوه. یاسا نیودەولەتی و رێسای یاسایی بریتین لە بنەما سەرەکییەکانی سیستمی نیودەولەتی. رێسا و سیستمە روون و چاو و وانکر اوو مکان بۆ رێگری کردن یاخود سزادانی سەرپێچی کردنی ئەم رێسا یاساییانە بریتین لە مەرجی پش و مختهی سەرەکی بۆ بەدی هینانی ناشتی و ئاسایش و گەشه سەندنی ئابووری و بەرەوپش چوونی کۆمەڵایەتی. رێکخراوی نەتۆه یەگەر توو مکان چەندین هەولێ داوه بۆ بەهیز کردن و پالپشتی کردنی رێسای یاسایی وەک پالپشتی یەک بۆ ئەو رۆلە گرنگەیی کهوا ئەنجومەنی ئاسایش دەیگێریت لەم بواردادا. ئەنجومەنی ئاسایش بریتییە لە بەهیزترین دامەزراوهی فرەلایەنە کهوا بە باشی گەشهیی سەندوو زياتر لە ئەرکه یاساییه سەرەکییەکانی خۆی. که ئەوانیش بە شێوێهکی گشتی بریتین لە دیاری کردنی ئەو کردەوانەیی کهوا هەمەشەن بۆ سەر ئاسایشی نیودەولەتی وە هەروەها پشیلکردنی ئاسایش یاخود کردەوهی شەرەنگیزی کهوا روویان داوه وە هەروەها دیاری کردنی ئەو پابەندیە دیاریکر اووانەیی کهوا پابەند کران لەسەر دەولەتانی ئەندام بە گۆرەهێ بەندی حەوتەم لە ميثاقی نەتۆه یەگەر توو مکان. لە روانگاری ئەمرودا بە تايبەتی لە دواي کۆتایی هاتنی جەنگی سارد چالاکییەکانی ئەنجومەنی ئاسایش بە پێچەوانەیی تیگەیشتنی تەقلیدی بۆ سیستمی نیودەولەتی بە روونی دەرەکهوت. وە دووبارە چالاکیی کردنەوهی ئەنجومەنی ئاسایش بووتە هۆی زیادبوونی بەکارهینانی دەسەلاتەکانی بەگۆرەهێ بەندی حەوتەمی ميثاقی نەتۆه یەگەر توو مکان وە هەروەها گرتەبەری چەندین رێکاری پشوست دژی ژمارەیهک لە دەولەت و ژمارەیهک لە کیانی بێ دەولەت. تیگەیشتن لە هەمەشه کردنی ناشتی لە کاتی ئیستادا پشیلکردنی بنەما سەرەکییەکانی یاسای نیودەولەتی دەرکرتەوه، وەک : مافی مرۆف و یاسایی نیودەولەتی مرۆبی. لەبەر ئەوه ئەنجومەنی ئاسایش کۆمەڵێک رژیمی دامەزراندوو بۆ دەرکردن و جێبەجێ کردنی بربارەکانی لەپێناو جێبەجێ کردنی رێساکانی یاسایی نیودەولەتی. ئەم تووژینهوهیه باسی ئەوه دەکات که نایە سزاکانی ئەنجومەنی ئاسایش دەسەپپیریت تەنها بۆ رووبەر و بوونەوهی هەمەشهکانی ئاسایشی نیودەولەتی یاخود چەند ئامانجێکی تر بەدی دەهینیت بەی ئەوهی پەموەندییهکی راستەوخۆی هەبیت بە گێراندنەوهی ناشتی و ئاسایشی نیودەولەتی. پاشان ئەم تووژینهوهیه ئەوه روون دەکاتۆه کهوا سزاکانی ئەنجومەنی ئاسایش بێ بەش نین لە کۆت و بەندە نیودەولەتییهکان.