Reasons behind the Failure of Right to Peace in Today's World

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Abstract

The right to peace and global security are considered as critical rights and necessities for human life, the realization of which requires support of the global society. Initially, the establishment of the United Nations made people believe that they are achieving this significant matter, and a major part of problems caused by disagreements and growing wars are being solved. Unfortunately, this has not been the case and we are still observing the increasing rate of clashes, domestic conflicts and foreign wars all around the World. Therefore, it is necessary to identify the barriers against the realization of this right and seek to address them. With little reflection, one discovers that one of the principle roots of the existing disagreements and unending wars around the World is the inefficiency of the United Nations (UN), which was established with the purpose of maintaining peace and security in the world. However, the UN suffers from significant difficulties in recognition, structure, and execution in the field of right to peace, which are mainly due to legal reasons. Therefore, this study attempts to find the existing weaknesses, including defects and shortages, of the United Nations in maintaining peace and security around the World. In addition, we will try to propose strategies to prevent the repetition of past mistakes, correct such defects, and take effective measures to improve the right to peace.

Keywords: right to peace, the Security Council, United Nation, war, weakness of law.

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Introduction

The establishment of peace and the absence of violence are among the most vital and critical requirements for human dignity. These notions have been sought by human beings for long. They are regarded as primary rules of legal systems and among the basic values of the global community. Insufficient attention to these issues implies ignorance of essential human dignity and other instances of human rights. As mentioned by Astor, "unity of the present world is understood as a system composed of interconnected sectors in which all sectors may have mutual influences on each other" (Grahl-Madsen & Toman, 1987: 377). Therefore, the right to peace is an important instance of natural, primary and vivid rights of humankind. Common sense essentially confirms the essential existence of the notion. It should not be ignored that most instance of natural rights evolve and realize alongside statutory rights. Here, one can refer to the theory of Hobbes on right to peace and emphasis on collective rights, which suggests: "Public access is one of the natural laws that is discovered by humankind but realization of peace and adaptation is possible through contract, and it is another principle or rule of the nature which is perceived by humankind but some natural rights may be neglected for the sake of attaining peace" (Hobbes, 1387 [2008 A.D]: 196-198). In this regard, the necessity of the completion of this process is clearly communicated and efforts are made to make contributive propositions on this subject.

The end of the Second World War was a turning point for the revival of the notion of "right to peace". This revival was somehow the outcome of the fear of Nazism and military affairs, which did not respect individuals. The revival was initially reflected in the United Nations Charter. In many cases, the charter points to human rights, basic freedoms, right to peace, equality and non-bias. The charter seeks to associate the governments to each other in terms of globally common goods

that are related to the essential value of humanity. Every government recognizes the value and imposes certain obligations based on the notion. The charter, therefore, imposes effective collective measures for preventing and removing threats against peace, stopping any act of aggression on global peace and security. It also promotes an understanding of and respect for opposing opinions, friendship between all nations and racial or religious populations, and developing the activities of allied nations for maintaining peace (Javid & Rostami, 1394 [2015 A.D]: 460).

Therefore, the efforts of the United Nations have led to the "Declaration of the Right to Peace". The declaration includes an introduction and four articles. The introduction suggests that the primary objective of the United Nations is keeping global peace and security. In addition, the introduction emphasizes the wills and intentions of all nations to eliminate war from all environments where human beings are living. Unfortunately, the measures and activities of the United Nations solely have moral and political values; following them depends on member states' will, which leads to an executive weakness or non-obligatory status of the charter articles. In addition, it cannot be ignored that the realization of the right to peace has not been much successful; this significant task has therefore not practically been fulfilled. Despite the fact that years have passed from the establishment of the United Nations, we are still experiencing violence and war in the global community. This problem is unfortunate, and accepting the right to peace as an official and legalized right still faces significant complications. This is while the main reason for the establishment of the United Nations was maintaining global peace and security. Therefore, the authors intended to deeply investigate the reasons behind the absence of peace and the right to peace (i.e. equivalent to the notion of

negative peace[1]), with emphasis on the United Nations. In addition, this paper's second objective is to seek a solution for maintaining this valuable right, as it may improve the functioning of the global community and create a free and fair global community, characterized by peace and security.

A descriptive-analytical method was used in this study. The authors attempted to uncover the existing barriers of the realization of global peace and security through investigating relevant theoretical concepts, gathering the propositions, and presenting general theorems. Therefore, the content is described under three headings, including weaknesses in identifying and recognizing, weakness of structure, and weakness of execution in a descriptive-analytical fashion. Moreover, several examples from the measures taken by certain countries are presented to confirm the content. Finally, several strategies such as making basic changes in the United Nations are suggested while the necessity of evolution and innovations according to the expedients of today's world is emphasized. The tools for collecting data consist of notes from relevant literature related to the topic, referring to information banks and online resources, and reviewing few cases studies from special countries.

Theoretical Framework

In this section, the issue of threats to the right to peace is introduced as a "dependent variable", which can be highly affected by the present weaknesses in the United Nations. The issues that may affect this "dependent variable" include failure to precisely define and identify this concept, lack of power balance among the sub-entities of the United Nations, lack of accountability, lack of supervision, lack of cooperation (legal and political obligation), unilateralism, etc. which are all

1. Negative Peace refers to preventing war, armed clashes and violence. Positive Peace refers to establishing justice, development and dignity (Babri Gonbad, 2013: 3).

recognized as the weaknesses of the United Nations. The United Nations must act as a moderating entity and the "mediator variable", conducting the necessary supervisions. These necessary supervisions include presenting the precise concept of this issue and recognizing it as an indispensable issue, changing the structure, and balancing the power among sub-entities of the United Nations. The United Nations must also exclude the previous time consuming methods in legislation such as international common law, and stop relying on opinions and assembled documents, establishing an independent legislation entity, and encouraging the cooperation between countries to resolve the disputes in a peaceful manner. This expedient supervision by the United Nations, especially by the General Assembly, plays an important role in improving the required elements for achieving the desired result, which is the global peace.

Weaknesses in Identification and Recognition

In many cases, the failure to complete the process of the right to peace is rooted in negligence of lawyers in identifying and recognizing this right, and normative assembled regulations related to it that shows that this right does not have the required executive power. As stated before, although this is a vivid, undeniable and essential right of human beings and it is regarded among instances of natural rights, it could be achieved if it is accompanied with statuary rights. Therefore, the significance of legal measures is doubled and one could confidently state that when a right is legally weak or when it lacks sufficient legal support, one can expect the right to be exposed to political games. The following paragraphs review these issues.

i) Lack of "Right to Peace" Definition

One of the primary complications of the right to peace is the absence of a reliable definition and international agreement on the matter, which has led to a subjective approach to the notion. Due to the different roles of peace in various cultural, religious, legal and political fields, different conceptions of the notion have been provided. From a conceptually traditional and dominant perspective, the term refers to the lack of aggression, violence and enmity (i.e. negative peace). However, in recent approaches to the security of human beings, the concept of peace has gone beyond its traditional approaches, referring to normal relationships between people and governments (i.e. fields of social or economic well-being; Saed, 1390 [2011 A.D]: 21). Accordingly, we observe the involvement of numerous elements in the development of the notion of "right to peace", which this has led to numerous definitions and therefore the absence of precise boundaries in this category. This absence of a uniform, unanimous definition and conception of peace enables opportunists to find a way out as they draw on different aspects of this right.

Therefore, as long as there is no common, permanent definition for the notion of "right to peace" and as long as this notion's characterization and instances are variable, opportunistic countries may use the notion to their advantage for achieving their individual objectives. In such cases, they will threaten the order of the global community and weaken the commitment of governments to this notion, which explains the reason for which different aspects of the right to peace should be determined and its elements should be distinguished from each other. In addition, the notion's range and limits should be determined. For instance, how should lack of war be defined? Does war solely signify destruction or does it include non-military conflicts and violence? Does the concept of war cover "soft wars" (i.e. cultural, civil and religious aspects) as well?

In addition, an important question that needs to be thoroughly clarified regarding the concept of "right to peace" is how should domestic peace and global peace be differentiated and what is the association between the two? Does peace solely include a post-war stage or does it also include pre-war stages, seeking negotiation and prohibition of war and violence? How could the internal conditions of a country (e.g. well-being, economic and security conditions) threaten global peace? As a result, it is necessary to identify and distinguish these relevant aspects to offer a comprehensive definition with clear boundaries. This necessitates the cooperation of the lawyers of the global community as well as consultation with relevant experts and professionals. Based on what was suggested above, one could state that despite the fact that the dynamism of the underlying notions of human rights points to consistency with the global situation, it should not be exploited by opportunists. The opportunists should not explain the notion to their interests by making excuses such as adaptation with today's world. They should not use deceptive reasons to drive nations towards conflict and peace-excluding measures. Therefore, a precise definition of the notion should be presented considering different relevant aspects with a definite framework and definite measures. In addition, the obligations of governments should be determined and during difficult times when the notion needs further interpretation, a definite interpretation should be agreed upon to seriously support the notion of the right to peace.

ii) Lack of Formality

Another important issue in the discussion about the notion of the right to peace is the appearance of a relatively new generation of human right under the title of the right of solidarity or the third generation of human right. The right of peace is considered as one of the subdivisions of the third generation of human right; the first and the second generations of human right were the

"promise of political and civil right", and "economic, social and cultural right". However, the right to peace lacks any identity document known as the covenant of solidarity right. The lack of an independent and unique document in line with the public right, which can guarantee the people's right (such as right to live in a safe environment, right to enjoy development, right to peace, right to determine one's own destiny, right to enjoy the common heritage of human kind, etc.) indicates the unjust behavior or the negligence of the international community and international lawyers in this respect. Therefore, in order to complete the process of the fulfillment of human right, it is necessary to compile an independent and obligatory document under the title of "Solidarity Right" in order to maintain a solid attainment of the third generation of human right throughout the World.

iii) Lack of Binding Documents

Unfortunately, there is no binding document that directly address the aspects of right to peace. The only binding document, which recognizes the right to peace is the African Charter on Human and Nations Rights, which acts as a local document for member states. The right to peace has not been independently necessitated in the third edition of the Human Rights Charter. This is while in relevant documents to the first and second editions of the Human Rights Charter, the necessity of this right has been recognized. Among such documents, one could point to the International Covenant on Civil and Political Rights and the introduction to the Covenant on Economic, Social and Cultural Rights.

The only independent and separate document on supporting the right to peace, which has been edited by the United Nations, is the Declaration on the Right of Peoples to Peace. The declaration, however, is not binding; it does not have any

executive guarantees, and lacks a precise framework on the way to implement it. Therefore, even if all relevant aspects are covered in the declaration, it will not have an executive power and will therefore not practically support the right to peace. Initially, one may be able to justify the reason behind the lack or the insufficiency of relevant documents on the right to peace, since the identification of this right lacks a long background, and the sources in which the right is recognized are scarce. However, this does not justify the negligence and procrastination of representatives of global community and relevant international entities in recognizing such a vividly essential right. On the other hand, one should not neglect that certain powers prevent the introduction of right to peace and justice as a human right and inclusion of the right in international conventions to maintain their freedom of action. The consequences of the insufficiency of documents on the right to peace could be rooted in the deprivation from advantages of executive guarantees.

The consequence of the insufficiency of documents on the right to peace is the deprivation from the advantages of executive guarantee. Therefore, binding documents with executive guarantee should be produced regarding this matter. In addition, the right to peace is ignored as it is not included in the necessary documents and it does not enjoy the advantages of executive guarantees, reporting mechanism and freedom of information. This is while the universal nature of human right, which has an international form, requires governments to present a comprehensive and precise report on their operations in order to fulfill their international commitments (Donnelly, 2003: 34). Therefore, a legal system is regarded as coherent, fair and efficient, only if it has a surveillance system with strong mechanisms. Although distinct organizations in charge of issuing reports exist within the United Nations, the reports mainly concern specific issues such as education, science and

culture, which require a long time to be realized, and they do not address the valuable right directly. For instance, article 1 in the stature of UNESCO refers to peace and human rights and suggests, "The organization's aim is to promote peace and security through encouraging the nations to participate. This is done through education, knowledge and culture and global respect for justice as an instance of rule of law, realization of human rights and basic freedoms". As long as this valuable right is not developed more seriously, the international community suffers from the lack of an executive guarantee.

On the other hand, one of the premises of an executive guarantee in the first and second editions of human rights is the development of committees, which are presumed to contribute to development of the right to peace. The committees are established based on relevant covenants and play an effective supervisory role in this affair. The supervisory tool not only covers various aspects of human rights, but also addresses certain issues such as lack of racial discrimination, torture and violence against women, which are mentioned as primary and secondary human rights respectively. However, the right to peace does not enjoy the supportive tool since there are no binding documents.

Weakness of the Structure

The separation of powers is obviously one of the primary principles in the formation of a society because the separation of powers and implementing it lead to the maturity of a legal system and can serve as a strong barrier against the concentration and monopoly of power, which may lead to a balance among powers. Although this concept is more relevant to the domestic affairs of governments, the separation of powers can be implemented in the United Nations; an organization formed through gathering all the countries of the world, and

seems inevitably necessary for being systematized. Unfortunately, the United Nations lacks an independent entity of legislation; ignoring the prediction of this sub-entity in the structure of the United Nations has led to a mixing of duties and caused various problems. Therefore, power and competency of legislation are executed by two other powers of the United Nations, namely the International Court of Justice (judicial sub-entity) and the Security Council (the executing sub-entity). Such powers make one doubtful about the presence of justice and fairness in this organization. As a result, it is necessary to deprive the competency of legislation from the mentioned sub-entities and assign it to an independent legislation entity.

i) International Court of Justice

The International Court of Justice is the main judicial sub-entity of the UN and a universal authority of judgment whose duty is to help with keeping the peace, universal security and development of international right, which has the competency of dealing with all international issues. The problem here is that the International Court of Justice has the competency of resolving disputes and consequently maintaining peace and security. However, the powers of this authority are not limited to the mentioned affairs and in most cases, the decision made by this authority is considered a pattern for the future disputes, which is called judicial procedure, and a sort of legislation, and therefore makes the powers of this authority limitless.

Despite the fact that there is no single judicial procedure in the international law, and alignment with judicial procedure is more significant for the issuance of consistent decrees by the court, the entity is not similar to the legal system of common law in terms of following previous procedures. The court may reject previous judicial procedures, but it should express its reasons for deviating from previously proven principles.

Therefore, the court follows previous judicial procedures practically. The reason behind the alignment of the court is that previous decrees are a valuable source of legal experiences since they are premised on the review of cases based on valid legal rules (Habibi & Shamlou, 1392 [2013]: 89).

In all cases, the court is required to resolve the raised disagreements based on international legal rules such as legal principles that are based on previous judicial procedures. However, the problem with such a procedure is the decrees that are premised on judicial procedures originated from secondary authorities of the entity, which implies the dominance of the secondary affairs over primary ones. In addition, reference to such procedures will gradually lead to the development of certain rules and this is recognized as a kind of legislation. This is while the court has the authority to express and implement the laws and not to legislate.

To support the note, one could state that in a similar decree to a consultative opinion on the legitimacy of threat or the use of nuclear weapons, the court stated that there are no rules in the international common law or agreements that allow using nuclear weapons or threatening other countries with such destructive weapons. In that case, the court regarded its task to be the evaluation of legal principles and applicable rules on threat or reference to nuclear weapons, and it was solely authorized to express the current laws and must not legislate (Rosenne & Ronen, 2006: 96).

Based on what was suggested above, one could state that contrary to the domestic area, there is no independent international legislative entity. At the global scale, more emphasis is placed on judicial procedures and international norms in the legislation process. This results in negative consequences in instances of human rights such as right to peace. These procedures lack complete clarity and undermine

the independence of sub-entities of the United Nations, which is the main representative of the realization of human rights and primary means of establishing peace. In this regard, such measures, as conducted by the court, are beyond its authorities, which will create numerous problems in the end because the focus of power in an entity will result in its unlimited freedom of action. This results in the negligence of mission and the essential philosophy of the entity, which is helping in keeping global peace and security. Therefore, the development of relevant laws and legislation should be done by authorized and independent entities in a way that they can reflect intended and predefined legal consequences, enjoy the legal requirements and guarantee its efficiency and consistency.

ii) Security Council

The Security Council is one of the political sub-entities of the United Nations, which was established to maintain international peace and security. While legislation has not been among the main goals of the Security Council, legislation competency is considered as the secondary authorities of this organization, which is rather doubtful, as we have repeatedly witnessed the enactment of law in form of "manifesto" by this executive entity. Therefore, it seems that the Security Council ignores the fact that its duty is resolving the disputes that threaten the peace and security of the world. As a result, it is necessary to limit the domain of the activities of the Security Council to prevent it from turning to a despot and great power. It seems rather dangerous and incorrect to assign legislation to an entity that is not responsive and is under the control of great powers. In today's world, such competency is not accepted even in domestic legal systems, except in certain exceptional cases (Mirabbasi & Mirabbasi, 1388 [2009 A.D]: 164). It can be concluded that since the Charter of the United Nations is considered as the constitution of countries at the global scale,

the sub-entities of the United Nations, especially the Security Council, which decide on the final reaction to a situation and determine the related legal status through issuing a manifesto, have an implied competency for legislation. Here we can refer to the case of Lockerbie, where the Security Council issued a manifesto, made a decision on behalf of the International Court of Justice, and determined a legal status, which could be considered as a kind of legislation. The details of this issue will be presented in the following paragraphs.

On December 21, 1998, an aircraft belonging to Pan American Airline exploded over the city of Lockerbie; 270 people including the passengers, crew and residents of the location where the aircraft crashed were killed. Following this accident, the Britain and the US governments conducted a long-term survey and finally concluded that the crash of the mentioned aircraft was due to the explosion of a bomb embedded in the aircraft by two citizens of Libya. The two Libyans were accused by the British and the US governments on November 13 and 14, 1991. The Libyan government rejected this accusation on November 18, 1991, and declared that they started conducting a survey on the event; at the same time, they asked international lawyers to cooperate with them (Aghaei, 1375 [1996 A.D]b: 60). The British and American governments issued a common declaration on November 27, 1991 and asked Libya government to respond positively to a "special request" delivered to them regarding the crash. The two mentioned governments asked Libya to extradite the offenders and they declared that if Libya rejects this request, they may take the retaliatory measures against Libya. The Libyan government rejected the request of Washington and London and the issue was referred to the Security Council as an international terrorism issue to give a legal legitimacy to the decisions made against Libya and apply more pressure on this country. Presenting the issue to the Security Council led to manifesto no. 731 on

January of 1992. In this manifesto, the Security Council declared its concerns regarding the terrorism measures of Libya, and condemned the Libyan government for illegal actions that threaten the security of airlines. They asked the Libyan government to respond positively to the request of the two mentioned governments and take part in fighting against international tourism. While Washington and London applied more pressure on Libya, a complaint was filed by the Libyan government with the International Court of Justice on March 3, 1992. This complaint referred to Montreal convention[1] of 1971 regarding airlines security and claimed that Libya had fulfilled all its commitments mentioned in the convention. At the same time, they also asked the court to declare that Libya fulfilled its commitments regarding the present issue, and Britain and the US governments violated the convention. They also asked for a termination of the measures of the two mentioned governments in applying pressure and threating Libya.

The government of Libya also asked for issuing a sentence regarding the security actions based on article 41 of the Court's constitution. Three days after the verbal investigation of the request of Libya, while the court was ready to issue the sentence, the Security Council issued the manifesto no. 731 and threatened Libya to sanction and punishment in case of not executing manifesto no. 731 (1992). On April 14, 1992, the International Court of Justice declared that it is not in a situation that can issue a temporary sentence, and rejected the request of the Libyan government (Aghaei, 1375 [1996 A.D]a: 61). Therefore, it can be concluded that sometimes the Security Council takes specific measures that do not comply with the Charter of the United Nations, and this can be regarded as obvious evidence of the limitless power and influence of the

1. According to this Convention, the trial must be held in national courts, and the request of Security Council was against Montreal Convention, and brought up many controversial cased in the working field of the Security Council (Amini Nia, 1389 [2010 A.D]: 150).

Security Council. However, according to the authorities and powers given to the Security Council in the Charter of the United Nations, this entity is an executive power of the United Nations and is not allowed to deal with the judicial affairs. In the mentioned case, the Security Council believed in its judicial competency and knew itself as a competent entity for dealing with legal affairs such as the international responsibilities of governments, the extradition of citizens, the compensation for loss, etc. Therefore, the Security Council reacts to different issues in the world through presenting a broad interpretation on the concept of international peace and security, and plays roles in legislating, determining and executing rights.

The other problem in the structure of the Security Council is dividing the members into two groups of permanent and temporary. This sub-entity of the United Nations is composed of 15 members (5 permanent and 10 variable members). The permanent members of the Security Council are the five great powers of the world; this position was granted to them because of their victory in World War II, and serves as a tool for the accomplishment of the goals of the mentioned members. Therefore, the fact that the permanent members remain fixed does not seem fair, and causes numerous concerns for developing countries. Moreover, granting the Veto right to the permanent members of the Security Council is against the principle of equality of governments and states. In addition, this condition disrupts the notion of impartiality. It may result in biased decisions and reinforce political disagreement. On the other hand, if one of the top five powers files a suit, and the resolution of disagreement is done by Security Council, the permanent member could use its Veto right and shows its disagreement. This is against the notions of fairness and justice. Here, it is necessary to refer to the Article 94 of the United Nation Charter and the work of the Security Council in this regard. Article 94 of the United Nation Charter stipulates:

1. Each Member of the United Nation undertakes to comply with the decision of the International Court of Justice in any case to which it is a party.
2. If any party to a case fails to perform the obligation incumbent upon it under a judgment rendered by the Court, the other party may have recourse to the Security Council, which may, if it deems necessary, make recommendations or decide upon measures to be taken to give effect to the judgment.

Accordingly, the Nicaraguan government complained to the Security Council based on Article 94, paragraph 2, of the Charter for the intervention of the US military and militia by the International Court of Justice, requiring the Security Council to compel the United States to accept its verdict. However the Americans vetoed the Nicaraguan complaint. In this process, on the one hand, the UN Charter has given the complaining party the right to submit a lawsuit to the Security Council. On the other hand, it has given the permanent members of the Security Council the right to "veto" the actions of the Security Council if they wish so, which renders taking the lawsuit to the Security Council almost useless. At the same time, it also compromises the verdicts of International Court of Justice (Majdi Nasab, 1374 [1995 A.D]: 175).

Therefore, further reflection seems to indicate a weak basis for the claim of the "global representation" of the Security Council, since it is regarded as an independent legal person and not a representative of permanent members or certain states. Therefore, it is necessary to re-check the issue of members division. At the same time, the United Nations should define a time period for their membership, and extend it based on their good deeds in the field of human right. According to the cooperation principle, and in cases where a member does not cooperate well, its place may be granted to another country

which has a desirable background in the field of realization of human right, in a way that other governments will be encouraged, and the equality principle will be manifested because one of the factors that contributes to the power of Security Council is its unlimited authority. This is while the council takes no order from any other entity and it is not monitored by any entity. In addition to the explicit articles of the UN Charter, the Council has certain authorities that go beyond the charter. Therefore, certain measures taken by the entity do not promise peace and stability.

Certain people believe[1] that the major duty of the Council to maintain international peace and security is a proxy duty, representing member states, and that the members have delegated this duty. Therefore, the Council makes decisions while its decisions are not independent. In addition, the Council is responsible to the member countries and should report annually to the General Assembly if necessary (Article 24 of the United Nations Charter). Hence, the Council should pay attention to the views of the members of the United Nations while making decisions and, in particular, the resolutions of the General Assembly, which represent the views of the members. This is in order fulfill its role of representation. Practically speaking, however, the Council has neither paid substantial attention to the resolutions of the General Assembly, nor to the views and benefits of the member countries (Mirabbasi & Mirabbasi, 1388 [2009 A.D]: 169).

Defining and determining the criterion for the right to peace are considered the functions of the Security Council; this duty has significantly revolutionized the traditional function of the Council. In this regard, the Council considers certain states as states that are against peace.

1. Olivier (2004: 409): "in no case may the council legislate or create law that contradicts the existing legal frame work."

The unlimited freedom that the creators of the Charter awarded to the permanent members of the council in 1945 is mainly due to an incomplete understanding of the notion of peace presented in the Charter (Amini Nia, 1389 [2010 A.D]: 154). With such freedom of action, the governments and the United Nations are at the mercy of the members of the Security Council. This situation may lead to political and biased interpretations of this legal notion, where instead of than implying peace, a weakening and disruption of the right may occur. In addition, continuous concerns with biased interpretations of the notion of peace by the entity may be raised in countries that lack sufficient political and regional power. The issue is therefore a serious issue: if the trend is not stopped, the world may witness a powerful Security Council with unlimited authority and influence.

Based on the presented arguments, one could perceive that the main reason for granting multiple authorities to the Security Council is lack of a legislative department with a global jurisdiction. Certain scholars believe that the replacement of international conventions and treaties could fill the gap that the exclusion of this entity may generate; however, this belief is not justifiable because many of these international conventions are intended to satisfy the interests of certain major powers. For instance, the Arms Trade Treaty (ATT) seeks to regulate the trade of common arms through a binding legal treaty. Article 2 suggests that lack of attention to international displacement of common arms by a state is possible if the common arms are possessed by a member country. This exception enables the United States to transfer its arms to countries such as Afghanistan, Iraq and its bases in various countries without reporting them (Najafi, 1394 [2015 A.D]: 441). In sum, establishing an independent legislative entity and developing relevant laws will secure the Security Council's persistent activities and legal intentions.

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Weakness in Execution

One of the reasons behind the undesirable and ineffective condition of the United Nations is its weakness in executing the right to peace. This weakness in execution includes the undesirability of the measures taken by the global society (the countries that form the members of the General Assembly of the United Nations), the undesirability of the measures taken by the Security Council in the field of execution, which is addressed in the following paragraphs:

i) Undesirable Operation of the Global Community

One of the duties of the General Assembly is investigating and presenting recommendations on the cooperation principles, and promoting the international cooperation in political affairs for maintaining international peace and security. In addition, part of the execution of right to peace depends on the cooperation of countries in the achievement of this important issue.

One of the factors that disrupts the right to peace and acts as a barrier to a worldwide attainment of the right is the unfair political behavior of several countries. Such behaviors contribute to the promotion of cruelty, bias, lack of justice and lack of fairness in the world, all of which add to the duration of wars (especially domestic wars). Wars act as problems for human life and reduce sustainable peace to an unrealized term. In this article, the authors intend to identify stressful political factors and minimize such factors in a way that war and conflict become less frequently encountered in different parts of the world while effective steps are made for the promotion of the right to peace.

Since factors threatening the “right to determine the destiny” are always supporter and promoter of disorder and war, it is necessary for all countries to pay special attention to this

principle. Moreover, the interferences of foreign countries or persons, and their hegemonic actions must be interdicted. The accomplishment of this principle requires the support by the United Nations to put an end to all colonial situations in a way that the right to determine one's own destiny can be manifested and practiced by every country.

There is a conflict between considering the principle of the right to determine the destiny as a political issue, or legal issue; a common article was manifested in the promises, which indicate[1] that this right has two aspects, and provides the means for promoting this political principle to a binding legal principle.

This article believes in the right of determining the interior and exterior destiny of people and even countries being colonized by other countries, and requires them to cooperate in putting an end to domination and force, and encourages granting the authorities independence and self-government, which are rather valuable. Therefore, the international cooperation commitments among, countries are manifested in two forms including commitment to leaving an action and commitment to doing an action, which will be reviewed in the following paragraphs.

- Negative Interferences (Commitment to Leave an Action)

It is evident that human rights cannot be easily guaranteed during wars, especially wars that begin because of racial, tribal and/or religious reasons (Vakil, 1390 [2011 A.D]: 69). Wars often weaken the role of the central governments and level the rout of the ill use by opportunists. Moreover, one of the reasons behind domestic wars, their growth and continuation, and ignoring the right to peace is the negative interference of certain countries. Perhaps if terrorist groups find themselves without

1. Refer to Article 1 in "political and civil legal promise" and "economic, social and cultural legal promise".

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proper support, they may reduce their lone riding. In this way, the consistency of their groups will be threatened, which will force them to be flexible in negotiations with other governments. In this regard, we can mention the financial support of terrorism by the Islamic banks of the US.

In regard to financing terrorism, one could point to the establishment of Islamic banks in the US; these banks are believed to support terrorism financially. Islamic banks in the US face numerous accusation since they collect charities, which may be used to fund terrorism. In the 1980s, Afghans and Arabs fighting against the Soviet Army in Afghanistan received financial aids through this channel. Later, several of those fighters joined Taliban and Al-Qaeda. On the one hand, one of the significant criticisms of the International Monetary Fund (IMF) against Islamic banking is the financial ambiguity of financial institutes. Previous studies suggest that these institutes face serious challenges in their clarification and in some cases, tracking the forwarded funds is difficult. The IMF experts emphasize the fact that certain characteristics of Islamic banking create vulnerabilities and a different approach for dealing with money laundering and financing of terrorism should be adopted (Raeis Shaghaghi, 1396 [2017 A.D]: 13).

The plunder of natural resources is one of the factors that leads to the support of continuous domestic wars and destroys the concept of right to peace. For instance, Africa has numerous strategic mines. The interests of multinational companies necessitates that they implicitly contribute to the cycle of lack of security and the persistence of war and anti-humanitarian crimes in this area. One may think that countries are helping the African people through financial aids, not knowing that nowadays the world is witnessing the pursuance of financial interests by governments through multilateral organizations and pressure groups in such organizations. Several countries are

apparently helping the African people through their financial aids; however, they are actually collecting substantial amounts of profit through the exploitation of natural resources of those countries. Therefore, multi-national companies and western colonizers seek to support insurgents and require the continuation of chaos in order to exploit those rich countries. Among the supports that reinforce domestic disagreements and lead to unending domestic wars, is the sale of arms by exploiters and colonizers to African countries. Such activities imply their emphasis on the continuation of chaos.

According to the above mentioned, one can conclude that in a system that aims at modifying the relationship between people and their government, determining the identity and components of human commitments of foreign governments may cause disruptive problems (Salomon & Shaygan, 1391 [2012 A.D]: 312). If the commitments of foreign governments to provide human rights are raised in cases where the national government is not able to provide the human rights for any reason, the interference of other countries in the domestic disputes under the title of "worrying about human rights" is actually a trick for reaching domination plundering the country.

- Lack of Peaceful Intermediation (Commitment to an Action)

Contrary to the negative interventional measures of certain countries, which aim to satisfy their own interests and secure their continued exploitation, at times, international responsibility necessitates states to make efforts for improvement and reconciliation after they observe explicit, systematic and widespread violation of human rights. In such cases, their interventions should be positive, reconciliatory, peaceful, humanitarian and without consideration of the interests of major powers. Unfortunately, certain countries choose to stay silent in

dealing with such cases; they do not obligate themselves to promote human rights and the right to peace. As a result, the term "common us" is unfamiliar to their ears. For instance, Australia, as the main land in Oceania and a rick powerful country, as well as India, Brazil, Argentine and Japan opt for silence despite the fact that they are regional powers and their positive intervention will significantly contributes to the achievement of global peace. The reason behind the silence of the Pacific counties might be maintaining the order and stability of their internal political system. However, one should hope that higher cooperation of impartial counties would contribute to the resolution of disagreements and peaceful mediation.

Therefore, the extent of the duties of governments at the international level both involves a negative duty (e.g. not to take the actions that prevent the peace), and a positive duty (to establish a secure international environment). However, the challenging issue is whether positive commitments regarding the international cooperation are sufficiently explained and clarified. A commitment can be regarded as a positive one if it respects, supports and provides human rights. Therefore, the appropriate caring as a universal criterion can play a significant positive role. The global society under the leadership of the United Nations must compile a binding document in this regard, which defines a set of duties for the countries involved in domestic quarrels and other countries (as the complementary duty) at the international level, and consider some criteria for determining the responsibilities.

Moreover, one of the appropriate supervisions in the United Nations is establishing boards to resolve the disputes, and supervising and verifying the decisions made at the UN. For example, in the cases of boarder disputes, the need for the cooperation of countries in mediations is rather important. In general, the disputes of the parties in such issues are not related

to the adaptation, execution, interpretation and explanation of the related rights; rather, disputes are defined as political ones. When the disputes cannot be resolved through legal principles, special political methods are required to resolve the related problems, methods such as direct negotiation between the parties, mediation, peace and adaptation, investigation, etc. (Mosalla, 1388 [2009 A.D]: 19). Therefore, it seems necessary that the United Nations assign an impartial board composed of experts in the legal, political, geographical, historical, and statistical fields for resolving the issues. In addition, the UN must assign a proper committee for supervising the process and conduct the required verifications. Moreover, another duty of the United Nations is appropriate supervisions on the agreement between the involved countries since occasionally, unequal agreements are signed, which are not effective due to their problems. For example, in the negotiation between the Freedom Organization of Palestine and Israel, which was conducted under the title of Oslo agreement, initially it seemed that the Freedom Organization of Palestine was recognized and the disputes were somehow terminated. However, in the Oslo agreement, there was no implicit implication to the right of determining destiny for Palestinians, and ambiguously the agreement pointed to the recognition of the legitimacy and political rights of the two parties. The national sovereignty of Palestinians was therefore ignored, and establishing the national organization of Palestine was introduced as a temporary solution due to denying the sovereignty of Palestinians (Köchler, 1379 [2000 A.D]: 83-84). That is because political rights in the form of determining the destiny and right of sovereignty cannot be granted by colonizing powers or a group of governments. This public right is executable through the free decision of the nations; politics under the title of self-governing sovereignty cannot be regarded as an independent entity, and this is a temperate solution that may cause quarrels in the future.

Therefore, the office of high commissioner of human rights, which is the center of the activities of the United Nations regarding human rights, and more importantly the United Nations as the legislator, supervisor, communicating agent, and investigator, must contribute as the truth finding agent and the diplomat of the main organization supervising the correct execution of human rights (Raei, 1391 [2012 A.D]: 14-15). As a result, it is necessary to assign special committees to supervise the fair agreements that can ensure the real independence of countries in the world.

ii) Undesirable Function of Security Council

- Unilateral Sanctions

One of the problems raised by the global community, especially third world countries and non-governmental organizations is the necessity of the satisfaction of human rights by the Security Council, as it imposes certain economic sanctions against certain countries (Mirabbasi & Mirabbasi, 1388 [2009 A.D]: 179).

Imposing unilateral economic sanctions by superpowers may cause numerous material and spiritual losses to people living under the sanction. On the other hand, it may add to the vulnerability of the country being sanctioned and can cause differences between countries regarding enjoying the right of development. Such differences can intensify the inequality between poor and rich countries (Steger, 2003: 104) but the presence of a strong international medium seems necessary in the effectiveness of the right of development as well as legal and social rights.

Initially, one could suggest that unilateral sanctions by the Security Council are legally admitted and in most of the cases, they are successful (e.g. sanction of Africa to eliminate apartheid). However, it should be noted that the method is not

always successful and in most cases, the imposition of these sanctions acts against the objective of the Council (i.e. maintaining global peace and security) and exclude fairness and justice. Therefore, more endeavors should be put into a peaceful resolution of disagreements rather than the imposition of unilateral sanctions.

- Biased behavior

One of the reasons behind the failure or low success rate of the United Nations in regard to the achievement of the principles of the United Nations Charter and the Declaration of Human Rights is addressing the problem selectively and resolving it through political instruments. Any unbiased supervisor with relative knowledge on the current incidents in the United Nations would easily discover that the issue of human rights in general, accusing certain countries of violating it, and issuing manifestos against these countries have a political nature (Mehrpour, 1386 [2007]: 121). In this regard, we can mention the manifesto no. 242, approved by the Security Council on November 22, 1967. This manifesto, which is about Middle East, is one of the most important manifestos of the Security Council regarding the situation of the Arab speaking countries and Israel. In this manifesto, which was issued in 1976 following the six-day war between Arab states and Israel, the Security Council expressed its concerns about the critical situation of the Middle East and presented its peace plan. In this manifesto, the Security Council emphasized the illegality of occupying lands by force, and asked Israel to move to the back of the borders determined before the 1967 war. One of the important arguments in the mentioned manifesto is the fact that that it only mentioned evacuating the regions occupied following the war in 1967, and did not mention the other regions occupied by Israel in 1948 and 1949. It could therefore be regarded as an implicit confirmation of the occupations made by

Israel (Mousavi, 1392 [2013 A.D]: 187). In this regard, Professor Tomas Maison said, "In the manifesto no. 242 approved on November 1967, the Security Council emphasized on illegality of getting a land through war, and asked the military forces of Israel to withdraw from regions occupied following 1967 war. Since it does not point to withdraw of Israel from the regions occupied in 1976, it can be concluded that the Security Council indirectly accepted the borders determined before 1967" (Mousavi, 1392 [2013 A.D]).

In another case, on July 12, 2002, the Security Council issued one of its controversial resolutions. Based on resolution no.1422, the International Criminal Court was requested to postpone the probable trial of peacekeepers who were citizens of the non-member states of the Rome Statute for the next 12 months. In fact, the essential philosophy of this resolution was a threat by the US against peacekeeping operations. The noteworthy point in practical response of the Security Council to the request of the United States is that the council used the Rome Statute and its influence to start a legal negotiation (Stahn, 2003: 36).

The intention of the Security Council in the approval of the resolution was addressing the US threat because based on the reports of the Council, the security and peacekeeping system of the United Nations would face problems if the US threat were realized. This could result in a more significant threat against international peace and security. The consequence of the court's decision (i.e. temporary exemption of peacekeeping forces of non-member states of Rome Statute) were vividly against certain rules and principles of international law, such as non-bias principle. The decision solely contributed to the protection of the interests of the permanent members of the Security Council (i.e. the United States) and this could not be justified easily. Therefore, resolution no.1422 is not acceptable in terms of the rules and regulations of international law. In addition, it

seems that the forwarded argument is essentially taking meaning from the term "peace" and using the term according to the political intentions of the permanent members of the Council (Amini Nia, 1389 [2010 A.D]: 152-153).

iii) Retaliatory Measures

Certain scholars believe that the only inevitable solution is relying on counteract actions. However, a solution that is a violation of human rights is insignificant because retaliatory measures that lead to war lack real value, and will never lead to inclusive peace.

Here we can point to the use of force for "determining the destiny", which was confirmed by the Security Council for the country being invaded, which can be regarded as a kind of counteract. One of the objections to the theory of using force for achieving the right of determining the destiny is that people who claim that their right to determine their own destiny is denied and try to use force for regaining this right, may one-sidedly order that their right to determine their destiny is denied (Mousavi, 1392 [2013 A.D]: 180). However, in some cases, due to colonial rule, the claim on violation of the right to determine destiny cannot be considered as a one-sided issue, similar to the claim of the Palestinians on their right to determine their destiny, which was recognized by the manifesto no. 3236 approved by the General Assembly in 1974. A part of this manifesto is as follows: "the legitimate right of Palestinians is supported by most members of the United Nations. Even the western European countries confirmed this right in the declaration issued on 13 June, 1980" (Waldheim, 1366 [1987 A.D]: 122-123). Therefore, Palestinians are allowed to use violence and force in their battles with Israel. This is a right recognized for Palestinians by the virtue of international documents and resources. However, this legal right should be executed in an allowable way. In other words, the "principle of

separation" must be observed, and military and non-military goals must be distinguished. The non-military goals must not be targeted, and military goals must be targeted considering the two principles of "necessity" and "proportion" (Mousavi, (1392 2013 A.D]: 183). In general, the author believes that aside from the inadmissible cruelty that is imposed on the violated countries, the mentioned method for resolving the disputes does not seem logical because it imposes considerable material and spiritual expenses to people and can be regarded as an action which is inherently forbidden. Such action could eventually promote war, and will therefore not be effective. As a result, it seems that forcible actions of the Security Council are mostly related to the commitment to action and do not consider the commitment to result. In such way, making use of such methods will not lead to desirable results, e.g. achievement of global peace. Therefore, dependent people must resolve their problems using legal methods to reach independence. Wiser measures (e.g. more constructive negotiations and cooperation of states) without rooting for political games and offering peaceful solutions are expected to be fulfilled. Such measures will enable the communication of the term "peace" in reality and will not contribute to the elimination of peace.

Consequently, it is necessary to make fundamental changes in the United Nations because issues may turn to more complex and more ambiguous ones than what existed in the previous international legal systems. When the Charter of the United Nation was compiled, military threats to international peace were considered as examples of threat to international peace and security (Kelsen, 1951: 930). However, after World War II and the appearance of nuclear weapons, the most prevalent military conflict was domestic wars as opposed to international hostilities (Osterdahl, 1998: 18). In today's world, considering the increasing growth of technology and its extensive use in communities, Cyber warfare is a new war that seriously

threatens national security; in the future nuclear missiles might be hacked and inefficient through using this technology. Therefore, since human right considerations consider many variables in recognizing an act as a legal one, international lawyers are responsible for evaluating the legality of actions. In an international legal system that, which is composed of limited number of bilateral rules executed by kingdom systems, and which lacks the international laws of human right, no one is allowed to compliant since there is a concern that matters might be more complex. However, if this complexity and difficulty in decision making lead to higher human dignity in the world, it is worth considering (Reisman, 1990: 876). Therefore, based on the dimensions and complexity of newly emerged issues, it seems necessary to make fundamental changes in the methods of resolving the problems according to the requirements of the time.

Conclusion

The right to peace is one of the instances of natural and primary human rights and any common sense points to its essential necessity. However, this right has been consistently neglected during human history. On the other hand, the establishment of the United Nations has played a significant role in the revival of this notion and this point of time can be regarded as a turning point in the achievement of peace and security for humanity. This global organization and its sub-entities have conducted extensive measures for the attainment of this objective. However, those measures are not sufficient and they have just led to the recognition of the right to peace in a non-binding declaration that merely has moral and political values.

The reasons behind the inefficiency of the UN in the achievement of the concept of right to peace are its weakness in identification, structure, and execution. In many cases, the lack

of the completion of the right to peace is rooted in the negligence of lawyers in identifying and recognizing this right; normative assembled regulations related to it indicate that this right does not have the required executive power. On the other hand, the separation of powers, which is one of the primary principles in the formation of a society, and is regarded as the symbol of the maturity of a legal system, does not exist in the United Nations. Unfortunately, this organization lacks an independent legislative power and this has led to power imbalance in sub-entities and has caused serious problems such as:

1. Relying on the judicial procedure of the International Court of Justice, which is now considered as a time-consuming, rejected and outdated method.

2. Limitless competency of the Security Council including legislation, determining the legal status, executing the Veto Right, unilateralism, etc. which can make it a great and despot power.

On the other hand, there are barriers at the stage of executing the right. These barriers include the following: lack of cooperation of the global society, political interventions of countries with the aim of domination and non-peaceful mediation, unilateral sanctions, biased behavior in issuing the manifestos, and retaliatory measures that not only have no positive results, but also lack any real value and can be considered a war promoter. Therefore, based on the mentioned criticisms, it is necessary to conduct a fundamental inspection and make significant changes in the United Nations. It is thus suggested to:

1. Present a fixed definition of the concept of right to peace and determine its properties and evidences in a fixed fashion; if necessary, interpret it by impartial

organizations that are specialists in the issue (legal-political), beyond the General Assembly and the Security Council.

2. Compile an independent and binding promise under the title of right of solidarity to introduce and recognize the right to peace, give it an execution guarantee and arrange for regular supervision by a competent committee.

3. Compile binding documents in the form of convention as an independent document of the right to peace by the General Assembly of the United Nations. It is better to define a time period for such conventions in a way that the members would not withdraw from the convention following a change in the president of a country or their policies.

4. Establish an independent organization under the title of legislation power in the structure of the United Nations, separate the powers and make a balance among them.

5. Change the structure of the Security Council, make the necessary changes in the method of dividing the members; define a time period for permanent members and extend their membership according to their positive actionsregarding human rights and the principle of coordination. Certain countries must therefore give their place to other countries with a desirable history in the attainment of the right to peace, in a way that this strategy can serve as a motivation for other countries and reach the objectives of equality.

6. Discontinue the unlimited powers of the Security Council and require it to be accountable to the General Assembly of the United Nations.

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7. Promote international cooperation among countries in maintaining peace and international security; encouraging the mediator countries through granting special concessions to them.
8. Prevent certain countries from political interventions with the aim of domination, and prevent militant countries through penalties such as heavy fines.
9. Appropriate supervisions by the United Nations through assigning unbiased specialist groups for resolving border disputes, compiling fair agreements and assigning supervisory committees to verify them.
10. Exclude dispute-causing methods such as counteract and retaliation measures in the policies of the Security Council, and taking more efficient measures based on legal standards and principles.

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