

Security Council and General Assembly Reformation: Responding Human Rights Issues

Iradhati Zahra¹

Abstract

The United Nations nowadays has many problems. By looking some case, especially human rights issues, the resolutions that the United Nations establish or about to establish is barely done. All of these matters started from the authority that the Security Council and the General Assembly as the State-Representative Organs have. Especially, the authority of the P5 members (China, United States, Russia, United Kingdom, and France), which is the veto power. This implementation of veto power has been implemented in the case of Rohingya. Even though this crisis of human rights in Rohingya is important, the political importance of some states are still prevailing the crisis of human rights in Rohingya. For example, it happened when China had vetoed this issue, which almost submitted to the ICC. Referred to those statements, this article propose two solutions to responding human rights issues. First, the United Nations has an urgency to reform the organization by modification the authority of the General Assembly and the Security Council, mainly in the system of establishing the resolutions. Second, the solution is to make a short-term period program in refining the human rights issues, and to improve the commitment of the United Nations for maintaining international peace and security as it written in the purposes of the UN Charter.

Keywords: Security Council, General Assembly, reformation, human rights, authority

Reformasi Dewan Keamanan dan Majelis Umum PBB: Menanggapi Isu Hak Asasi Manusia

Abstrak

Perserikatan Bangsa – Bangsa pada dewasa kini memiliki banyak permasalahan. Dengan melihat beberapa kasus yang terjadi, terutama yang berkaitan dengan isu hak asasi manusia, resolusi – resolusi yang dikeluarkan atau hendak dikeluarkan oleh Perserikatan Bangsa – Bangsa jarang terselesaikan dengan baik. Seluruh permasalahan ini diawali dari kewenangan yang dimiliki oleh Majelis Umum PBB dan Dewan Keamanan PBB sebagai organ perwakilan negara – negara. Terutama, keewenangan yang dimiliki oleh anggota P5 atau anggota tetap Dewan Keamanan PBB (Cina, Amerika Serikat, Russia, Inggris, dan Perancis), yaitu hak veto. Implementasi dari hak veto ini telah dilaksanakan pada kasus rohingya. Walaupun, kasus krisis hak asasi manusia di Rohingnya ini sangat penting, kepentingan politik dari beberapa negara masih dapat mengungguli urgensi dari krisis hak asasi manusia yang terjadi di Rohingnya. Sebagai contoh, hal ini terjadi ketika Cina menggunakan hak vetonya pada isu Rohingnya ketika isu ini hampir dibawa ke ICC. Berdasarkan pernyataan tersebut, artikel ini menggagas dua solusi dalam merespon isu hak asasi manusia. Pertama, PBB memiliki urgensi untuk mereformasi organisasi ini dengan memodifikasi kewenangan Majelis Umum dan Dewan Keamanan, terutama dalam sistem penerbitan resolusi. Kedua, yaitu dengan membuat program jangka pendek dalam melakukan pemulihan hak asasi manusia, dan untuk memperbaiki komitmen PBB dalam menjaga perdamaian dan keamanan internasional sebagaimana yang tercantum sebagai tujuan di Piagam PBB.

Kata Kunci: Dewan Keamanan, Majelis Umum, reformasi, Hak Asasi Manusia, Kewenangan

¹ Mahasiswa Program Sarjana Fakultas Hukum Universitas Padjadjaran. Jl Dipatiukur Nomor 35 Bandung, email iradhatizahra@gmail.com

A. Introduction

United Nations is an International Organization which build for good purposes, mainly there are two purposes: peace and security. This Organization existed since October 24th, 1945, their existence stands out because of a long history of war and colonialism, which we all know as a World War II. United Nations came into existence when the charter had been ratified by five powerful countries, which we usually know as 'The Permanent 5 (P5)', namely: Russia, United States of America, China, France, and United Kingdom.

The P5's role in the United Nations by ratified the UN Charter had a big and powerful impact in the United Nations since the organizations existed until now. Their powerful impact has been reflected in their role and authority in the Security Council. The P5 members are not the only countries that fit in the role of the Security Council. There are also other 6 non-permanent members who fill the role of Security Council. According to Article 23 (1), the 6 non-permanent members are elected by General Assembly. However, there is some authority that distinguished The P5 members and The Non-Permanent members. According to Article 27 (3) UN Charter:

"Decisions of the Security Council on all other matters shall be made by an affirmative vote of nine members including the concurring votes of the permanent members; provided that, in decisions under Chapter VI, and under paragraph 3 of Article 52, a party to a dispute shall abstain from voting".

As we can see in Article 27 (3) UN Charter, the UN Charter allowed The P5 of the Security Council to have the veto power. Veto power is a power or rights to revoke judgment, provision, or resolution that will be established by another Security Council members.² That veto power or authority has a considerable substantial by much political importance, especially The P5's political importance. The political importance frequently as if eliminating the purposes of the UN Charter, which are peace and security.

Regardless, political importance of some states establishes an assumption that the purposes of the United Nations are not peace and security, but for the important matters of The P5 members. This thought reflected the 'third-states' importance, mainly some states who had some problems in that need help or guidance from United Nations who is expected to solve the problems. Otherwise, this thought could really happen in a short time.

As we can see in some case that happened in some states, some worrying case occur human rights issues. As we, the nations, agreed in Article 1(3) UN Charter that the human rights issues are one of the important matters that should be protected. On top of that, it is really important to conceiving the true meaning of the human rights itself. Human rights are difficult to define, but in general terms, they are regarded as fundamental and inalienable claims or entitlements which are essential for life as a human being.³ Human rights are 'the rights that one has simply as a human being', without any

²Savira Dhanika Hardianti and Setyo Widagdo, "Akibat Penggunaan Hak Veto Oleh Amerika Serikat Terhadap Kasus Agresi Israel di Gaza", *Kumpulan Jurnal Mahasiswa Fakultas Hukum*, January 2015, page2

³ Mansisuli SSenyonjo, *Economic Social and Cultural Rights in International Law*, Oregon: Hart Publishing, 2009, page 9

supplementary condition being required. In the words of the CESCR: Human rights are fundamental, inalienable and universal entitlements belonging to individuals and, under certain circumstances, groups of individuals and communities.⁴ Human rights are fundamental as they are inherent to the human person.⁵ Considering the purposes of the United Nations in the Article (1) 3 UN Charter above, this refinement of human rights issues must be the concrete solution for achieving and maintaining the international peace and security. Therefore, human rights are essential and fundamental for every mankind. Also, there are some non-derogable rights that cannot revoked by any mankind, such as: the right of living, the right to not be tortured, the freedom of having a thought and conscience, freedom of believing a belief, freedom of not to be enslaved, freedom of to be equal before the law, and freedom of not to be accused based on the law.

This human rights issues also included the right of minorities. Minorities are traditionally (although still controversially) defined as a group of persons who reside in the territory of a State and are citizens thereof, display distinctive ethnic, cultural, religious or linguistic characteristics, are smaller in number than the rest of the population of that State or of a region of that State, and are motivated by a concern to preserve together that which constitutes their common identity, including their culture, their traditions, their religion or their language.⁶

The crisis of human rights that happened to the minorities in Rakhine State, Myanmar (Rohingya) is one of the

human rights issues that happened since about 1940. But this crisis has just emerged in 2015 because of the large number of Rohingya refugee. In Myanmar, the Rohingya have very limited access to basic services and viable livelihood opportunities due to strict movement restrictions and denied citizenship rights.⁷ The act of Myanmar's government to evict Rohingya people from their own state must disrupt our sense of humanity. Also, this has rendered them one of the largest stateless populations in the world.⁸

On 25th August 2017, a deadly assault by Rohingya insurgents on multiple police posts in Northern Rakhine triggered a brutal crackdown on the Rohingya population, and since then, over 700 000 civilians have fled across the border into Bangladesh.⁹ As if the violation of human rights is not enough, many girls and women had raped or sexually assaulted brutally by the government's army. The Myanmar army has systematically used rape as a weapon against the ethnic minorities for decades (Flint 2017:287).¹⁰ Rohingya women who experienced rape suffered from trauma reminding them of a severe form of psychological and social torture used to intimidate the women (Farzana 2017:103-105).¹¹ What happened in Rohingya is an ethnical cleansing, the government of Myanmar and the Buddhist vigilant didn't want to see the Rohingya people as a Myanmar citizen. Instead, they did all of the cruel things to Rohingya people, that we can consider it as an act of genocide.

⁷ European Commission, "The Rohingya Crisis", *Echo Factsheet*, August 2018, page 1

⁸ *Ibid.*

⁹ *Ibid.*, page 2

¹⁰ Linda Nordby, "Gender-based violence in the refugee camps in Cox Bazar: A case study of Rohingya women's and girls' exposure to gender-based violence", *Thesis of Uppsala Universitet*, May 2018, page 5

¹¹ *Ibid.*

⁴ *Ibid.*

⁵ *Ibid.*

⁶ Olivier De Schutter, *International Human Rights Law Cases, Materials, and Commentary*, New York: Cambridge University Press, 2010, page 6

Genocide is one of the *jus cogens* that we, all of the nations, acknowledge as a peremptory norm and an extraordinary crime. Being unable to solve this problem, the United Nations should have been taking a serious action to solve this crime against humanity. Moreover, this crisis in Rohingya already happened for a long time and getting serious since 2015.

This issue almost submitted to the International Criminal Court (ICC). But China, as one of The P5 members with veto power, rejected this issue to be brought before the International Criminal Court, also China has been reticent about condemning Myanmar's government during the crisis.¹² The foreign ministry spokeswoman of China, Hua Chunying said that "We don't think unilateral sanctions or criticisms would help with settling the issue".¹³

Also, there was another draft of a resolution that is about to call on Myanmar to allow access for aid workers, ensure the return of all refugees and grant full of citizenship rights to the Rohingya. Unfortunately, the effort of General Assembly also became useless because of the veto power of China and Russia, followed by some regional countries, namely: Cambodia; Laos; Philippines; Vietnam, and Myanmar, who against an urged of Myanmar to end a military campaign against Muslim Rohingya and called for the appointment of a UN special envoy who is Antonio Guterres as the envoy.¹⁴

¹²Associated Press, "China: Sanctions, Criticism Won't Help Settle Rohingya Issue", <https://www.voanews.com/a/china-sanctions-criticism-won-t-help-settle-rohingya-issue/4547174.html>, accessed on December 20th, 2018 at 7.13 PM.

¹³*Ibid.*

¹⁴The Guardian Post, "China and Russia oppose UN resolution on Rohingya", <https://www.theguardian.com/world/2017/dec/24/china-russia-oppose-un-resolution-myanmar-rohingya-muslims>, accessed on December 20th, 2018 at 7.34 PM.

As we can see in one of the most worrying crisis in humanity in this decade, the crisis of humanity in Rohingya is a perfect example for how urgent the veto power could suspend or even revoke the purposes of the United Nations, which are peace and security. Meanwhile, the General Assembly should've been more innovative by using different approaches when they brought this issue to the Security Council. On the other side, the Security Council was having a tendency to be subjective when it comes to make a decision, even though that was about human rights issues. Moreover, the resolution of Security Council is the only resolution that could legally bind, this is also one of the differences between General Assembly since the resolution of General Assembly will just recommend and will not legally binding. Since the gap between General Assembly's resolution and Security Council's resolution is quite distant, it often evokes a deadlock in some matters.

Against this background, this article aims to modify the authority of Security Council and General Assembly as the states-representative organs in the United Nations. By looking the authority of Security Council and General Assembly, the system of veto power and the establishment of resolution by Security Council and General Assembly should be modified for the efficiency of resolving merely the human rights issues. This will be an alternative yet a realistic solution for the United Nations since we all know The United Nations will not be over with the political importance of every state, mostly the political importance of The P5 members.

B. Standing of Veto Power

The voting system that The Security Council apply divided into two systems based on the type of matters, namely: the procedural and the non-procedural.¹⁵ According to article 27 of the Charter, on all but procedural matters, decisions of the Council must be made by an affirmative vote of nine members, including the concurring votes of the permanent members.¹⁶ A negative vote by any of the permanent members is, therefore, sufficient to veto any resolution of the Council, save with regard to procedural questions, where nine affirmative votes are all that is required.¹⁷ The veto was written into the Charter in view of the exigencies of power.¹⁸

Neither the definition of procedural nor non-procedural problems can't be found in the UN Charter. However, there was held a conference of four of The P5 members in San Fransisco, there are United States, Soviet Union, United Kingdom, and China.¹⁹ That four states had compiled a list of procedural matters, such as code of conduct which are written in Article 28 – 32 UN Charter, and the question list which related postponement meeting.²⁰ In the other side, the non-procedural matter is a recommendation for dispute settlement and a prescription for violence act.²¹ Nevertheless, if there is some doubt emerge between them, so then it called as a non-procedural matter.

Based on Article 27 (3) UN Charter, the voting shall be made related to procedural matters which will be decided based on at least 9 votes from 15 votes. Besides that,

the decision of non-procedural matters will be decided based on at least 9 votes from 15 votes, including The P5 members.²² This statement in the provision points out that The P5 members have the veto power.

The veto power of P5 has a powerful relationship with the Security Council authority. As the provision was written in Article 41 UN Charter:

“The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations.”

By conceiving those article, as if the Security Council is the most powerful organ in the United Nations, merely because of the authority for using an armed force to give effect to its decisions. It means the draft resolution, including the one related with human rights issues, as it mentioned before in the introduction, might be repelled by either one of our more than one members of The P5. Unfortunately, this not only happened in once, but it happened more than that. The case of Rohingya and much other violence act shall be the procedural matters since it occurred a crisis of humanity (rape and sexually assaulted, ethnic cleansing, evict the Rohingya people from their own states, and other infringement of human rights).

In this article, modification of Security Council shall be written in UN

¹⁵ Savira Dhanika Hardianti and Setyo Widagdo, *Op.Cit.*, page 5

¹⁶ Malcolm N. Shaw, *International Law*, 6th Edition, New York: Cambridge University Press, 2008, page 1374

¹⁷ *Ibid.*

¹⁸ *Ibid.*

¹⁹ Savira Dhanika Hardianti and Setyo Widagdo, *Loc. Cit.*

²⁰ *Ibid.*

²¹ *Ibid.*

²² *Ibid.*, page 6

Charter, it means the UN Charter itself shall be an amendment. In the amendment of UN Charter, the veto power of The P5 shall be restricted in some occasions, such as when the states itself was one of the parties in a dispute or in those affairs either directly or indirectly. The amendment itself also including The P5 members who have indirect importance in those related states. These statements can be applied in Rohingya crisis who just vetoed by China and Russia. It still unknown the main and the real reason why China and Russia vetoed draft of the resolution for Rohingya crisis, there must be some political or personal importance of each state. And this fact indicates that the existence of The P5 consists a subjective-matters that could aside from the purposes of the United Nations, there are peace and security.

C. The system of United Nations Resolution Establishment

According to UN Charter, there are two organs in the United Nations that allowed to establish a resolution, namely General Assembly and Security Council. However, as it mentioned before in the introduction, there is a difference between the resolution which established by General Assembly and by Security Council.

Indeed, the authority of the two main bodies has a different powerful impact. As it is written in Article 11 (1), UN Charter:

"The General Assembly may consider the general principles of cooperation in the maintenance of international peace and security, including the principles governing disarmament and the regulation of armaments, and may make recommendations with regard to such principles to the Members or to the Security Council or to both"

Also in Article 13 (1) b, the General Assembly shall initiate studies and make recommendations for the purpose of:

"promoting international cooperation in the economic, social, cultural, educational, and health fields, and assisting in the realization of human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion"

According to those articles, the General Assembly has an authority to make recommendations to the members or to the Security Council or to both of them, which called as a resolution. The resolution itself will not legally binding because of the nature itself as a 'recommendation'. Whereas, the realization of human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion are one of the authority for General Assembly to resolve.

On the other hand, we have to look at the authority of Security Council in the matter of establishment of resolution and the use of force, especially for human rights issues. Based on Article 34 UN Charter, Security Council has an authority to take an act actively in a situation that is likely to endanger the maintenance of international peace and security. Even though, the binding of Security Council Resolution should be carefully analyzed before a conclusion can be made as to its binding effect. As Michael Wood cited in his journal, the principal judicial authority on the interpretation of Security Council Resolutions (SCR) is a brief passage in the ICJ's 1971 *Namibia Advisory Opinion*.²³

²³ Michael Wood, "The Interpretation of Security Council Resolutions, Revisited." *Max Planck Yearbook of United Nations Law Online*, Volume 20, No. 1, 2017, page 75

"The language of a resolution of the Security Council should be carefully analyzed before a conclusion can be made as to its binding effect. In view of the nature of the powers under Article 25, the question whether they have been in fact exercised is to be determined in each case, having regard to the terms of the resolution to be interpreted, the discussions leading to it, the Charter provisions invoked and, in general, all circumstances that might assist in determining the legal consequences of the resolution of the Security Council"

Moreover, the Security Council is the only organ who can determine for using force if the existence of any threat had proved to be inadequate. In the matter of the use of force, as it is written in the provision of Article 42 UN Charter, the ability for using force to restore international peace and security should be implemented in the matters of human rights issues, particularly the one that already infringed the *jus cogens*, such as genocide that happened in Rakhine State (Rohingya). As we conceived article 24 (2) UN Charter, the power of UN SC is enormous enough to establish an absolute and binding resolution. According to David Schweigman, the Article 24 (2) UN Charter needs a requirement of compliance with norms such as human rights, self-determination and the principle of good faith.²⁴ Also, Erika de Wet recognizes the Council's broad powers but argues that it is still bound by *jus cogens* and the purposes and principles of the UN.²⁵ It mean, the ideal of UN SC to not have an 'absolute' power to establish a resolution

or not to establish a resolution because of their political importance, particularly when it comes to *jus cogens* matters. Meanwhile, the legal capacity of General Assembly is not enormous as Security Council, as if the Security Council is the core of United Nations.

By looking the authority of General Assembly and Security Council, also the system of their establishment of resolution, this article proposes a new system of United Nations Resolution establishment, either by the General Assembly or the Security Council. This proposal merely can apply in really important matters, such as human rights issues. Beforehand, we have to conceive how does the procedure or steps a resolution could establish and will be binding.

According to Article 99 UN Charter, the Secretary-General also has an authority to bring attention to the Security Council, as it is written in those provisions:

"The Secretary-General may bring to the attention of the Security Council any matter which in his opinion may threaten the maintenance of international peace and security."

As an 'icon' of United Nations, this authority ought to be implemented actively, whenever there was a case or crisis which may threaten the maintenance of international peace and security. Afterward, according to Article 34 UN Charter, as mentioned before, the Security Council may investigate and later to take an action for those case or crisis that is submitted to them. Then, the Security Council may take an act over the case of crisis. Regardless, the action that the Security Council take will be accepted by

²⁴ Devon Whittle, "The Limits of Legality and the United Nations Security Council", *European Journal of International Law*, Vol. 26, Issue 3, 2015, p. 675

²⁵ *Ibid.*

the members of the United Nations, as it is written in Article 25 UN Charter:

"The Members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter"

Based on those statements and article, the Security Council Resolutions has a wide and big impact on all the members of the United Nations. However, the resolution itself might be really subjective in the same case. On the other hand, with the veto power, the draft resolutions also might be rejected by the Security Council.

In this article, there is an alternative solution to make the United Nations resolutions could legally bind. In the Article 11 (1) UN Charter, General Assembly could make a recommendation to the Security Council or to the members. Indeed, the recommendation itself will not be legally binding. Afterward, the recommendation by the General Assembly to the Security Council shall be examined and discuss. In these steps, frequently, the veto power is used by The P5 members. This is the real problems in the United Nations which could inhibit the resolutions itself. Therefore, in this proposal, if the draft resolutions are rejected by using veto power by the member of P5, those draft resolutions shall be returned to the General Assembly. Afterward, the decision itself shall be legally binding and count as a General Assembly Resolutions. This will be the realistic and 'win-win solution' for the United Nations.

By counting the General Assembly Resolutions is legally binding, implicitly the General Assembly Resolutions is counted as a source of international law. Even though, this opinion still arguably in many scholars. Professor Richard Lillich argued that Resolutions can reflect the emergence of a

customary norm, and Professor Richard Falk asserted that a consensus of states can generate new norms of customary international law through the formal procedures of the United Nations.²⁶ Some scholars have even gone so far as to speak of "instant custom," resulting from UN action.²⁷ It is arguable that this group of scholars would only incorporate Resolutions into the existing source of custom, but the practical effect would nonetheless be to treat General Assembly Resolutions as a separate authoritative source.²⁸

Also, there are some statements against the General Assembly Resolutions as a source of international law. General Assembly Resolutions are inadequate as legal sources because they frequently contradict each other or are too vaguely stated to be applied as law.²⁹ For example, United Nations General Assembly Resolution 1803 (XVII) of December 14, 1962, authorizes states to nationalize, expropriate or requisition property and override private interests for the sake of the public interest.³⁰

However, this alternative solution, at least, must apply in any kind of human rights issues, mainly the *jus cogens* case, such as genocide that happened in Rakhine State (Rohingya). Indeed, this will be an exception for the authority of the Security Council and the General Assembly, that we have to make the General Assembly resolutions be legally binding, by considering the role of the two State-Representatives organ that has

²⁶ Gregory J Kerwin, " The Role of United Nations General Assembly Resolutions in Determining Principles of International Law in United States Courts", *Duke Law Journal*, Volume 876, 1983, page 892

²⁷ *Ibid.*

²⁸ *Ibid.*

²⁹ *Ibid.*, page 893

³⁰ *Ibid.*

different power, and it shouldn't be contradictory to each of them.

D. The 'Short-Term' Program as the Main Focus for the United Nations

Another alternative solution that this article proposes is by adding a new provision in the UN Charter. The provision itself will be the short-term program that must be done in every five (5) years. This program will aim to improving the commitment of the United Nations in keeping the international peace and security as their purposes. Also, this program will be the priority of the United Nations, especially in the aspect of human rights issues.

For example, the short-term program is called "The Settlement of Human Rights Issues Batch I". This program can start with pacific settlements of disputes, but the difference with the provision in UN Charter is this program obliged the United Nations to settle some human rights issues in a certain period. Afterward, if these pacific settlements of disputes still not inadequate, the Security Council may be using force to settle the human rights issues and to protect the victims. This program aims, with high expectations, that the crisis of human rights in some states may be settled in about five (5) years.

Moreover, there just happened other human rights issues in Xinjiang, China. Uyghur is Turkic ethnicity with Muslims as their majority. The Uyghurs (sometimes referred to as the Uighurs) originate from the XUAR which lies in the North-West of China, on the border with Central Asia.³¹ Despite the existence in Beijing and other urban center of a State Ethnic Affairs Commission, whose responsibilities include

conducting studies related to ethnic issues, making relevant policies, and coordinating and monitoring the conduct of other agencies with obligations relating to ethnic minorities, there are no government-supported projects or funds available to solve the health crisis which the Floating Uyghurs face. Even when the Chinese government invested significant funds in support of HIV/AIDS projects in XUAR, very little attention was given to the Floating Uyghurs living in China Proper, despite the seriousness of their healthcare problems being clearly evident.³² This program may be implemented to resolve the crisis of human rights and discrimination in Uyghur Muslims.

As if, the crisis of human rights in Rohingya is not enough, those new discriminations and suppression in Uyghur remind us to force the United Nations to seriously take an action to settle the human rights crisis.

After all, the final resolution from the General Assembly to take a serious act of the discrimination and the crisis of human rights in Myanmar and China may consist: First, the pacific settlements of disputes. The Pacific settlements of disputes might be done with negotiation; mediation; or any other diplomatic methods. Second, if those methods still not working, the United Nations may give the states (Myanmar and China) a warning to stop the act of discrimination against minorities in their states. And Third, if all of those methods still not working to resolve the crisis of human rights, the United Nations may give the states a sanction by not having rights to 'speak-up' in the United Nations. The sanction itself should not be in economic sanctions. Since China is one of the well-developed states nowadays and indeed the economic sanctions will not

³¹M. Rayila, "The pain of a Nation: The Invisibility of Uyghurs in China Proper." *The Equal Rights Review*, Volume 6, 2011, page 45

³²*Ibid.*, page 47-48

have any effect on China. Otherwise, the provocation of the act of genocide that happened in those states, for example, Myanmar, must be prosecuted or bring him or her to the International Criminal Court (ICC). This case of genocide in Myanmar indeed can be brought to the International Criminal Court (ICC), since this crime is one of those extraordinary crimes that disturb our sense of humanities. Even though, as this article mentioned before in the introduction, this Rohingya case has almost ever been brought to the International Criminal Court (ICC), but it was failed because of the veto power that China and Russia were used. After all, the jurisdiction of ICC is to try individuals (rather than States), and to hold such persons accountable for the most serious crimes of concern to the international community as a whole, namely the crime of genocide, war crimes, crimes against humanity, and the crime of aggression, when the conditions for the exercise of the Court's jurisdiction over the latter are fulfilled.³³

However, with this new alternative solution, the General Assembly may give a legally binding resolution according to this short-term program that must be done in 5 (five) years period. Otherwise, this matter might be done in tribunal court, as it has happened before in Yugoslavia with their International Court of Tribunal for Yugoslavia (ICTY).

E. The Urgency of the Implication of the New System of the Establishment of United Nations Resolutions to the Human Rights Issues

Regarding the arguments before, this new system of the establishment United Nations Resolutions must apply for refining the human rights issues in some states. By

³³ ICC, "Understanding the International Criminal Court", *Hand book of ICC*, Netherlands, p. 13

looking at the crisis of humanities that happened in Myanmar should have been enough for all members of the United Nations to unite and take action to settle those matters with a sense of humanities.

In conceiving the true meaning of human rights, we also have to conceive the infringement of human rights. Following the atrocities committed during the Second World War, the acute need to maintain peace and justice for humankind precipitated a search for ways of strengthening international cooperation, including cooperation aimed both at protecting the human person against the arbitrary exercise of State power and at improving standards of living.³⁴

The crisis of human rights in Rohingya is betraying the concept of non-derogable rights. As the American Convention on Human Rights also expressly recognizes "that the essential rights of man are not derived from one's being a national of a certain State, but are based upon attributes of the human personality".³⁵ As stated by the Inter-American Court of Human Rights in its Advisory Opinion on Habeas Corpus in Emergency Situations, the rights protected by the Convention cannot, per se, be suspended even in emergency situations, because they are "inherent to man".³⁶

Also, as already explained, it was the tragedies of the two World Wars that compelled the international community to create a world organization with the purpose of furthering peace and justice, inter alia by encouraging the promotion and protection of human rights and fundamental freedoms.³⁷

³⁴Office of the High Commissioner of Human Rights, *Human Rights in the Administration of Justice: A Manual on Human Rights for Judges, Prosecutors, and Lawyers*, New York, and Geneva: United Nations, 2003, page 3

³⁵*Ibid.*, page 4

³⁶*Ibid.*

³⁷*Ibid.*, page 5

The crisis of human rights in Myanmar is a genocide. As we know, genocide is one of the *jus cogens* that acknowledge by all members of the United Nations. The Convention on the Prevention and Punishment of the Crime of Genocide signed in 1948 reaffirmed that genocide, whether committed in time of war or peace, was a crime under international law. Genocide was defined as any of the following acts committed 'with intent to destroy, in whole or in part, a national, ethnical, racial or religious group as such':³⁸

- a) killing members of the group;
- b) causing serious bodily or mental harm to members of the group;
- c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- d) imposing measures intended to prevent births within the group;
- e) forcibly transferring children of the group to another group.

Indeed, the acts that happened in Rakhine State in Myanmar is an act of genocide, which ironically is done by the government itself. In fact, the settlements of this act of genocide that happened in Myanmar cannot be done with the pacific settlements of disputes, since it is already tried and it's not working. After all, as this article mentioned before, the settlements of this matters should be done either in International Criminal Court (ICC) or Tribunal Court, just like happened in Yugoslavia. In brief, the court of ICTY once emphasized that it followed from the object and purpose of the Genocide

Convention that the rights and obligations contained therein were rights and obligations *erga omnes* and that the obligation upon each state to prevent and punish the crime of genocide was not dependent upon the type of conflict involved in the particular situation (whether international or domestic) and was not territorially limited by the Convention.³⁹

According to those reasonable arguments above, those will be enough for implementing the new system of establishment United Nations Resolutions. Indeed, all of those methods is done for maintaining the international peace and security, as it is written for the purposes of the United Nations Charter.

F. Amendment of United Nations Charter

On the top of that, UN Charter had been amended five times. However, most of the amendments that had done before were about enlarging or increasing the number of organs. Until now, there are no amendments related to enlarging the authority or restricting the authority of some organs. Based on Article 109 (1) UN Charter, this construction for enlarging or restricting some authority will be rejected by the Security Council, especially when the proposal of the amendment is about to reform the authority of the Security Council. Also, the Security Council has an authority to approve the proposal of amendment of the UN Charter.

According to the arguments as it's mentioned above, about the veto power; establishment of United Nations Resolutions; and the short-term program for United Nations, may be discussed and examined in the General Assembly, so the General Assembly has to make a

³⁸ Malcolm N. Shaw, *Op. Cit.*, page 282

³⁹ *Ibid.*, page 284

recommendation to the Security Council, and they have to approve it. Afterward, the Security Council has to make decisions or to take an act by establishing a binding resolution. Thus, the resolution itself will be the main program of the United Nations for maintaining the international peace and security.

However, if the P5 members use their veto power which can revoke the progress of refining the peace and security issues, and the resolution itself cannot be established and be legally binding. Then, those matters or recommendation will be brought back to the General Assembly. Thus, the General Assembly can make a final examination and establish a decision, or as we call the General Assembly Resolution that can be legally binding. Also, for making the examination and the decision-making are equitable, the decisions about this program must be agreed and fixed by a two-thirds vote of the members of the General Assembly.

Regardless, this proposal merely done in a human rights issue, considering the amendment of UN Charter itself is extremely hard to do because of the political importance of many states, especially The P5 members' political importance. By pointing out this human rights issues as one of the threats to international peace and security, this can be the main reason for all the member of the United Nations to agree to amend the United Nations Charter.

Also, this proposal of the short-term program is a better alternative by not reforming the authority of the Security Council, but by adding the provision to improving the commitment of United Nations for maintaining the international peace and security.

Another argument to strengthen the urgency to amend the United Charter is most of the crisis of human rights that happened right now in some states, such as Myanmar and China are because of the discrimination against minorities. Nowadays, the practice of colonialism may not exist in anywhere. However, if we take a look closely into this discrimination against minorities and the crisis of human rights in Myanmar and China, that may be defined as colonialism implicitly. It means the practice of colonialism itself may happen inside that states itself. Wherein, minorities in China and Myanmar have the rights of self-determination that essential in every mankind. These rights also acknowledge in Article 1 (1) and Article 2 (1) International Covenant on Civil and Political Rights (ICCPR)

Even though the principle of self-determination, therefore, applies beyond the colonial context, within the territorial framework of independent states. It cannot be utilized as a legal tool for the dismantling of sovereign states.⁴⁰In its General Comment on Self-Determination adopted in 1984, the Committee emphasized that the realization of the right was 'an essential condition for the effective guarantee and observance of individual human rights'.⁴¹The Committee takes the view, as Professor Higgins noted, that 'external self-determination requires a state to take action in its foreign policy consistent with the attainment of self-determination in there maining areas of colonial or racist occupation. But internal self-determination is directed to their own peoples'.⁴²

G. Conclusion

⁴⁰ Malcolm N. Shaw, *Op.Cit.*, p. 291

⁴¹ *Ibid.*

⁴² *Ibid.*

Regarding the background as this article mentioned above, the core of this threaten in international peace and security is the crisis in human rights that happened in some states, which lately happened in Rakhine State, Myanmar (the discrimination against Rohingya Muslims) and Xinjiang, China (also about the discrimination against Uyghur Muslims). However, the crisis in human rights barely clear in a short-term period. This happened, mostly, because of the veto power that The P5 members have used. The impact of the veto power itself is very firm, the veto power may revoke or suspend the resolve those matters.

By those arguments, this article proposes two solutions which are: *First*, by reforming the authority of General Assembly and Security Council. Particularly, the establishment of General Assembly's resolution and Security Council's resolution, also the impact of General Assembly's resolution should have more legal force to make it binding if the draft resolutions are rejected by using veto power by the member of P5, those draft resolutions shall be returned to the General Assembly. Afterward, the decision itself shall be legally binding and count as a General Assembly Resolutions. This will be the realistic and 'win-win solution' for the United Nations. *Second*, United Nations should make a short-term program for every five years to improving the commitment of the United Nations in keeping the international peace and security as their purposes.

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