

The Principle of National Sovereignty and Human Rights Mechanisms

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Abstract: One of the main subjects with increasing effects in international level is the subject of human rights. Over the years, international evolutions and some challenges resulted from human rights on national sovereignty of states have been observed. In this regard, activities and measures of international organizations and UN in top of them in different fields such as human rights domain have made the principles of national sovereignty more Impressionable than before. Hence, it seems that other traditional perceptions of the concept of national sovereignty are not acceptable in domain of international law in the current age. This is because; such perceptions have lost their credit under effect of evolutions of international law and evidences indicate that the principle of interference in domestic affairs of states has been changed over the time. In this study, effects of human right mechanisms on principle of national sovereignty have been discussed. It should be mentioned that in this study, using scientific analysis method has been considered as a basis.

Key words: Human rights, human rights mechanisms, principle of national sovereignty, states, Iran

INTRODUCTION

It should be mentioned that the issue of human rights has been considered more than before at the current world. Over the years, international evolutions and some challenges resulted from human rights on national sovereignty of states have been observed. According to sensitivity of the international community to human right issues on one hand and gaining credit and legitimacy of governments in light of protection and promotion of human rights on the other hand, position of this issue has become more important than before considerably. Hence, any kind of violation of human rights would be judged and analyzed by international institutes and governments and nongovernmental organizations at the current age as a result of development of communication technology. Currently, violations of human rights have the capability to destroy national trust in governors of states, along with crisis of legitimacy of sovereignties. In this regard, it is observed that approval of various resolutions in international assemblies like United Nations General Assembly, Human Rights Council and other ones has provided conditions for interference in domestic affairs of states. Importance of human rights challenges would be perceived more than before, when it is known that Security Council has interfered in status of human rights in some countries over the years with excuse of human rights issues, as violation of human rights and necessity of interference to stop it have threatened two principles of

state sovereignty and lack of interference in domestic affairs of states. The attitude is in such position that Kofi Anan, Former Secretary General of the UN, has announced in 54th annual summit of UN General Assembly that states should interfere in domestic affairs in case of emergence of violation of human rights, even if the interference results in violation of national sovereignty of states. However, it seems that subject of human rights has been changed into one of the most important challenges against national sovereignty of states. Hence, the present study is aimed in determining human rights mechanisms and their impact on national sovereignty of states.

MATERIALS AND METHODS

In this study, it has been tried to analyze effects of human rights mechanisms on national sovereignty of states using library data collection method.

Principle of national sovereignty and international documents of human rights: For a better understanding of concepts should be defined. At the first, short definitions of some key concepts applied in this study are presented. The first important item is concept of human rights. The term “Human Rights” is almost new term, since it has not been observed in remained works of Plato and Aristotle. Maybe, it could be mentioned that this term has been applied for the first time in renaissance period by

open-minded philosophers of that time like Thomas Hobbs (1588-1679), John Luck (1632-1704) and Jean-Jacques Rousseau (1712-1778) when they use the term “natural rights” or doctrine “human right”. The term “man rights” has entered to routine conversations after World War II and establishment of UN by 1945. As it was mentioned, this term was replaced instead of terms “natural rights” and “man rights” which have long antiquity. Many scholars have mentioned that no comprehensive and complete definition can be presented for human rights. This issue is also because of historical differentiations, cultural differences, economic conflicts, heterogeneous political tensions and asymmetric philosophical foundations (Zakerian, 2009). Some scholars have also considered a legal approach and have defined human rights as a series of scores belonged to people of a society and codified in statutes which are possessed by people due to being human and in relation with other people of the society and with the dominant power of required supports (Hashemi, 2005).

Another key concept in this study is the concept of “national sovereignty”. This word is importance from this perspective that sovereignty is one of the most fundamental concepts in field of studying governance and understanding character of government is impossible without recognition of sovereignty (Abulhamd, 1989). The word “sovereignty” has been derived from the word “Superempirical” meaning superior. At the same time that the term is used as government, it is rooted in Greek verb “Kubernan” meaning leading or leadership. The Greek word has been applied by Plato to demonstrate how to design a governmental system and it has been changed into Latin word “gubernare” in the middle of Medieval, referring to running, governing or leading and ultimate value of a political establishment is called as “sovereignty” (Galahar, 2011). The new concept of “national sovereignty” has been codified for the first time by late 16th century and through referring to new phenomenon of “territorial state”. The concept refers legally to main political reality that is emergence of central power which used to apply its authority in field of legislation and execution of law in certain territory. During a century, the power could be changed into an undisputed power, whether inside or out of the territory (Morgana, 2005). At the end of 30 year war and through signing the Westphalian Treaty on 1684, a focus point was emerged for promotion of legal concept of national sovereignty or authority. Hence, concepts of authority on territory, equality, independence and state sovereignty are considered in the mentioned treaty. Although, origin of sovereignty in past was in power and authority in hand of governor and king, the origin was changed after

evolutions as a result of The Great French Revolution. Hence, origin of sovereignty was assigned from the king to people and people were responsible to apply supreme authority, since origin of authority is in people and the impacts of authority would return to the people. As a result, its control is in hands of people. Hence, sovereignty in limit of domestic area in absolute form with no limitation that can have sovereignty immediately after establishment of the government is called national sovereignty (Badiei Azandahi, 155).

A bout the history of the subject of this article, the first document, in which human rights are considered, is order of Kurosh, Iranian king with antiquity of 25 centuries. In order of Kurosh, right to freedom and security, freedom of movement and ownership right and even some economic and social rights have been recognized and supported officially (Askarkhani, 2004). Till 19th century, guaranteeing human rights used to be taken by the governments; although internationalization of human rights was realized in 20th century with the signature of contract on Protection of Minorities under supervision of League of Nations. After World War II, global thought of human rights protection reached its peak point. After establishment of UN, identification and development of human rights was widely resulted from measures taken by the organization. UN members have announced in UN Charter that observance of human rights and basic freedoms is one of the main goals considered by them. Hence, through approval of UN Charter by 1945, a good context was provided for emergence of issue of human rights. The most important article of the Charter on human rights is article 55. In paragraph c of the said article, effective global respect to human rights and basic freedoms for all people without differentiation in terms of race, gender, religion or language is emphasized. As the charter was a not a perfect document and had some gaps in field of protection of human fundamental and basic rights, this issues made the UN to think about approval of an international document on human rights. Finally, as a result if efforts of the UN and supports of member states, global declaration of human rights was approved in Paris Summit by Dec 10th of 1984 (Ziaei Bigdeli, 2012). On the other hand, after World War II, human rights was spread all around the world under supervision of UN (because of legal commitment of the organization) and philosophical, technological, communicative and information evolutions of the world in later decades resulted in emergence of 3 generations of human rights. The third generation under the title of “solidarity rights” was created in late decade of 20th century. Measures of the UN to promote and protect human rights has had different dimensions including

codification and adoption of various conventions and Declarations to identify the human rights and the continuous deepening of the different parts such as civil rights, political, social and economic rights, etc., encourage governments to ratify international documents, create institutions and procedures necessary to ensure observance of human rights helping to build democratic institutions and foster a culture of human rights within the context of human societies (Hemons, 1998). On the other hand, after French Revolution in 1789 and declaration of citizen rights and declaration of the US by 1776 and declaration of human rights of this country, the challenge between human rights and absolute sovereignty of the states was began actually and practically (Molayi, 2000). The concept of absolute sovereignty was presented by John Bodin from France. In view of Bodin, sovereignty has been defined as absolute and indefinite power or king is defined as absolute omnipotent (Sharifi Taraz Koochi, 2011). Accordingly, the government with sovereignty can't follow any kind of supreme international law such as human rights (Sharifi Taraz Koochi, 1998); unless the consent of state is considered. By 18th century, concept of national sovereignty was declined from absolute form to relative form and with the development of power balance in next era after 1815 in Europe, it was developed practically among member states and reached 20th century with peace conferences (1899 and 1907) of the Hague. With the increasing development of international law, sovereignty of states was declined and the states accepted some limitations in some cases on their sovereignty in benefit of international order. Since, 20th century, the international community respected the principle of national sovereignty and developed side collection of international laws of human rights which used to allow giving opinion on status of human rights in other states (Shayegan, 2003). Today, concept of respecting state sovereignty should be interpreted such as other principles of international law based on UN Charter and other international documents.

In terms of classic international law, sovereignty can be considered as supreme authority of a state in regard with making and implementing decisions. Concept of foreign sovereignty of state is independence and equality of the state with other states and regulations to distinguish the state from nongovernmental communities; meaning that power of state is a supreme, unlimited and non-compliance power. From this perspective, sovereignty has two domestic and foreign dimensions. Domestic dimension of state sovereignty means that the state is able to regulate and run state affairs without foreign interference. In Foreign dimension as it was mentioned before, sovereignty of states was declined with

the development of international law and states accepted some limitations in some cases in benefit of international order. Since, 20th century, the international community respected the principle of national sovereignty and developed side collection of international laws of human rights which used to allow giving opinion on status of human rights in other states (Shayegan, 2003, 233). Accordingly, it seems that national independence and national sovereignty is not being considered in political issues of the current age as its meaning in past times and its classic concept. Some attitudes have been even considered that governments have gone away from the sovereignty and absolute independence and there is nowhere for these states at the current world anymore. Although, it should not be ignored that national sovereignty is remained still as the best symbol of power and basis of mutual relationships and recognition of states, limit and dominance of the sovereignty is limited to various global factors such as International organizations, the Universal Declaration of Human Rights and Minority Rights. In order to adjust performance of states with human rights standards and in way of realization of basic rights and freedom of people, especially on behalf of governments, different ways are designed and implemented. One of these ways is limitation of authority and absolute sovereignty of state through signing contract and treaty, through which the state can announce its agreement to limit its authority. The principle has had extraordinary importance in gradual internationalization of human rights. Collection of regulations of international law on human rights entered to a new stage with the announcement of UN Charter in June of 1945 and the documents and international cooperation to realize human rights were considered gradually. The collection has been evolved in two forms generally: one in framework of UN declarations that the most general one is global declaration on human rights. The declarations have high moral value and have spread light on legislation, legal and executive measures of states. The second way to complete the collection is signing international contracts among governments. Provisions of the documents are binding for member states (2003, 235). In this regard, another example of limitation of using sovereignty of states is presented as follows.

Although, immunity of states against courts of other countries is one of the clear effects of independence of countries and using sovereignty in its foreign dimension, a process is forming gradually as a result of relevant evolutions of human rights that have adjusted traditional principle of states and national courts have sentences people with immunity through referring to main function

of international community in regard with fighting against gross human rights violations and crimes against humanity. Moreover, one method of international community to guarantee observance of human rights is to predict a right for victim of violation of human rights in regard with taking measure against the state that has accepted membership of international treaty. However, requirement to use the method is to accept using it and passing domestic legal by the charged government for violation (Shayegan, 2003). After the end of the bipolar system, more emphasis was on observance of human rights on behalf of the states. World Human Rights Conference of 1993 has considered 3 main principles in its agenda including the universality of human rights, enforcement of human rights and the democratic process. In this conference, important measures and plans are considered such as paying attention to role of UN in human rights, prohibition of states from conditions that are in conflict with soul of human right treaties and referral of project of setting memorandum of an international court for wide spread violations of humanitarian rights and human rights to UN Commission (Zakerian, 2002). Moreover, Security Council has taken action in several cases to form international courts by that time. The Security Council established an international court to prosecute people committing crime against international human rights in Yugoslavia (The International Tribunal for Former Yugoslavia) through resolution No.827 by May 25th of 1993. Currently, international criminal law has paved the way for judgment of officials of states and political officials in power under special conditions. Moreover, the relationship between human rights and national sovereignty of states has been considered in important international documents as follows:

- The UN Charter (in the introduction and articles 1, 55, 56, 13, 62, 68 and 76)
- Universal Declaration of Human Rights
- International Covenant on Civil and Political Rights
- Second Optional Protocol and the International Covenant on Civil and Political Rights
- International Covenant on economic, social and cultural

On the contrary, according to paragraph 7 of article 2 of the UN Charter, general prohibition of use of force can be interpreted in more extended form, so that prohibition of interference in domestic affairs of member states should be generalized to all legal actions of the organization, even those actions with no necessary effect (Recommendations). This is because; the recommendations can affect national competence of

states in some cases. Each recommendation of the UN, whether referring to all states or certain state, can result in harmful effects for the states in special cases. The interpretation was acceptable by 1945 due to importance of principle of state sovereignty; although the interpretation was adjusted gradually with formation of new commitments in form of UN institutes (Eftekhari Jahromi, 1995). However, it should not be ignored here that relevant issues of sovereignty are problematic more and less. In fact, there are some contradictions in text of UN Charter. Paragraph 7 of article 2 of the charter has talked especially about lack of interference in affairs that are naturally a member of innate competency of every country. However, the charter has presented an important exception on this rule in form of predicted executive measures in chapter 7 (Askarkhani, 2004). Currently, after 60 years from approval of Universal Declaration of Human Rights, the declaration has been changed into one of the most important historical documents and has resulted in development and impact of human rights in local, national, regional and international level, so that over the decades, some movements have been taken in some countries, especially in Asia and Africa, to adjust and reform Constitutions and domestic regulations according to contents of international human right agreements (Parvin, 2008).

International organizations and their impact on principle of national sovereignty: According to impact of international organizations on states, the study has tried to analyze some of the institutes and their impact on principle of national sovereignty shortly.

United Nations General Assembly: it is the highest international institute which has today affected national sovereignty of countries in field of human rights according to different articles of the charter. According to article 10 of the Charter, the assembly has the authority (except for article 12) to investigate any kind of problem or affair in limit of the charter or relevant issues of rights and obligations of each pillar set out in the charter. Moreover, the organization can make recommendations for members of UN or Security Council or both of them about each of the mentioned issues and affairs (Molayi, 2000). According to article 13 of the charter, it is responsible for promoting international co-operation 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. Also, according to articles 14 and 15 of the charter, General Assembly can make some recommendations or investigate reports of other members of UN in field of human rights (Arfa'ei, 1993, 16).

Security council: The most important pillar to protect peace and international security in UN is Security Council. Certainly, the most effective institute to violate national sovereignty of states practically and with explanations of international law is Security Council. Particularly after Cold War, the institute has violated national sovereignty of some states through pretexting issues such as Violation of Human Rights in some regions. It should be mentioned that the institute, according to article 24 of the charter, takes measure whereby different articles of charter. Over the past years in addition to individual criminal responsibility, another method to prevent wide violation of human rights, even with cost of multidimensional military interference (Zarif, 2014) is responsibility to protect. Responsibility to protect means that if a country is unable to protect its citizens, The International Community has the responsibility to protect these people (Zakerian, 2013).

Human rights council: After 60 year from activity of UN in field of human rights, the most important structural evolutions of the UN included change in “Human Rights Commission” and replacing it with “Human Rights Council”. Following approvals of officials of states in regard with agreement with establishment of Human Rights Council, the UN General Assembly became responsible for providing conditions to establish the council. General Assembly also established Human Rights Council as a result of such approval in summit of March 15th of 2006 in Resolution 60/251 (Mirabbasi, 2009). In the mentioned resolution, the most missions of the council included:

- Similar to human rights commission, the council should consider its main responsibility as systemization of different fields of human rights
- Key and weaknesses of Human Rights Commission such as Special Reporting Rituals should be observed by the council more and less
- Creation of mechanisms for Universal Periodic Review (UPR)
- The council should preserve all missions and institutes and functions in Human Rights Commission in addition to review, reform and sectional deepening (such as special rituals, individual and group petitions) (The Resolution 60/251)

An important issue in regard with activity of Human Rights Council considered in the Resolution 60/251 is prediction of new mission for human rights council under the title of “Universal Periodic Review”. Creation of the

mentioned mechanism has been for purpose of preventing politics and optional action of Human Rights Council, so that human rights status of all states can be analyzed in this framework based on accepted requirements and based on principle of cooperation and mutual negotiations.

Human rights committee: As some institutes of Human Rights have been established in framework of Human Rights Conventions, they are called as treaty institutes or institutes from treaty. The main duties of the institutes is to have supervision on good implementation of the relevant convention on behalf of member states and investigation of the reports presented by states and making some recommendations and interpretations to implement the convention more than before if necessary. The most important institute is Human Rights Committee established based on The International Covenant on Civil and Political Rights by 1976. The committee is the most important secondary element of General Assembly that is active in field of human rights. According to article 28 of The International Covenant on Civil and Political Rights, the he mentioned committee has been established under supervision of UN General Assembly with the participation of Nationals of States Parties to the Covenant based on personal competency and working experience at the invitation of the Secretary-General and to “protect human rights”. According to article 40, the party states of the covenant have promised to implement decisions made by the committee and to submit reports on advancement to settle the rights (Mehrpoor, 1995). The mentioned committee has the competency to investigate received reports from member states based on violation of commitments of the convention by another member state in addition to be responsible for handling reports of member states on execution process of the mentioned covenant. The third and the most important part of obligations and competencies of Human Rights Committee is related to competencies considered by First Optional Protocol to the Covenant on Civil and Political Rights. Whereby the regulations of the said optional protocol, the committee can receive and handle complains of real entities that claim that they are victim of violation of human rights considered in the mentioned covenant (Mirabbasi, 2009). The measure of the Human Rights Committee is important, since article 1 of the optional protocol attached to the covenant has allocated the tight to apply competency of the mentioned institute to handle complains of people under their competency and quasi-judicial feature to the committee (Madani, 2013). In general, efficiency of the committee has had multidimensional aspect: some states have changed their

regulations as a result of recommendations of the committee. Others that are the majority have ignored the recommendations and there are also some states that refuse to answer request of the committee to give opinion about complain of a national party (Golshan Pajoo, 2008).

CONCLUSION

In this study, it has been tried to investigate the relationship between principle of national sovereignty and human rights mechanisms in short. Certainly, experience of more than 7 decades activity of the UN and performance of the organization and other international institutes in field of human rights has affected national sovereignty of states more than before. Hence, human rights can be considered in field of concepts emphasized by clear text of the charter to defend it with the cooperation of countries and the UN (Paragraph 3 of article 1 of UN Charter). Accordingly, it seems that other traditional perceptions of concept of national sovereignty in field of international law are not acceptable, since such perceptions have lost their credit under effect of evolutions of international law and the principle of no interference in domestic affairs of states has been adjusted over the time. Level of commitment of states to international regulations of Human Rights has affected stability of sovereignty of countries. Hence, the reality is that the issue of human rights is the most important issue of the current age affecting the states that has made some limitations for states and has changed their sovereignty (Amini, 2010). Accordingly, human rights have such position in international system currently that other states can't define it only in their domestic competency through documentation of domestic law or international law although, the emphasized law in framework of human rights has also faced some limitations. This is because; applying some limitations such as preservation of public order and preservation of others rights is essential which are considered in statutes and constitutions of the countries.

However, it seems that human right has the capability to be considered as a threat to national sovereignty of states and the issue of human rights has the ability to actualize the mentioned challenge.

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