

+IRAN, RESERVATIONS AND INTERNATIONAL TREATIES OF HUMAN RIGHTS

Arash Izadi

Attorney-at-Law, PhD Candidate, Xiamen University school of Law China
Arash.izadi@stu.xmn.edu.cn

Abstract: Among international treaties on human rights, The Government of the Islamic Republic of Iran, ratified ten and just signed two of them. Among The treaties which Iran has been ratified, two of them are ratified with "Reservation"; and the rest ratified unconditionally and has fully accepted. The second type of ratifications such as Convention on the Rights of the Child, Other members of the convention and the United Nations Human Rights Commission concerned Iran's Conditions has the conflict with the subject and the goals of the convention. Because of the vague. This article tries to approach to the following points: Weather as well as governments, the Human Rights Committee and other regulatory authorities are legitimate to assessing of "reservations"? What is the effect of the conflict of "reservation" with the subjects and goal of the convention? What are Iran's Strategies and solutions to face such kinds of Conventions?

Keyword: Reservations, Human Rights, international treaty, Vienna Convention on the Law of Treaties

Introduction

The governments of Iran In addition of the UN Charter with some of its articles are related to Human Rights signed and ratified many international human rights treaties. Among the international conventions on human rights, Iran just signed two and ratified tens of those treaties, but two of them are accepted by "Reservation" from Iranian Government and the rest

unconditionally accepted and absolutely approved. The agreements are as follows:

Convention relating to the status of refugees, which The National Council Parliament of Iran at the Time of Approval accepts it by some conditions. As a single article text approved by the National Council, the government retained its right to avoid the most favorable treatment to refugees of nationals of the States which are typically have regional, residence, customs, political and economic agreements; and on the other the provisions of Articles 17, 23, 24 and 26 relating to wages, employment, freedom of movement and choice of residence within the country "shall be considered as recommendation".

Convention on the Rights of the Child 1989 which The Government of the Islamic Republic of Iran at the time of signing it on September 1991 and also at the time of ratification on March 1993 imposed general condition on it. The Islamic republic of Iran is an Islamic country which same as most Islamic states of the world the Rules are based on Islamic rules; and according to Iranian constitution all the laws and regulations Must be Upon to the Islamic rules¹ According to the Article 125 of the Constitution, international treaties must be signed by the President or his legal representative and according to Islamic Consultative Assembly Parliament Act, treaties should be assessed by

¹ Article 4 is immutable and the Council of Guardians ensures that all articles of the Constitution as well other laws are based on Islamic criteria.

the Guardian Council to consistent with the constitution and Islamic criteria². Thus, because the Islamic Republic of Iran's parliament rules should be match with Islamic principles and the constitution, international treaties at the ratification time neither cannot be against domestic laws Islamic principles. Upon ratification of international conventions on human rights in the legislative system before and after the Islamic Revolution, there have been some excesses or negligence (Mehrpour, 1998, p.415). For example, both conventions of International Civil and Political Rights and the economic, social and cultural rights 1966, has been ratified without any conditions and concerns to its conflicts with laws which has been enacted by the senate and National Parliament. After the Islamic Revolution Because of the need to comply with the constitution and Sharia legislation, the precautionary approach taken for ratifying the covenant of the right of the child and the Convention ratified with the general condition of compatibility with Islamic norms and rules.

Meanwhile, what seems problematic is that the Necessity of the compatibility with the Convention by the laws which are likely the Iranian parliament in future will pass, Many countries opponent to Iran's reservation on the convenient of right of child because they consider it as Contrary to the purpose of the Convention .

Legal regime of reservations to international human rights treaties

Treaties on human rights have its own specialties which make its ratification issue more complicated the purposes of these treaties are the issue of setting minimum standards of humans' protection in the world. International obligations contained in such treaties are not common obligations between the states; governments obligate to respect the international standards of human rights towards their citizens. International human rights treaties provided different positions about the possibility of signing, ratification or accession by the governments. Some treaties

banned reservation in general terms or about some of its articles, such as the Convention against Discrimination in Education. Some treaties, like the Convention on the Political Rights of Women, The reservation is permitting without any restrictions. But other countries are free on acceptance or rejection of a clause in these treaties. A third group of treaties such as the Convention on the Elimination of All Forms of Discrimination against Women, provided that if the reservation requirement is not inconsistent with the purpose and object of the treaty is accepted. The fourth group human rights treaties, such as the International Covenant on Civil and Political Rights, in particular, reservations were silenced. According to the 1969 Vienna Convention on the Law of Treaty's, when the treaty is silence about the reservation, the member states Recognize that it is allowed or not allowed based on the assessment of the purpose and object of the treaty.

1. The Human Rights Committee's view

One of the monitoring pillars of human rights witch has joint statement on reservation of international human rights treaties is the Human Rights Committee of the 1966 International Covenant on Civil and Political Rights. The Covenant and its first Optional Protocol are silent on the reservation. Only in articles 46 and 47 of the Covenant stipulates that its provisions should not be interpreted in a manner that is inconsistent with the provisions of the UN Charter or the right to use and exploit natural nations in full and free of impair their natural wealth and resources. With notice to the silence of the Convention on the reservation, until November 1994, 46 countries from the 127 member states of the Covenant, in particular made 150 reservations on it! (General Comment ", 1994, par.1) Imbert believes that the silence of majority of members about reservation was because they wanted to ensure the implement the rules of the law of treaties (the 1969Convention on the Treaties) (Imbert. Human Rights Rev. (1981) VI: 1, p. 42). According to Article 19 of the Vienna Convention, one of the effects when a treaty is silent on the Reservation

² Article 96 of the Iranian Constitution

is that the validity of the reservation stated by the government in accordance with the object and purpose of the treaty determined. Due to concerns about the Reservation of human rights treaties, Human Rights Committee in 1994 under questioned his interpretation of the clause No. 24 of the International Covenant on Civil and Political Rights and the ratification of the Vienna Convention on its flexibility system (General Comment, 1994, par.1). The committee's opinion about purpose and subject matter of the treaty are making legally binding human rights standards by defending and describing some civil and political rights and pose them in the establishment of the binding legal obligations' and establish an effective supervisory institution subject to the obligations of (General Comment, 1994, par.7) Although according to the Human Rights Committee view declaring reservation by states doesn't mean significant unwillingness of the states to implement the provision of the basic principles of human rights, and for different reasons declare reservation . (Redgwell, ICLQ, vol. 46, and p.399) the Human Rights Committee approach is particularly influenced by the human rights provisions the states practices show that the objections of some states on human rights treaties against other states are done by the same justification. Interpretation No. 24, of the Human Rights Committee not only expressing its Competency to evaluating of matching the reservation with the subject and purpose of the treaty, also consider its self-authorized to evaluating the Committee conclusion. In other words, if Committee find any conflict between the issue of reservation and the state purposes of the treaty could be considered as invalid, and consider the state bind to the treaty . This opinion faced comprehensive objection of states. Till now States doesn't accept such kind of the authority's to human rights observer bodies.

2. The International Law Commission's view

Regarding to Ambiguities and gaps in the 1969 Vienna Convention on the reservation, at 1993 by resolution 31/48 of the General Assembly on the topic of reservations to treaties was put on the

agenda at the International Law Commission. The ambiguities and gaps are as follows: reservations on bilateral treaties, the exact meaning of interpretive declarations, the subject of match or mismatch of reservation with the object and purpose of the treaty, impacts of reservation on implementation of the Treaty, protest to the reservation of the successor state right to reservation on the human rights treaties, customary and peremptory rules. International Law Commission at 1994, chosen Professor Allen Pelé as Special Reporter for this topic. He at his first report on 1995, only discuss on issues related to the reservation, the records and the purpose of the final enumerated issue of reservation (UN Doc. A / 50/10 (1995), par. 491.) . The Special Reporter at his second and third report emphasized on the need to preserve the effectiveness of the legal system of the Vienna Convention on reservation and paying attention to uncertainties and gaps in the Vienna Convention. After deliberation of special reporter report, the Commission from three suggested legal strategies (prepare a protocols to the 1969 Vienna Convention, setting a convention titled as reservation on treaties and Compilation Guidelines on the reservation Collection) chosen the Third solution and just develop to set a collection of guidelines to Explain Strictly the current regulations (UN Doc. A/53/10, 1989, par. 482). The International Law Commission According to the Special Reporter reports, believes to preserve the constitutional framework of the 1969 Vienna Convention and emphasized that the legislative jurisdictions of the Vienna Convention on all multilateral treaties, including human rights treaties are applicable. The opinion of the Special Reporter of the Commission as a conclusion to the Topics Was that The Supervisory Organs according to its supervisory duties can evaluating the reservations on the treaties, but cannot specified to the consequences related to the reservations and cannot make decision about the membership of the Stakeholders state to the treaty . Furthermore, if estimate a reservation as

unauthorized the Stakeholders state cannot ignore the evaluation and should take an appropriate act. (UN Doc., A / 57/10 (2002), par.95-96)

3. The Lawyers views

Applicability of the Vienna Convention on reservation to the International Human Rights Conventions, made Disagreement among experts in the validity of reservations and its acceptance and rejection system and also in the effects when the reservations are against to the subject and purposes of the convention.

3.1. Reservations validity according to the Vienna Convention

– there is two opinions about reservation validity according to the 1969 Vienna Convention: Acceptability of Reservation (Permissibility) And Acceptability Rejection (Opposability). According to the first view, the 1969 Vienna Convention for validation of Reservation in concern when the treaty is silence has two stages. At first stage, the tolerability and validation of Conformity of reservation with the object and purposes of the treaty should be reviewed (Art. 19 of Vienna Convention). If the Reservation is incompatible with the object and purposes of the treaty, regardless of the reaction of other governments of other states party to the treaty unauthorized and therefore cannot accept it. at the second stage, according to the paragraph 4 of Article 20 the states only may accept or reject the reservations, in accordance with The purpose of the treaty, and they cannot individually make decision to accepted or rejected of Unauthorized reservations, unless all member states have agreed to the changes caused by reservation. (Clark, 85 AJIL, 1991, p. 304; Redgwell, Universality or Integrity. 1993, BYIL. Pp. 245-257) But supporters of the Second opinion believes that, articles 19 and 20 of the Vienna convention are related to each other and are the base of the reservation validity, invalidity, states evaluation and their reaction's. In other hand each member states are qualified to Diagnosis the matching of reservation to the object and purpose of the treaty. The state which accept the reservation, consider it as valid and conversely, the reservation opposite state consider it as

Unauthorized. If a reservation is against to the purpose and object of the treaty, but all the other member states of the treaty are agree with the reservation, this means the reconsideration of the treaty. (Belinda Clark, 85 AJIL, 1991, p. 306). The method adopted in the Convention on the Elimination of All Forms of Racial Discrimination, shows the recent opinion. According To this Convention, in case if two-thirds of the Member States be against to the reservation, the reservation will consider as unacceptable (paragraph 2 of Article 20).

3-2 the effects of invalidation of reservation-

regardless of the competent authority for evaluating the validity of the reservation issue, the effects of Inconsistencies with the Topic and purpose of the Treaty has particular Importance. In respond To the Question of what are the legal consequences arising from inconsistent with the object and purpose of the treaties, there are three legal Solutions as follows:

A. The obligation of the state to the whole treaty except to the provisions which has been declared as reservation. This solution which has been made by the 1969 Vienna Convention and in act makes a way for reservation to the object and purpose of the treaty. If some states be opposite to reservation, the state which imposes reservation is not member of the treaty only at the provisions which are same as the subject of the reservation, however if the reservation is accepted; the result would be exactly the same. In other hand if a state impose reservation on the principal provisions of the treaty and these reservations are opposite to the object and purposes of the treaty, the result is the same as when reservation is accepted. (R. Goodman, AJIL, 2000, p. 535.).

B. invalidity of reservation Thereby invalidating the satisfaction of the reserving state and the state loses its membership of the treaty. This approach is based on this view that the reservation is inseparable from the relevant regulations. This means dismissal the reserving state from the treaty and perhaps the reserving

state prefer to take back their reservation or modify it instead to pay high costs for that.

C. separability of unauthorized reservation from the provisions of the reservation, and obligation of the reserving state towards whole the treaty; including the provisions which have been declared reservation on them.

This solution faced a wide opposition from the member of international law commission (UN Doc. A/52/10(1997), par.83) and writers (Roberto Baratta, EJIL, 2000, p.43). Opponents of the recent view argue that it's not possible to obligate the state to the provisions of a treaty which Treaty expressly refused to accept. Because it is contrary to the principle of consent and the rule of law, and in accordance to the Vienna Convention legal system If some of the member States of the treaty protest to the states reservation, it would affect only contractual relationship with the state or states opposed to the reservation (paragraph 3 of Article 21 of the Vienna Convention 1969).

Since the government due to political considerations and diplomatic relations doesn't sever its contractual relation with the reserving state, the recent state doesn't loss anything by declares reservation and therefore imposes unnecessary reservation of treaty. On the other hand, for two reasons it intensified at the human rights treaties, First, States national Interests not require protest to other member states reservations of treaty. Second the reserving state precautionary approach to these treaties and declare many reservations which some of them may be essential to the satisfaction of the treaty. Thus, if essential reservations are not separable to the relevant provisions, unnecessary reservations Are separable and doesn't harm to the reserved provisions (R. Goodman, AJIL, 2000, p.537). Many states in order to gain prestige joined to international human rights treaties. According to some authors if a reservation forms the state satisfaction, the reserving state would be free to choose one of two options: Cancellation or modification of reservation or withdrawal from the treaty. (R.Goodman, AJIL, 2000, p. 542, 546.) The Committee may examine the states report.

CONCLUSION

In the current era, international treaties create by international conferences or international organizations. For some states acceptance of all obligations contained in the treaty which are contrary thier national regulations are not possible. Reservation is a strategy to facilitate countries to join to the international treaties, but actually eliminates integrity and unity of the treaty. The 1969 Vienna Convention on the Law of Treaties regulated the reservation on International treaties According to this treaty, if the treaty is silent on the reservation, the reservation validity will evaluate In accordance with the object and purpose of the treaty (Article 19 of the Vienna Convention). But, it's not clear yet the competent authority to verify compliance the reservation with purpose of the treaty. Under the Vienna Convention Treaty system, Member States are responsible for this task. The state's foreign policies are based on their national interests and the states doesn't Show any tendency to oppose reservation, because it doesn't create mutual rights and duties, such as international human rights treaties. On the other hand, based on Article 20 of the Vienna Convention system, Even if member states opposed to the treaty with reservations due to its inconsistent with the object and purpose of the treaty, establish a contractual relation between reserving state and protester state, unless the recent state express clearly its Contrary intention. For reservations to international human rights treaties, the Vienna Convention faced a great challenge. The human rights committee discussed about replacing the reservation Reparability theory with the state Consent with bind to the treaty as a specific rule and replace to the reservation to human rights treaties at Vienna Convention. As The Committee's view, the reservation is invalid and reserving state is bounded to whole treaty if the reservation is incompatible with the object and purpose of the treaty. This view faced widespread opposition of states and most lawyers, because they consider it violates the principle of consent and sovereign of

the states to accept international bonds. International Law Commission also stressed the universality of the Vienna Convention and declares that when the monitoring body meets the circumstances of the treaty, only states can embark on its results. However The Commission believes the monitoring organ on Human Rights according to their supervisory duty can assess Compatible or incompatible of the reservation with the object and purpose of the treaty. This assessment is not binding for the states, but occurs an objective and impartial assessment from the reservation and on practice make in ineffectual. States cannot be Apathetic about assesses monitoring organs; they should use appropriate measures about them. In other words, they have quit from the treaty, or withdraw or modify their reservation. According to above, the general reservation of Iran to Convention on the Rights of the Child Not only assessed as Contrary to the object and purpose of the Convention by some states, also it's possible the Rights of the Child committee declare it invalid because of it is general and vague. Unlike the Human Rights Committee position the others human rights observing organs practices show that these organs have a true approach to the states reservation, Instead comment on the validity of the reservation ; promote the states to cancellation or modification of the treaties. (UN Doc. A/ 57/10 (2002), par.53.) Thus Iranian government cannot continue to keep its general reservation on the Convention on the Rights of the Child. While it is clear it is incompatible with the object and purpose of the Convention. It should partly cancel of the general reservation and review and modify its international obligations. Not pleasant experience on declare general reservation on mentioned treaty shows that Iran's accession to other international conventions on human rights, such as The 1979 Convention on the Elimination of All Forms of Discrimination against Women, Should accurately clearly identify certain rules are inconsistent with local laws and Islamic rules and such as some Islamic states only declare reservation on specific provisions. Some say the

International Covenant on Civil and Political Rights in 1966 inspired many international conventions on human rights, Including the Convention on the Elimination of Discrimination against Women and the Convention's provisions interpretation of the principals and set forth in the Covenant. Since the contract without regard to its conflict of laws principals and norms of domestic and unconditionally accepted, Provided the conventions would be ineffective. This is a remarkable view because If declare reservation on the international conventions of human rights due to Inconsistency with Islamic rules and regulations, at the first stage should declare reservation on Covenant on Civil and Political Rights . unfortunately, after Islamic revolution on 1979, Due to the political situation prevailing in the country, it was neglected and subsequent behavior indicates the government accepted international obligations contained in the Covenant. The slightly Provisions Will not have the Necessary ground to execute at Iran legal system. However, in the era which the world's leaders for protect human rights use it in their foreign policy priorities, this initiative has High political costs. But it seems that, this is an inevitable Approach which should be considered. Otherwise, Commitment to international obligations which are contrary to the domestic laws and Islamic principals are not reasonable and always will have problems. As well as political considerations that have prevented the plan proposed by the competent authorities of the country, In addition, due to political considerations, till now prevent the official authorities of the state to express their propos, from the legal point also there is serious obstacles in front of this solution. Only at the signatures time, Ratification and accession to international conventions can declare reservation on some of its regulation which have Compliance with the object and subject of the treaty. Iran has ratified International Covenant on Civil and Political Rights without reservation. Thus maybe it's possible to make satisfied opposed Parties about the acceptance of reservation just by negotiation

with human rights committee and Member States and The States Parties to the Covenant the States Parties to the Covenant and discuss the possibility of implementing some of its provisions because they are incompatible with Islamic rules.

Belilos v. Switzerland, ECHR, Series A, vol. 132, 20 April 1998.

ICJ Rept. 1951, Reservations.

Sources:

- Mehr Poor, Hussein, the international human rights system, printing, publishing information, Tehran, 1998.
- Louis Cavare , *Le Droit International Public Positif*, Tome II, Paris, 1969th.
- Emamdzadeh, Mohammad Kazim, *the use of reservations to international treaties*, Law Journal No. 8, spring-summer 1987, p. 202.
- Taheri chemirani sefatollah, reservations to treaties, *Foreign Policy Magazine* , Vol. XIII, No. 1, Spring 1999.
- Roberto Baratta, "Should Invalid Reservations to Human Rights Treaties Be Disregarded?", *Ejil* ., vol. 11, 2000th.
- Bowett DW, "Reservations to Multilateral Treaties nonRestricted", *Byil* 1967-77.
- Belinda Clark, "Thevienna Convention Reservations Regime and the Convention on Discrimination against Women", *85 Ajil* , the 1991st.
- Ryan Goodman, "Human Rights Treaties, Invalid Reservations, and State consent", *Ajil* ., vol. 96: 531, 2000.
- PH Imbert, "Reservations and Human Rights Conventions", (1981st) VI: 1 *Human Rights Rev.*
- Marks, "Reservations Unhinged: The *Belilos* Case before the European Court of Human Rights ", (in 1990) 39 *Iclq*
- Redgwell Catherine, "Reservations to Treaties and Human Rights Committee's General Comment No 24 (52)", *Iclq* , vol. 46, 1997.
- Redgwell Catherine, "Universality or Integrity? Some Reflections on Reservations to General Multilateral Treaties ", one thousand nine hundred ninety-three, *Byil* ., pp. 245-257.

International documents:

- Vienna Convention on the Law of Treaties, 1969, published in the Journal of Law, Office of International Law, No. 8, Spring – Summer 1987.
- International Law Commission on reservations to treaties, UN Doc. Supplément No 10, A/ 50/10 (1995).
- UN Doc. Supplément No 10, A/ 52/10 (1997).
- UN Doc. Supplément No 10, A/ 53/10 (1998).
- UN Doc. Supplément No 10, A/ 57/10 (2002).
- Human Rights Committee, general comment No. 24 on reservations to human rights treaties:
- General comment on issues relating to reservations made upon ratification or accession to the Covenant or the Optional Protocols thereto, or about declarations under article 41 of the Covenant, CCPR/ C/ 21/ Rev. 1/ Add. 6, adopted by the Committee on 2 Nov. The 1,994th, Reproduced in (the 1995th) 2: 1 *Int. Human Rights Rpt* . 10-15.