



DEFENDERS

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- A Look at the Conditions of Border Couriers (Kooleh-bars) in Iran
- Review of the Role and Status of Ethnic Groups in the Charter on Citizens' Rights
- What do the new U.S. sanctions mean for Iran? Experts respond
- Art of US Sanctions on the Ground
- Changing Israel Capital:A Serious Breach of International Law
- Protection of Children against Pornography

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Editor's Note

Human rights have continually been violated over the years. This is why human rights activists and defenders have over different periods tried hard to bring human rights across borders and give them an international image, and make them conform with international treaties and documents, and from this aspect increase human rights implementation guarantees.

The adoption of different human rights declarations and conventions are the fruits of the campaigns of people who have worked hard for centuries, they are the fruits of horrific experiences of Mankind, the fruits of many trials and errors that have the signatures of millions of people's lives.

These human rights documents and treaties are great achievements of today's humanity who price has been paid heavily. The thing that now worries human rights activists around the world at the dawn of the New Year is the practices of powerful countries of the world who claim to human rights and international law in the further discrediting of these international treaties and conventions. Countries leaving and disregarding international treaties cause damages to the implementation guarantee of human rights and international law.

Also the unilateral measures of some countries in their approach to other countries, alongside the disregard for international documents is an alarm bell which human rights defenders are trying to make decision makers and takers so that before it is too late to defend the little Mankind's achievements in the protection of human rights.

Thus, as a human rights magazine, the Defenders Newsletter in this issue has tried to show the effects of unilateral coercive measures on ordinary people. Sanctions that are imposed with human rights slogans, are themselves the biggest violators of human rights. Interviews with various thinkers around the world to learn their views and a review of the Art of Sanctions book have been done for this reason in this issue of Defenders.

A look at the Citizen's Rights Charter as a step towards protection and promotion of human rights has been done in the form of an article in this issue.

The conditions of cross border couriers in Iran, threats and challenges that they face and presenting solutions for the protection of their rights is another research article in this issue of Defenders.

In this issue, Defenders Newsletter has tried to while reviewing some of Iran's human rights issues to also review global situations. The review of the legal consequences of changing Israel's capital is one such review.

Also, as the world's most vulnerable group, children have always been the focus of human rights defenders. The expansion of cyberspace today has turned into a threat against children. For this reason a section of this issue has been allocated on the subject. It is apt that we thank all those who helped us in preparation of this issue, and declare that we shake the hands of all experts and human rights defenders on the path of the promotion of human rights.

A Look at the Conditions of Border Couriers (Kooleh-bars¹) in Iran

By: Zahra Mirabian
Researcher on Human Rights

Border Couriering is a profession that some individuals on border regions resort to for making a living. Border couriering is a term used for the job in which people carry goods on their back. Civil institutions in Iran have always warned about the terrible conditions of border couriers. To-date many border couriers have lost their lives on treacherous and dangerous routes on the border regions. And threats such as landmines leftover from the Iran-Iraq War, mountainous dangers such as landslides and avalanches and or confrontation with border guards always threaten these individuals. Even though the Iranian government has prohibited firing on border couriers but in many instances it is difficult for border guards to distinguish border couriers from terror groups, particularly Iranian border couriers who prefer to move across the border at night.

A major part of border couriering activities is concentrated in regions away from official customs and points of entry, and according to the government's definition, border couriering is deemed as smuggling. The carrying of contrabands by border couriers and transporting contraband on backs of horses and mules from rough border region terrain into bordering cities and villages is one of the common methods for smugglers to transport their contraband goods.

According to assessments, approximately 3 billion dollars' worth of contrabands are smuggled through 12 unofficial points in four provinces of Kermanshah, West Azerbaijan, Kurdistan, and Sistan and Baluchistan into Iran annually. According to the statistics of the director general of the Planning and Supervision of the Processes Bureau for the Office of Combat against Smuggled Goods and Currency, 90 percent of the profits from border couriering goes in the pockets of professional traffickers and 10 percent is distributed among 70 to 80 thousand active border couriers on the borders of the country.²

Border Couriering and Violation of Human Rights within Iranian Laws

Border couriering threatens the human rights and right to life and right to employment. The border couriers' lives on dangerous mountainous routes are continually under threat. Furthermore, having a suitable job for border couriers is a very important human rights concern. All this is while Iranian laws clearly recognise the right to employment.

For example Article 77 of the Citizen's Rights Charter consider it the citizen's right to choose the job they like freely and without discrimination. No one can deny them this right on the basis of ethnicity, religion, gender and or differences of opinion in political and or social views.³

Organizing Border Couriering

In the smuggling process, border couriers a large volume of importing consumer goods into the country, spending a considerable amount of national income on smuggled items instead of leading the financial flow into production cycle. The profit which goes into the smugglers pockets, at the expense of others. This issue and the



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bad conditions of the border couriers, is the violation of their basic rights by traffickers and leads to the sufferings of these couriers while crossings borders, therefore the government decided to address their situation and the cabinet of ministers' guidelines on the "addressing the exchanges in border temporary markets" was approved on 23 August 2017, and its generalities received the initial approval of the Parliament.⁴ The cabinet's decision to organize the condition of border couriers⁵ is something that some interpret as the official recognition of smuggling, but Ibrahim Zareiee, the director general of the Bureau for Planning and Monitoring of Customs, Trade and Economy Processes for the

Office of Combat against Smuggled Goods and Currency, says that the aim of this new government policy is for the reduction of smuggling and registration of imported goods by border couriers and the separation of border couriers from smugglers.⁶

To address the situation, the government has made two series of decisions:

a) New Government Decisions

1 – Border couriers can sell goods that have entered the country through official border checkpoints in border markets, up to a specific value limit, and put the profits from the imports in their own pocket and not of smugglers.

2 – Implementation of the "Border Street vending Trade" Plan with regards to dwellers in border regions of 4 provinces which results in border couriers to as well

as continuing their work as small traders, to import goods from the southern ports and benefit from customs and excise discounts by using “street vendors’ clearance credit card”.⁷ (By replacing the word border courier with the word street vendor, the authorities are trying to give a status to these individuals and turn them into traders from carriers of goods.) This results in eliminating the expenses of storage, transport and customs, because now, with the implementation of the Border Trading Guidelines, customs and excise discounts from the imported goods are paid to the street vendors. In this plan the street vendors are a go-between traders and bazaaris.

3 – Creation of a safe path for border couriers to prevent these individuals from crossing dangerous and rough terrains.

4 – Creation of markets on the border areas with customs and excise management. In this plan individuals who have 3 years of residence and are at least 20 kilometres from border’s ground zero in West Azerbaijan, Kurdistan and Kermanshah Provinces and also at least 50 kilometres from border ground zero in Sistan and Baluchistan Province, are eligible to receive trade discounts.

According to the guidelines approximately 500 thousand border region dwellers or 110 thousand households are included in this plan. Also according to the approval of the cabinet of ministers, border couriers who live in villages in the border regions of 4 provinces, per household will benefit from trade profit discount of the maximum of 28 million Rials per month.⁸ One of the important advantages of these guidelines is facilitating internal transit. In fact the transfer of border dwellers’ needed goods are permitted from origins to bordering markets will lead to notable reduction in the final cost of items.

In the government’s latest decision taken in December 2018, the Interior Ministry gave news of a new approval of the government on receive assistance of the private sector and civil society to solve border couriers’ problems.⁹

b) Comprehensive Sustainable Development of Border Regions Draft Legislation

In the Iranian Fifth Development Plan draft legislation and for the provision of sustainable security on the border regions and effective control of cities, the Interior Ministry has been tasked to draft a comprehensive plan on sustainable security on the border regions with the cooperation of Economic Affairs and Treasury, Justice, Information Ministries and the police force and other relevant ministries and organizations and have it approved by the National Security High Council, in a way that until the completion of the Plan, programmes adopted for controlling and monitoring the borders are fully implemented.

According to one of the articles of the Development Plan, any action taken at the borders and border regions will take place according to the programmes and indexes



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that are included in this Plan. This Border Region Sustainable Development draft legislation has been designed by the Interior Ministry and is currently being reviewed by the cabinet of ministers' special commissions.

The draft legislation monitors the sustainable development of all border regions of the country. The realisation of this legislation and the sustainable development of border regions is dependent on the performance of the government and the overall economic growth of the country.

Challenges of the New Policy of the Government for Border Couriers

a) One of the most important challenges of this Plan is the opportunities created for smugglers by full implementation. Some border couriers are encouraged by smugglers to carry illegal goods into the country to receive higher payment, goods such as drugs, alcoholic beverages, weapons and ammunition, explosives. These border couriers who choose dangerous pathways and or endanger their lives by carrying illegal items from inaccessible regions face dangers such as falling off mountains, or getting caught in snowstorms and avalanches, risk of hitting landmines left over from the War, and in instances border couriers are mistaken for terror groups and might come under fire from border patrols, because telling border couriers apart from terror groups in rough mountainous terrains is very difficult, particularly at night.

b) Critics also raise the question that what solution has the government considered for ordinary people to be able to make a living without getting involved in security issues?

Conclusion

In spite of technical and implementation challenges “Addressing Border Couriers’ Conditions Plan” can be an effective action for the improvement of the living standards of border couriers and protecting their human dignity. Unfortunately, the return of United States’ economic sanctions threatens the implementation of this Plan. Due to security conditions of borders of Iran and the continued attacks of terror groups, implementation of the plan by the government is not easily possible. Addressing the conditions of border couriers has been one of the demands of the people and civil institutions in Iran in the recent years, demands that can be a positive process for the removal of the border couriers’ problems. Problems which not only undermine the human dignity of border dwelling Iranians but also affect their right to development.

1-Those who carry goods on their backs illegally across borders

2-<http://www.ghatreh.com/news/nn43721926/%D8%A7%D9%81%D8%B2%D8%A7%DB%8C%D8%B4-%D9%88%D8%B1%D9%88%D8%AF-%DA%A9%D8%A7%D9%84%D8%A7-%D9%85%D8%A8%D8%A7%D8%AF%DB%8C-%D9%85%D8%B1%D8%B2%DB%8C>
<https://shahvrand-newspaper.ir/1296/19/Main/PDF/13960519-1194-4-40.pdf>

3- <http://citizensright.ir/home/document/4765>

4- <http://yon.ir/qJp5E>

5- <http://yon.ir/DTKMN>

6 - <http://yon.ir/W7jRc>

7- <http://yon.ir/08QBR>

8 - <http://yon.ir/mr7m7>

9- <http://yon.ir/u5hJI>

Review of the Role and Status of Ethnic Groups in the Charter on Citizens' Rights

By: Ali Salehi
Researcher on Political Science

Abstract

Presently there is the belief that the oldest document of Mankind which reiterates human rights is Cyrus the Great's Declaration. As well as Mankind's freedoms, freedom of belief for ethnic and tribal minorities had also been stressed. Now, today after the passage of 2500 years, Iranians have once again written a Charter on Citizens' Rights. In this study we are attempting to review the status of ethnic and religious minorities in Iran in this comprehensive document. Therefore, following a glancing review of the views of international human rights with regards to the importance of the Charter on Citizens' Rights, we will deal with the two economic and cultural dimensions which are very important for the minorities' community in Iran. These dimensions had been found in Iran before the preparation and publication of the said document, and our aim in this research is to review whether "the Charter on Citizens' Rights has managed to cover these weak points or not?" Our presumption is that the answer to this question will further stress on the importance and fundamental role of the Charter.

Introduction

Human rights thinks about the promotion of human dignity within the governmental sphere. Thus it continually tries to protect victims of violence. It is possible for a group of these victims be from the minorities of a society. It is natural that racial, linguistic and ethnic minorities in each society are distinguished from the majority of the population due to the differences. But human rights sees its duty to remove and or at least minimise these imaginary boundaries, visible distinctions and fake superiority.

The fact is that the Charter on Citizens' Rights of the Islamic Republic of Iran is a reflection of the Constitutional Law, through which it has brought within the national boundaries of the Iranian government the UN Universal Declaration of Human Rights in an executive legal way; so that through this law it can increase the further promotion of human status and dignity.



The most important demands of minorities in Iran are cultural issues. Thus a separate Chapter has been allocated to this in the Charter

Therefore in this research we tried more and better to analyse the aspects of the Charter on Citizens' Rights with regards to ethnic, tribal, racial, linguistic and religious minorities. This Charter which is made up of 22 chapters and 120 articles tries to pay attention to all aspects of the lives and needs of different Iranian groups regardless of their ethnicity, religion and gender.¹ This document tries with smartness to not separate minorities from the text of society and treat them as other sectors of society and only in necessary cases and for the purpose of insistence on concepts which a high status has been given to them in the Constitution, international human rights documents and in their cultural mentality,

in a way double the value creation be considered in legislations.

In all human rights circles with thematic studies of Iranian minorities, cultural debates are always considered, but a subject that made us conduct this research was not just cultural issues, because just as human rights logic confirms that minorities' problems and issues cannot be reduced to cultural issues. This fact has been stated in Article 55 of the UN Charter. There economic welfare and development have been deemed vital as cultural issues for all Mankind. With regards to thematic study this research has shown that one of the main mental concerns of minorities in Iran is not only culture but also economic problems.² Thus, following review of cultural issues in Iranian Citizen's Charter, in the next step we tried to include economic issues in such way in this research document, through which to present a different text. But we should bear in mind that the wealth production and distribution cycle in Iran is faulty and minorities are not exempt from other groups of society and they just like other Iranians face economic problems too. Thus we decided in this research in a separate section and with an economic view at the Citizen's Charter to study the economic problems minorities more carefully.

Cultural Debates of the Citizen's Charter

The most important demands of minorities in Iran are cultural issues. Thus a separate Chapter has been allocated to this in the Charter. For this purpose, in Chapter XIX of this document not only the government deems itself officially committed to not pursue policies of omission and making everyone the same, but in step with the Constitution, the Charter states that with regards to the cultural rights of ethnic groups and minorities applies a policy of tolerance and conciliation and in instances support for them.

In this regard it can be said that the Charter stresses on the preservation of the cultural identity of ethnic groups, whereas in Chapter 15 the Constitution only mentions

freedom to learn and teach ethnic languages alongside the official language of the country, and deems the right to learn mother tongue as an individual right, the Charter stresses on the preservation of ethnic identity as a collective right. Thus we are witness to the development of cultural and ethnic rights in the Charter from an individual to a collective concept.³

The UN Committee on Economic and Social Rights (ECOSOC) reiterates that the right of participation in cultural life, like other rights stated in the International Covenant on Economic, Social and Cultural Rights, obliges countries to three levels of commitments: commitment to respect (restraint from direct or indirect interference in the enjoyment of cultural life), commitment to protection (adoption of measures to prevent third party interference in the enjoyment of the related right), and commitment to implement (adoption of judicial, administrative, legislative, financial, promotional and other needed measures with the aim of full identification of the right stated in Article 15(1)(a) of the Covenant.)⁴

It seems that those who drafted the Charter on Citizens' rights considered the following commitments, Article 96 of the Charter states that cultural diversities and differences of the people of Iran are to be respected, and Article 97 to 102 have set some commitments for the government to support and implement. It is worthy to mention that the drafting of the Charter and its implementation addendum in fact cover the three points mentioned in the previous paragraph of this narrative.

For example with regards to linguistic rights Article 101 of the Charter clearly stresses on the right to learn and use and teach Iranian ethnic minorities languages. There is no doubt that the learning of mother tongue plays an undeniable role in the preservation of the identities of ethnic minorities. Furthermore, the preservation of minorities' identities has been declared as a customary principle.

Thus, it seems that the Charter has managed to cover not only all the cultural demands of minorities in Iran, international human rights principles and all the human and Islamic perspectives, but it has expanded them and increases the attention to detail of the authorities.

Economic Debates of the Charter on Citizens' Rights

With an economic glance at the Charter, in this section we review the legal concepts and foundations of the development and welfare for minorities.

To this aim a research that was done in 2016 shows that with regards to the unemployment factor, there is a direct link between unemployment among



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minorities and unemployment in Iran. And these two factors have a direct link with each other.⁵

According to this research which has been published by the Iranian Census Centre, we can clearly compare the unemployment growth rate and economic participation in central and surround regions in the summer for the two 2016 and 17 consecutive years.⁶ This research shows that although the economic participation index in ethnic provinces where minorities live, increases and there is a drop in unemployment among them. Similar surveys have also taken place in non-ethnic provinces.

Furthermore, these stats and figures warns us that the ethnic and minorities centres of Iran do not have a unison and comprehensive trend in increase and or decrease in the economic participation rates or unemployment rate. Meaning that the said regions are not in a separate dimension from the overall economic situation of Iran and are developing alongside the whole of Iranian society, although in an institutionalised way they are lesser developed than the centre.

Considering the last report of the Iranian Census Centre in the spring of 2018 most of the unemployed were in the Chaharmahal and Bakhtiari, Sistan and Baluchistan, and Lorestan Provinces, and also Zanjan, Hamadan, Ardebil and Semnan Provinces had the lowest unemployment rates.⁷ In other words, although Sistan and Baluchistan, and LOrestan Provinces have ethnic Baluch and Lor minorities and have the highest unemployment rate in the country, but during a similar period that this study was conducted, the Azeri ethnic minorities in Iran (Zanjan, Hamadan and Ardebil Provinces) had the lowest unemployment rate in the country. The conclusion can be reached that it is not the power structure in Iran which causes poverty and unemployment among ethnic minorities, and the cause must be sought elsewhere.

Also from the comparison of the aforementioned figures, it can be found that the job creation factor and subsequently investment, eradication of poverty and wealth creation do not have a discriminatory and structural in the ruling body of Iran and minorities are not deemed as second class citizens, because in the event of existence of the omission policy either the figures and stats should be uniform in the rise in poverty indexes and drop in economic participation among all minorities, and or in the event of the existence of a superiority of one ethnic group over others policy, it would have shown a steady and increasing trend for one ethnic group and decline for other ethnic groups, none of which can be seen in the abovementioned figures. With a little scrutiny of the development plans of the recent decades we will easily discover that one of the main reasons for lack of development in the marginal regions of Iran is due to the preferential and short-sighted approach of the relevant authorities. Iran, just like other developing countries, without having any discriminatory views towards ethnic minorities, has not made any plans for job creation and strengthening of the economy in the marginalised regions of the country. In turn, this lack of attention for the ethnic-regional structure of Iran has been problematic, because in the recent years we have witnessed an increase in migration from the marginal regions towards the centre, which this population

movement in itself has created new problems and headaches for the Iranian government. Thus, we have seen a change of attitude among the Iranian government leaders in setting the budget for 2018 in the minorities and marginal regions which can help in improvement of the local economy of ethnic groups and minorities. Reviewing the aforementioned ups and downs we can conclude that although there the legislator does not have discriminatory views towards ethnic groups and minorities within the Constitution and other laws and guidelines, and on the contrary they have development and welfare in the marginal regions in their working agenda, but preferential approaches, bad performances, and free hand of some of the authorities, have caused marginal regions to fall behind. According to researchers, the compilers of the Charter on Citizens' Rights have in total worthiness with consideration of the economic problems of minorities, have included Chapters XVII and XVIII in this document. In both of these Chapters the legislator obligates the authorities to provide services or necessary supports to create welfare and employment for all minorities without any ethnic, racial and even gender discrimination. The legislator has even gone further and in Articles 89 and 90, there are instances exclusively for women and their rights to enjoy welfare. Also the authors of the Charter clearly state in Article 82 that arbitrary, discriminatory and biased approaches are prohibited.

Conclusion

Perhaps it can be claimed that the Charter on Citizens' rights of Iran is an ideal example of Article 55 of the UN Charter, because it states:

“With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote:

- a. higher standards of living, full employment, and conditions of economic and social progress and development;
- b. solutions of international economic, social, health, and related problems; and international cultural and educational cooperation; and
- c. universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.”

In this research we clearly showed that the points in Article 55 of the UN Charter (be they cultural, economic and welfare dimensions) have been exactly reflected in the Iranian Charter on Citizens' rights. Furthermore one of the strong points



Considering the last report of the Iranian Census Centre in the spring of 2018 most of the unemployed were in the Chaharmahal and Bakhtiari, Sistan and Baluchistan, and Lorestan Provinces, and also Zanjan, Hamadan, Ardebil and Semnan Provinces had the lowest unemployment rates

of the charter is that alongside stating the laws and humanitarian ideals of the Iranian government and nation, the application and supervision mechanism on the implementation of the Charter have also been immediately presented. Thus, we see a strong, uniform and comprehensive text, which according to researchers it is a great example of the implementation and application of UN Charter's ideals, because by signing this document governments commit themselves in its implementation. Although in its text we see great Mankind ideals, but the Iranian government has succeeded put to practice these ideals in the framework of the Charter on Citizens' Rights.

Finally, if we want to think bigger and compare the Charter on Citizens' Rights with the UN Charter, we'll see that in the body of the UN Charter the authors deem all human beings as fully equal, but the Charter on Citizens' Rights takes a step further and not been content with just an idealistic look, and alongside the equality of all people it also considers their diversities and stresses on the rights of ethnic groups and minorities in having cultural, economic and etc. rights, and tries to put an order into this points and implement it so that it can be monitored and evaluated.

Sources:

- Humanitarian Law and International Human Rights, Dr. Mohammad Reza Ziaee Bigdeli, Review of International Humanitarian Law Developments National Humanitarian Law Committee Secretariat, Nasim Publications, 2003.
- Bozorgavari Faranak: "A Look at the Subject of Nationalism in Iran", Defenders, autumn 2016-winter 2017
- Sooresrafil E-newsletter, No. 100, 2017
- Sadat Akhavi Seyyed Ali, "Draft Optional Protocol on the International Covenant on Economic, Social and Cultural Rights", Law Quarterly, Series 38, No. 4, 2008
- <https://www.tasnimnews.com/fa/news/1396/07/27/1549657>
- <https://www.yjc.ir/fa/news/6612118>
- <http://www.irna.ir/Bushehr/fa/News/81818898>

1-This point has clearly been mentioned in the preamble of the Charter on Citizens' Rights

2- Bozorgavari Faranak, "A Look at the Subject of Nationalism in Iran", Defenders, Autumn 2016-winter 2017, pp16-19

3- This is exactly according to Article 2 of the UN Committee on Economic and Social Rights

4- Sooresrafil electronic weekly newsletter, No. 100, 2017

5- Bozorgavari Faranak, "A Look at the Subject of Nationalism in Iran", Defenders, Autumn 2016-winter 2017, pp16-19

6- There are different variables for reviewing the economic and income situation which we noted two variables which are discrimination and poverty factor and economic boom and dynamicity.

7- <https://www.tasnimnews.com/fa/news/1396/07/27/1549657>

What do the new U.S. sanctions mean for Iran? Experts respond

By: Kourosh Ziabari
Journalist and Reporter

In May 2018, the U.S. President Donald Trump pulled the United States out of the Joint Comprehensive Plan of Action, commonly known as the Iran nuclear deal. This was the fulfilment of a promise he had made during the presidential campaign season and frustrated the other parties to the agreement, who saw Trump's move as detrimental to the fate of an accord that was the outcome of months of engaged diplomacy. Iran deal was endorsed by the UN Security Council through the resolution 2231, stipulating specific limitations on Iran's nuclear program in return for the removal of the nuclear-related sanctions that Iran was penalized with for several years.

The U.S. President reinstated all the sanctions that were lifted as part of the JCPOA, claiming that withdrawal from the Iran deal would make America safer. The Trump administration officials made it clear that the ultimate goal is to bring Iran's oil exports to zero and decapitate the oil-rich nation's economy. The unilateral de-certification of the JCPOA by the United States and the introduction of new economic sanctions in August and November last year marked a new low in the course of Iran-U.S. relations and undid all the achievements that were made during President Obama's tenure to bridge the gaps between Washington and Tehran through negotiations and détente.

The introduction of new sanctions on Iran also gave rise to concerns that the Iranian people will have to brace for more difficult days and months as their country is once again targeted by stringent punitive measures and their livelihoods are going to be affected direly. The humanitarian consequences and impacts of the sanctions are perhaps the most neglected side of President Trump's aggressive Iran policy.

In 2018, Organization for Defending Victims of Violence conducted interviews

with several academicians and public policy experts to gauge their views on the withdrawal of the United States from the Iran deal and the enforcement of new sanctions against the Middle East nation. In these interviews, the experts shared their opinions about the human impact of the sanctions, the legality of the sanctions and the reasons why the United States withdrew from the JCPOA.

The most important excerpts from these interviews are selected, which can be found below.

Dr. Edward Wastnidge, Lecturer in Politics and International Studies at the Open University, UK

- The US withdrawal from the JCPOA was a short-sighted, political move made by a president utterly unequipped for the realities of managing U.S. foreign policy. It shows that the current U.S. administration does not care for internationally recognized agreements, or the views of its allies. The Islamic Republic of Iran has every right to possess a peaceful, civilian nuclear program, and yet it still allowed one of the most rigorous inspection regimes and restrictions on its nuclear program to demonstrate its commitment to international norms in this area.
- The humanitarian consequences of such actions are the saddest outcome of the decision to reimpose punitive sanctions on Iran. This can be seen in the difficulties that ordinary Iranians face in accessing certain medicines for example. Also, the wider sanctions targeting Iran's oil exports also have a potentially destabilising effect on the economy, adversely affecting citizens through increased inflation, and complications in securing international finance. The U.S. leadership claims that it wants to support ordinary Iranians, but their actions only undermine this supposed good intent, and they end up playing politics with people's lives in an effort to appease their own support base and regional allies.

Prof. Nancy Gallagher, research professor at the University of Maryland's School of Public Policy, USA

- The humanitarian consequences of the reimposition of U.S. sanctions against Iran are particularly unfortunate and are already being widely condemned. European countries may want their first special purpose vehicle to focus on facilitating humanitarian trade since the United States claims that its sanctions are not intended to interfere with it.
- The political leaders [of Europe] are extremely angry about the Trump administration's withdrawal not only from the JCPOA, but

also from the Paris climate agreement and other important accords. They see Trump's trade wars as damaging their own economies and putting the global economy at risk. They also hate the imposition of secondary sanctions. But they have limited ability to convince private companies to take economic risks and they do not want their relationship with the United States to fall apart completely.

Prof. David Cortright, Director of Policy Studies at the Kroc Institute for International Peace Studies at the University of Notre Dame, USA

- The UN Security Council supported the [nuclear] agreement and viewed it as a significant success of the use of diplomacy in combination with sanctions and with the offer to lift sanctions. That was a key part of the diplomatic agreement. So the UN is not supporting this [the U.S. withdrawal]. The European Union was also an active participant in the previous negotiation and supported the JCPOA; they have declared their opposition to the U.S action and they're trying as best as they can to maintain financial connections with Iran to try to avoid the secondary sanctions that U.S. is imposing on many financial institutions. The European Union is strongly opposed; some of the major trading countries in the world like China and India are opposed to the U.S actions. Russia is opposed. So the U.S is very isolated in this policy that it's undertaking.

- The sanctions are primarily focused on financial measures but when you make it difficult to finance trade, it means that the overall sanctions have an effect on everyone because you can't important necessary goods, exports become more difficult. And there are reports that some families are having difficulty being able to purchase pharmaceutical products and specialized drugs. So, there's definitely a price that the ordinary person pays when these kinds of broad commercial economic sanctions are imposed as we're seeing in Iran

Medea Benjamin, the co-founder of the Code Pink organization, USA

- President Trump's unilateral withdrawal from the nuclear deal makes a mockery of international cooperation and Trump's reimposition of sanctions punishes countries that want to abide by a deal that was approved not only by the negotiating parties but was passed unanimously by the UN Security Council. It is the height of imperial hubris. President Trump talked about wanting to withdraw from the deal during his campaign, so once he was president he wanted to fulfil that promise to his base and to his large campaign contributors. He has also been anxious to undo the major legacies of President Obama, from his healthcare bill to the Paris climate

accord to the Iran nuclear deal.

- We know the sanctions will hurt millions of ordinary Iranians because we already saw that when strict sanctions were imposed from 2010-2015, and we have seen how just the threat of these new sanctions has wreaked havoc on Iran's economy, with the value of the rial plummeting and prices skyrocketing. Major western companies have already pulled out of multi-billion dollar deals, which severely curtails Iran's economic options. And while the U.S. government insists that humanitarian aid is exempt, with the banks not wanting to handle financial transactions with Iran, critical medicines are already in short supply.

Prof. George A. Lopez, Vice-President of the Academy for International Conflict Management and Peacebuilding at United States Institute of Peace, USA

- I firmly believe that there were no substantial reasons related to the JCPOA -- and certainly no violations by Iran to the deal -- that provide either the logic or the evidence for the Trump administration withdrawing. I think it was a decision driven by the president being heavily influenced by Israel and the Saudis who made an argument about the continued existential threat that Iran might acquire nuclear weapons in the future and who latched on to the provision in the deal that some dimensions of it would expire 10 years hence.

- I think there's no question that imposing economic sanctions has become a highly preferred tool of the Trump administration. My own view is that the administration fails to comprehend what types of sanctions work best under what conditions and they particularly fail to understand or operationalize that sanctions must be smart and precisely targeted against those very particular entities or individuals responsible for the behavior the sanctions are meant to challenge or end. Finally, Trump does not understand that sanctions only work because they're one of many tools being applied to persuade and engage a target to work out our differences diplomatically. He seems to think the coercive element of sanctions is what leads to the capitulation of the target and the achievement of US goals. This is a dramatically oversimplified and naive view of sanctions that destine them to fail.

Paul Pillar, non-resident senior fellow at Georgetown University's Center for Security Studies, USA

- Economic sanctions have the attraction to US policymakers of

being a middle ground between doing nothing and using military force. Given the prominence of the United States in global economic affairs and especially in the worldwide financial system, the belief is that US sanctions will be more effective than sanctions imposed by other countries. In many instances, sanctions are used at least as much as a domestic political tool as anything else – a way of expressing disapproval of some foreign regime.

- The unilateralism of the Trump administration already has been politically condemned. The United States is isolated on this issue. The outcome of this struggle –the outcome that matters most – will be decided not at the ICJ but rather in the executive suites of European businesses. What remains to be seen is whether the secondary sanctions the United States tries to impose will deter enough non-US commerce with Iran that the JCPOA will not be saved.

Dr. Trita Parsi, president of the National Iranian American Council, USA

- The US's use of sanctions certainly seems to have reached a point in which certainly can have a destabilizing effect and in which other countries have been given incentives to put into place the building blocks of an alternative global financial system since Washington has decided to use the existing one as an instrument of American power.
- The Trump administration has made clear that they do not value nor respect human rights. Their neglect of human rights abuses in GCC states, particularly Saudi Arabia, certainly does not give confidence that their focus on human rights in Iran is motivated by genuine concern for the Iranian people. In fact the sanctions Trump is imposing on Iran violates the Iranian people's human rights.
- I believe that broad economic sanctions are a form of collective punishment and as a result a violation of the Iranian people's human rights. We have clearly seen how sanctions among other things have created medicine shortages in Iran. One cannot claim concern for the Iranian people while pursuing policies that deliberately target and impoverishes ordinary Iranians.

Art of US Sanctions on the Ground

Comments of a Local NGO

By: Maryam Erzi
Researcher on UCM

The core idea of Richard Nephew's book "The Art of Sanctions" is that sanctions are designed to target the well-being, happiness and satisfaction of all citizens in the target country rather than aiming to improve human rights. What is even worse is that on-the-ground they even jeopardize the life and health of all ordinary people especially the vulnerable groups including children, women, patients, people with disabilities and the poor. Here are some points mentioned in the book:

1. The book uses the word pain 233 times. Inflicting intolerable pain on people especially the most vulnerable is mentioned as the aim of sanctions. What the book refers to as "escalating pain and diminishing resolve" is translated as violation of almost all human rights of the people in the target country, including all fundamental rights and freedoms:

- *"But at the root of their efforts is the desire to inflict some measure of pain in order to change policy, as well as an inclination to match pain levels with the desired outcome". p.11*

2. Sanctions limit employment opportunities because unemployment leads to dissatisfaction of citizens with the government and revolt:

"Employed citizens tend to be happier citizens, more satisfied with their government and its performance, and less inclined to revolt (in whatever fashion is feasible depending the nature of the host government system and local culture or society). Unemployed citizens are, by extension, probably less happy citizens, less satisfied with their lot in life and the performance of their government". p.51

3. Inflation hurts people by increasing the cost of living:

“Sanctions that aim to increase inflation de facto aim to increase costs to average citizens”. p.143

4. Sanctions are designed to be destructive as war but in a less visible way, negatively affecting the most vulnerable groups of the target society :

“But on a strategic level, the imposition of pain via sanctions is intended to register the same impulses in an adversary as those imposed via military force: to face a choice between capitulation and resistance, between the comparatively easy path of compromise and the sterner path of confrontation. And just because the damage wrought by sanctions may be less visible (at least, with some sanctions regimes), it need not be less destructive, particularly for economically vulnerable populations that may be affected”. p.11

5. In order to leave more destructive influences on the target country, sanctions are designed to focus on the vulnerabilities of that country. The less developed the country is, the better target it will be for the sanctions; and once again it contradicts the international norms promoted by the United Nations to improve the economic livelihood in the developing countries (clear violation of the right to development):

“Is the country an advanced economy, integrated into the rest of the international system? These distinctions matter greatly, as they speak to the degree to which an economy is itself vulnerable to international forces. Economic inequality is another related factor that ought to be contained in the assessment”. p.55

6. The sanctions are claimed to be aiming at the political leaders to change their policies and protect human rights. Notwithstanding, the author confesses that authoritative political systems are more resistant to sanctions than democracies and it can be concluded that sanctions push the countries toward more authoritarian systems shrinking the space for human rights activism (clear violation of the right to freedom of expression and violating the democratic values):

*“For Kim (North Korea), it is arguable that almost no level of economic pressure would be sufficient to topple him, at least given current views of the consolidated nature of his regime”.
“In contrast, fully functional democracies are highly vulnerable to domestic political pressure created by sanctions”. p.96*

7. The aim of sanctions, as defined in the book, is to increase pain of the people as well as preventing any solution to relieve the pain, so that the target country is forced to start negotiations. In other words, in the sanction

systems intolerable pain and suffering of the people is the avenue for bridging negotiations:

“This book aims to help development of sanctions strategies that identify the intersection of escalating pain and diminishing resolve, at which a diplomatic negotiation can be most effective”.
p.3

8. It seems as if, those who design sanctions, have no concerns for the number of lives that would be lost due to lack of access to vital items including food and medicine, among all the hardship they will have to tolerate, before the target country reaches the point when it submits to the sanctions pressure – if it will ever reach the point.

9. Various aspects of pain including the necessity of finding vulnerable sectors of the target society and making sure that pain will be felt are discussed in the book:

“The sanctioning state must understand as much as possible the nature of the target, including its vulnerabilities, interests and commitment to whatever it did to prompt sanctions, and readiness to absorb pain”. p.4

“...develop a strategy to carefully, methodically, and efficiently increase pain on those areas that are vulnerabilities while avoiding those that are not”. p.4

“Sanctions are intended to create hardship—or to be blunt, “pain”—that is sufficiently onerous that the sanctions target changes its Behavior”. p.9

10. The book suggests that in order for the sanctions to be successful, they need to continuously make sure that the target country will not find any solution to the problems created by sanctions:

“Continuously recalibrate its initial assumptions of target state resolve, the efficacy of the pain applied in shattering that resolve (they perfectly know that people are dying because of lack of access to medicine.)p.4

“In fact, the type of pain and its severity may be modulated, but the intention of sanctions is always to make the new status quo uncomfortable and unpleasant for the target”. p.4

11. The book reiterates that the severity of the pain should not be reduced:
“Moreover, the irony of all this is that sanctions are ultimately intended to cause pain and change policy: denying some of that pain may make for better public relations for a sanctions program, but it also undermines the contention that sanctions work and

may even interfere with their effectiveness on a practical level if a sanctioner adjusts the regime to address a humanitarian problem and, in doing so, reduces the very pain the sanctions are intended to create". p.12

12. The first part of the following extract of the book can be considered as the on-the-ground reality of sanctions, since they impose excruciating pain to the targeted people:

"The application of pain against a sanctions target is sheer sadism unless it is connected to an expectation about what that pain will achieve and is matched with a readiness to stop inflicting pain when the sanctioning state's objectives are met". p.48
"It should be made sure that the pain is felt sever enough". p.53

13. Maybe the most ironic claim of the book is presented where it defines the aim of the sanctions as pushing the country to take "meaningful steps to address concerns regarding the human rights of the Iranian population, including religious minorities and other at-risk populations."p.147

The contradictory nature of the aforementioned argument is that the sanctioning country claim to be concerned about "human rights of the Iranian people". It seems as if that the USA reduces Iranian's Human Rights to the minorities' right to freedom of religion (which should be protected) and ignores the systematic widespread violations of people's human rights as a direct result of sanctions.

Conclusions

The direct quotations cited from the book shed light on the real aim of sanctions of forcing the target state comply with the political will of the sanctioning state. The excuse of improvement of human rights situation in the target country seems to be a propaganda to help justifying the unilateral act. The logic behind sanctions explained in the book clarifies that the measures are used as a means of economic bullying against the target country, to put the people under severe pressure and to keep increasing the level of hardship in the society in order to make them revolt against the government and destabilize the political situation to an extent that the officials make a decision to come to the negotiation table and accept the conditions set by the sanctioning country.

From a human rights law perspective, however, both the sanctions and the unilateralism exercised in imposing the measures are considered to be unlawful. They violate almost all human rights of the target population including the right to life and the right to health. According to the author of the book (p.11) and the UN special Rapporteur on the Unilateral Coercive Measures "UCMs can be considered as act of war" in which there are no protections for civilians who are deemed to the "silent death".

Changing Israel Capital: A Serious Breach of International Law

By: Mohsen Hekmati
Researcher on International Law (PhD)

Summary

President Trump officially declared Jerusalem to be the capital of Israel. According to international law, including United Nations resolutions, Jerusalem is an international area and does not belong to either Palestine or Israel. An unlawful unilateral act by a state to change the established rules of international law is completely unacceptable. The situation of Jerusalem has been one of the most important and controversial conflicts in international law. The action of one state, in this case United States of America, could not affect the resolutions and organized actions of international bodies. This action also makes serious obstacles in peaceful settlement of the dispute between two parties. Breach of the fundamental human rights of Palestinian people such as the right to self-determination is just one of many consequences of changing Israel's capital by the United States. In this text, after reviewing the validity of United States act in the context of international law, the effects of this action will be surveyed by established rules of international law, specially the opinions of International jurists and International Court of Justice. At the end, we will come to this conclusion that this action is a big step backward to years that force and chaos was ruling international community. Respecting international human rights is not just an ideal slogan, but it is a globally accepted rule which has to be enforced by all states, especially those apparently claiming to be the decision-makers of the international society.

Introduction

Relocating the US embassy would derail hopes for peace by recognizing Israel's

hostile military occupation, which divides and impoverishes residents. The city has been Israel's center of government since 1948. Britain and the United States have been the principal external powers that have affected Palestine. While both were cognizant of justice considerations, those considerations were not always primary in their policy decisions. Britain and the United States did not always view Palestine through the lens of what is just and appropriate for Palestine and its inhabitants. (Quigley, 2004, 1).

The international law of occupation is a subset of International Humanitarian Law (IHL) designed to balance the needs of the occupying power against the needs of the occupied population pending determination of the fate of the occupied territory. The central tenet of this body of law is found in Article 43 of the 1907 Hague Regulations, which provides: The authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore, and ensure, as far as possible, public order and [civil life], while respecting, unless absolutely prevented, the laws in force in the country.

World War II only made matters worse. Jews liberated from Nazi camps wanted to leave. Surveys of displaced Jews showed they wanted to go West, but Western countries did not want them, and the Zionist organization urged Western countries not to take them. It viewed the long-term solution for Jews as a state in Palestine, even if it meant forcing Jews to go there who had no interest. (Quigley, 2004, 3).

In the wake of World War II, the Fourth Geneva Convention of 1949 was designed to provide additional protections to occupied populations. The four Geneva Conventions of 1949 have been said to "constitute the heart of international humanitarian law," and both the Hague Regulations and the Geneva Conventions are generally regarded as customary international law. (Harris, 2008, 89)

The city's status has been an open question for decades. The intent of the U.N., when it voted in 1947 to partition what was then British-administered Palestine into Jewish and Arab states, was to put Jerusalem under an international regime. But after the Arab-Israeli war of 1948, newly born Israel controlled the western portion of the city and Jordan the east. In the 1967 war Israel captured the eastern sector and annexed it. No country, however, recognizes Israel's hold there. The Arab states insist on Arab sovereignty over at least East Jerusalem, which the Palestinians want to make the capital of their hoped-for future state.

Human Rights of Palestinian

Israel's continuing control of the bulk of Palestine's territory left one glaring problem that the international community could not avoid. The Arabs expelled in 1948 numbered half a million to one million, depending on which estimate one accepts. Israel's government let Jews migrating to Israel move into their houses and take over their lands. By its Resolution 194 in December 1948, the UN General Assembly called on Israel to repatriate the Arabs. By the same resolution, the General Assembly set up a Conciliation Commission for Palestine to work towards an overall settlement of the Palestine problem, and in particular to urge



To the Palestinians, a demand for a state in that portion of Palestine that Israel did not take in 1948 was modest. This demand represented a serious concession from the original Palestinian position that there be a single state in Palestine

Israel to repatriate the displaced Arabs. (Quigley, 2004, 5).

The ICJ declared in an advisory opinion, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, that the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Covenant on Civil and Political Rights (ICCPR), and the Convention on the Rights of the Child apply to occupation except to the extent that particular provisions of such conventions are subject to derogation in times of national emergency. (Harris, 2008, 115)

One of the issues the 1993 agreement put on the negotiation table was that of the Palestine Arabs displaced in 1948.

Israel shortly dealt a blow on that issue,

as it was doing on settlements. A right-of-center government that assumed power in Israel in 1996 gave a new rationale for refusing repatriation to the displaced Arabs, namely, “demographic security.”⁵³ Israel, according to Prime Minister Benjamin Netanyahu, did not want a diminution of Israel’s Jewish majority. The new government would oppose “the right of return of Arab populations to any part of the Land of Israel west of the Jordan River,”⁵⁴ a position that precluded repatriation not only to Israel, but even to the Gaza Strip or West Bank. (Quigley, 2004, 12).

To the Palestinians, a demand for a state in that portion of Palestine that Israel did not take in 1948 was modest. This demand represented a serious concession from the original Palestinian position that there be a single state in Palestine. The demand involved recognizing a Jewish state in the bulk of Palestine’s territory, a recognition that was all the more difficult because Israel established itself by driving out the majority of the Arabs who lived there.

Israel demanded that Jerusalem be under its sovereignty, even though the international community had never recognized Jerusalem as belonging to Israel. The eastern half, taken by Israel in 1967, was viewed as under Israel’s belligerent occupation. The western half, taken by Israel in 1948, was viewed as falling appropriately under an international status. Foreign governments, even those most friendly to Israel politically, have refused to situate their embassies in Jerusalem, because they do not recognize Israel’s sovereignty over west Jerusalem. (Quigley, 2004, 13).

The ICJ declared, *inter alia*, that the “Green Line” was apparently of provisional character, but nonetheless that the territories, including East Jerusalem, are considered occupied territories in which Israel has the status of occupying power

under international humanitarian law. The ICJ also stated that the establishment of Israeli settlements in the territories is illegal according to international law. (Noam, 2006, 12)

Until the early years of the 20th century, conquest was a recognized basis for title to territory: a State could lawfully acquire territory through the use of force. During the course of the 20th century, this traditional rule of international law was decisively reversed by two key substantive developments, namely the incremental prohibition of the use of force in international relations, which culminated in the adoption of Article 2.4 of the United Nations Charter, and the emergence of the principle of self-determination as “one of the essential principles of contemporary international law. As both embody aspects of international public order, they may be viewed as *ius cogens* norms, that is norms from which no derogation is allowed, which are also obligations owed to the international community as a whole. (Scobbie & Hibbin, 2010, 85)

A right of self-determination is included in the corpus of customary international law. As recognized during the inter-war period, the people of Palestine are entitled to exercise self-determination there. The “people” so entitled includes those who were displaced from Palestine in 1948. Those people as well are entitled to be repatriated by Israel. The accession of Hamas to control of the Palestinian Authority in the West Bank and Gaza Strip has put new focus on the self-determination issue. It is, of course, within the rights of the Palestinian people as a collectivity to forego a claim to part of the territory to which they are entitled. By negotiation with Israel, this might be done. Repatriation, as a right adhering to the individual, is not subject to being ceded by the collectivity. (Quigley, 2007, 16)

Jerusalem Embassy Act (1995)

Bill Clinton didn’t want it, the Israeli prime minister was against it, and yet the U.S. Congress voted overwhelmingly 23 years ago to move the U.S. Embassy from Tel Aviv to Jerusalem. Successive presidents blocked the law’s implementation until this year, when Donald Trump decided to recognize Jerusalem as Israel’s capital. Every six months for more than two decades, U.S. presidents have had to decide all over again whether to move the U.S. embassy in Israel from Tel Aviv to Jerusalem. Since the Clinton administration, they decided each time to keep the embassy where it is, seeking not to throw a wrench into delicate Middle East peace talks.

The law required the U.S. to move the embassy from Tel Aviv to Jerusalem by a set deadline, but conceded that the move could be put off for six months at a time as long as the President “determines and reports to Congress in advance that such suspension is necessary to protect the national security interests of the United States.”

The Act asserted that every country has a right to designate the capital of its choice, and that Israel has designated Jerusalem. The act notes that “the city of Jerusalem is the seat of Israel’s President, Parliament, and Supreme Court, and the site of numerous government ministries and social and cultural institutions.” Jerusalem

is defined as the spiritual center of Judaism. Furthermore, it stipulates that since the reunification of Jerusalem in 1967, religious freedom has been guaranteed to all.

The United States described the evolution of its position on Jerusalem from this point forward in its 2014 merits brief in the matter of *Zivotofsky v. Kerry*, stating: When Israel declared independence in 1948, President Truman immediately recognized the new state. But the United States did not recognize Israeli sovereignty over any part of Jerusalem. Nor did it recognize Jordanian sovereignty over the part of the city it controlled. That same year, the United Nations General Assembly, with United States support, passed a resolution stating that Jerusalem “should be accorded special and separate treatment from the rest of Palestine.” In 1949, when Israel announced an inaugural meeting of its Parliament in Jerusalem, the Truman Administration declined to send a representative because “the United States cannot support any arrangement which would purport to authorize the establishment of Israeli . . . sovereignty over parts of the Jerusalem area.”

In 1967, Israel established control over the entire city of Jerusalem. In subsequent United Nations proceedings, the United States stated that the “continuing policy of the United States Government” was that “the status of Jerusalem . . . should be decided not unilaterally but in consultation with all concerned.” The United States emphasized that it did not recognize any Israeli measures as “altering the status of Jerusalem” or “prejudging the final and permanent status of Jerusalem.”

In 1993, with the assistance of the United States, representatives of Israel and of the Palestinian people agreed that the status of Jerusalem is a core issue to be addressed bilaterally in permanent status negotiations. Subsequently, both President George W. Bush and President Obama sought to assist the parties in establishing negotiations on all outstanding issues, including Jerusalem’s status.

Just as East Jerusalem is Palestinian territory under international law, so have Israel’s West Bank settlements been constructed in violation of the Fourth Geneva Convention, to which Israel is a party. (Israel is also a signatory to the UN Charter and remains in perpetual violation of numerous Security Council resolutions, as well.)

Within this “highly sensitive” and “potentially volatile” context, “U.S. Presidents have consistently endeavored to maintain a strict policy of not prejudging the Jerusalem status issue and thus not engaging in official actions that would recognize, or might be perceived as constituting recognition,” of Jerusalem as “a city located within the sovereign territory of Israel.” This policy is rooted in the Executive’s longstanding assessment that any such action would “discredit[] our facilitative role in promoting a negotiated settlement,” which would be “damaging to the cause of peace and . . . therefore not . . . in the interest of the United States.” That assessment affects a range of United States actions. In particular, the United States maintains its embassy in Tel Aviv. (<https://www.lawfareblog.com/waiving-jerusalem-embassy-act-or-not>)

A poll, taken in November 2017, by the Brookings Institute found that, of a national sample of 2,000 adults, 63% of Americans polled opposed the move

of the embassy from Tel Aviv to Jerusalem, while 31% supported it. Among Democrats, 81% opposed the move and 15% were in support, while among Republicans, 44% opposed the move and 49% supported it.

In the 2017 AJC Survey of American Jewish Opinion, done in September 2017, it was found that 16% of American Jews polled supported an immediate move of the embassy to Jerusalem, 36% wanted to move the embassy at a later date in conjunction with Israeli-Palestinian peace talks, 44% opposed moving the embassy, and 4% said they weren't sure.

The Jerusalem Embassy Act of 1995 is the most forceful expression of Congress's desire that the U.S. embassy be moved to Jerusalem. The act declares that "Jerusalem should be recognized as the capital of the State of Israel" and that "the United States Embassy in Israel should be established in Jerusalem no later than May 31, 1999." To ensure this

happens, it imposes sanctions on the executive branch if it fails to take such steps along an enumerated timeline. Specifically, section 3(b) of the act states:

Not more than 50 percent of the funds appropriated to the Department of State for fiscal year 1999 for "Acquisition and Maintenance of Buildings Abroad" may be obligated until the Secretary of State determines and reports to Congress that the United States Embassy in Jerusalem has officially opened.

The UN Charter recognizes the universal right to self-determination, and the UN cannot legally act in a manner that prejudices this right. Nevertheless, the partition plan was premised on the explicit rejection of Palestinian self-determination.

The UN Special Committee on Palestine (UNSCOP), the body that produced the partition plan, pointed out that for the majority Arab population of Palestine to exercise their right to self-determination would be contrary to the goal—supported by Western powers like Great Britain and the United States—of establishing a "Jewish National Home" in Palestine.

In all, there are seventeen UN Security Council resolutions condemning Israel for violating international law by attempting to annex East Jerusalem. The key point that the US mainstream media systematically misinform the public about is that the UN did not pass all of these resolutions because Jerusalem's status is "disputed" and needs to be determined through negotiations. On the contrary, every single one of these resolutions was passed because Jerusalem's status is not in dispute.

Under international law, as reflected in numerous UN Security Council



The UN Charter recognizes the universal right to self-determination, and the UN cannot legally act in a manner that prejudices this right. Nevertheless, the partition plan was premised on the explicit rejection of Palestinian self-determination



In 1967, the Security Council failed to force Israel to withdraw from the Palestinian territory it took by force of arms. And since 1993, the Security Council has been even less active, because of the position of the United States that any Security Council action would erode the bilateral peace process

resolutions and affirmed in July 2004 by the International Court of Justice (ICJ), all of the Gaza Strip and the West Bank, including East Jerusalem, remains “Occupied Palestinian Territory”. (<https://www.foreignpolicyjournal.com/2017/06/23/why-the-us-moving-its-israel-embassy-to-jerusalem-would-be-illegal/>)

Conclusion

The UN Security Council has never exercised its powers under Chapter VII of the UN Charter to deal with threats to the peace, even though the Palestine-Israel conflict has been arguably the most intractable the United Nations has faced. The Security Council did not try to stop the Jewish Agency from taking territory in Palestine in 1948, or from expelling the Arab population. Ethnic cleansing became a serious matter to the Security Council in

the Balkans in the 1990s. But in Palestine in 1948, the Council limited itself to verbal calls for cease fires.

In 1967, the Security Council failed to force Israel to withdraw from the Palestinian territory it took by force of arms. And since 1993, the Security Council has been even less active, because of the position of the United States that any Security Council action would erode the bilateral peace process.

The International Court of Justice, also, using the then-current terminology of obligations erga omnes, declared self-determination as an obligation owed to the international community as a whole in the East Timor case (1995), and reaffirmed it in the Legal consequences of the construction of a wall advisory Opinion(2004). All states are under a duty not to recognize territorial changes brought about by virtue of the use of force, which is essentially a negative duty of abstention, but they also have a positive duty to promote the realization of the right of self-determination in non-self-governing territories. While resolution 242 is, formally, merely a recommendation adopted under Chapter VI of the UN Charter, the prohibition on the acquisition of territory through the use of force is a binding rule of international law. Some claim, although this is contested, that the Security Council can disregard or vary the legal obligations of the parties when it is dealing with a dispute if this is embodied in a decision, in other words when the Security Council invokes and acts under Chapter VII of the UN Charter. By virtue of Article 25 of the UN Charter, Security Council decisions are binding on member States and prevail over their other legal obligations by virtue of Article 103. As resolution

242 was adopted under Chapter VI of the UN Charter, it is merely a non-binding recommendation. Its terms cannot over-ride binding law. Moreover, it is doubtful whether the Security Council is legally competent to adopt a resolution which disregards the prohibition on the acquisition of territory through the use of force. As the International Court affirmed in the Legal consequences of the construction of a wall advisory opinion, this prohibition is a corollary of the prohibition of the threat or use of force in international relations, therefore it presumably shares the *ius cogens* status of the latter.

Whether justice can be restored is the task now before the international community. It is beyond the scope of this article to formulate proposals. Justice has been overridden for so long that restoring it presents serious problems. Yet in its approach, the international community must understand where the true claims to justice lie, and must make policy to recognize those claims.

References

Harris, T. Grant (2008), Human Rights, Israel and the political realities of occupation, International Law Forum of the Hebrew University of Jerusalem Law Faculty, Research Paper No. 15-08, October.

Noam, Gilad (2006), Territorial Aspects of the Israeli-Palestinian Conflict: A Legal Perspective on Some Historical and Contemporary Issues, The Hebrew University of Jerusalem, Faculty of Law, Research Paper No. 6-06.

Quigley, John B. (2004), Justice in the Palestine-Israel Conflict, Center for Law, Policy and Social Science, Working Paper Series, No. 14, August.

Quigley, John B. (2007), Self-Determination in the Palestine Context, Center for Interdisciplinary Law and Policy Studies, Working Paper Series, No. 101, September.

Scobbie, Iain and Hibbin, Sarah (2010), The Israel-Palestine Conflict in International Law: Territorial Issues, University of London, SOAS School of Law Studies Research Paper Series, No. 2/2010

<https://www.foreignpolicyjournal.com/2017/06/23/why-the-us-moving-its-israel-embassy-to-jerusalem-would-be-illegal/>

<https://www.lawfareblog.com/waiving-jerusalem-embassy-act-or-not>

Protection of Children against Pornography in the Information and Communications World with a Look at International Documents and States' Procedures

By: Sara Balkh
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Abstract

The advancement of technology and expansion of communications and information tools, have created a suitable base for pornography in cyberspace. Due to lack of a proper defence ability, recognition of existing opportunities and threats in the web environment, profiteers have turned towards child pornography. This has been followed by various efforts of different players on the basis of human rights towards the protection of children in this article we attempt to highlight some of the actions that have been taken in this regard at international, regional and national levels, and find out how much more it is possible to reach a common protection framework in view of different reactions. Keywords: child pornography, national action, international action, nongovernmental organizations, systematic laws.

Introduction

Child pornography means any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes.¹

In today's world, technology causes the facilitation of the opportunity to produce content even at individual levels and subsequently easy access of the audience, has created new and more complex forms of pornography in the recent years. This has boosted the dangers of the occurrence of forms of sexual abuse and exploitation of children and it has further drawn the attention of different human rights activists and organizations.

The existence of changes alongside the highlighted threats, has doubled the

attention to the issue and methods to combat it. First in this article we review the three main child protection against pornography documents. These documents present an overall picture of the international and regional protective order on the subject of discussion. This will be followed by the procedure of countries that include the United States of America, Japan and Malaysia in the protection of children against pornography in order to determine the measures of countries and the differences among them for the reader of this article. Following the determination of the protective measures gap of countries with each other, in the third part of this article, the two subjects of the adoption of systematic laws and the role of NGOs will be discussed. These are matters that can to an extent reduce the existing gaps among various legal systems.



Child pornography means any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes

1 – International and Regional Documents

Three main and effective documents exist on the protection of children against pornography. Through presenting definitions and specific frameworks, these documents mandate states to implement laws and programmes to help children and their families.

1.1 Optional Protocol on the Rights of the Child on the Sale of Children, Child Pornography and Child Prostitution

While the Convention on the Rights of the Child covers a vast area of human rights, the Optional Protocol of this Convention, only concentrates on the sexual exploitation of children that include pornography.

The document contains an introduction (11 paragraphs) and 17 articles. In the introduction, in order further to achieve the purposes of the Convention on the Rights of the Child and the implementation of its provisions, States Parties should undertake in order to guarantee the protection of the child from the sale of children, child prostitution and child pornography, and the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.² Article 2C states that Child pornography means any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes. Article 3(1)(c) states that taking pictures of the bodies of children for profiteering must be covered in the criminal laws of states. The Convention calls for member states



The Convention on the Protection of Children against Sexual Exploitation and Abuse is another important document which through the criminalisation of the subject (Article 20(2)) and the punishment of the perpetrators via international cooperation (Article 38(1)) in protection of children

to recognise these individuals as criminals in accordance with their domestic laws. (Article 3(4)).

1.2 The Convention on Cybercrime of the Council of Europe (Budapest Convention)

The Convention on Cybercrime of the Council of Europe has been compiled in accordance with the Convention on the Rights of the Child and its Optional Protocol. This document, concentrates some important aspects in the fight against cybercrimes. Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, the following conduct: producing child pornography for the purpose of its distribution through a computer system; offering or making available

child pornography through a computer system; distributing or transmitting child pornography through a computer system; procuring child pornography through a computer system for oneself or for another person; possessing child pornography in a computer system or on a computer-data storage medium.³ Each Party shall adopt such legislative and other measures as may be necessary to ensure that the criminal offences established in accordance with Articles 2 through 11 are punishable by effective, proportionate and dissuasive sanctions, which include deprivation of liberty.⁴ And on the other hand through defining keywords such as the definition of term “minor” (Article 9(3)) and pornography (9(2)) efforts have been made in the creation of commonalities in the protective system in mind of the Convention.

1.3 Convention on the Protection of Children against Sexual Exploitation and Abuse (Child Protection Convention) and EU Directive on Combating the Sexual Abuse and Sexual Exploitation of Children and Child Pornography

The Convention on the Protection of Children against Sexual Exploitation and Abuse is another important document which through the criminalisation of the subject (Article 20(2)) and the punishment of the perpetrators via international cooperation (Article 38(1)) in protection of children. This Convention stresses on the joint responsibility of states (Article 26(1)) and asks states to deem the following as crimes, producing child pornography, offering or making available child pornography, distributing or transmitting child pornography producing child pornography for oneself or for another person, possessing

child pornography, and knowingly obtaining access, through information and communication technologies, to child pornography.

On 13 December 2011 this Convention was updated by the European Parliament and the European Council through the Directive (2011/93/EU) of the European Parliament and of the Council of 13 December 2011 on combatting the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA.

Alongside the Convention, the EU Directive on Combating the Sexual Abuse and Sexual Exploitation of Children and Child stresses on the role of the internet in today's world and its acceptance as an undeniable reality, calls states to take necessary measure to prevent exploitations of this technology towards children. (Articles 6 and 25)



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2. National Measure of Countries

National laws and actions are adopted in view of the economic, social and cultural capacities of a country.⁵ As a result, if they properly understand the needs of society, they will reach their goals through the collective participation of the government, people and national institutions.

2.1 The United States of America

In general, the Federal Government's protection of children against exploitation basis is the establishment of a balance between the responsibilities and liberties of parents, and the duties of the Government towards children and on the basis of Federal Law framework. When parents are unable to protect their children or not interested in doing so, the government acquires the right to protect them. On this basis, through policies and legal measures, investigations and prosecutions, provision of services to victims alongside publicity and information dissemination activities, the Federal Government protects child victims or children who are threatened by pornography.

In the United States, pornography is one of those crimes where the perpetrators receive heavy punishments. If an individual comes across a website with criminal content, in the initial step he or she can report the crime to local law enforcement authorities, and then to national institutions. The report can be given via a telephone call and or online.⁶

Alongside these measures Innocent Images Initiative is another measure taken

to combat child pornography and sexual exploitation on the internet. This action which was part of the FBI Cyber Division reviews and analyses various case files data and information, in order to stabilise the presence and deterrence role of the police on the internet.

In 2004, the FBI set up the Endangered Child Alert Program (ECAP) in order to provide an extensive protection of individuals who might fall victim to abuse. In this Program the FBI gets the help of national and international mass media to show the faces of known child pornography criminals to the general public and prevent their further criminal activities. This also helps the apprehension and pollicisation of these individuals.⁷

2-2 Japan

Many children in Japan are threatened by sexual exploitation.⁸ In this country sexual exploitation means “violation of the fundamental rights of children which includes sexual exploitation of children by adults where the child is treated like a sex object.” (World Congress against Commercial Sexual Exploitation of Children Declaration and Agenda for Action: 1st World Congress against Commercial Sexual Exploitation of Children (1996), Para. 5)

In 1999 the Act on Punishment of Activities Relating to Child Prostitution and Child Pornography, and the Protection of Children was adopted in the country. In 2004 this Act was reviewed for the first time and points such as punishments for the perpetrators became heavier. In 2014 the second draft legislation on the amendment of the said Act was adopted under the heading of the Act on Regulation and Punishment of Acts Relating to Child Prostitution and Child Pornography, and Protection of Children, and this time punishment was set for any form of control over children regardless of intent. In this Act, complementary regulations for the protection of children against new technologies in the communications world in areas such as animation, games, specific Japanese comics, and other similar instances where children are sexual tools for the fantasies of the creator, were all set.

2-3- Malaysia

In Malaysia the protection of children’s rights is on the basis of domestic laws and joining the Convention on the Rights of the Child and its Optional Protocol on the Sale, Prostitution and Pornography of Children. Nonetheless, there are laws which cover all the forms of the subject under the sexual offences, obscene, indecent and offensive material heading.

Printing Presses and Publication Act 1998 (PPPA), the Film Censorship Act 2002 (FCA), and the Penal Code prohibits obscene and offensive materials in relation to printing and film, whereas indecent, obscene and offensive contents are governed by the Communication and Multimedia Act 1998 (CMA). However, it is unfortunate that Computer Crimes Act 1997 (CCA) does not address this particular issue since child pornography is considered as a computer crime against children online.⁹

Beside these rules, Sexual Offences against Children Act 2017 law is aimed at protecting children aged 18 and below from sexual crimes which is in line with

the Child Act 2001.

Under the law, offenders of sexual crime against children aged 18 and below could face an imprisonment for up to 20 years and is liable to whipping, and those found making, possessing and distributing child pornography could be jailed up to 30 years and six strokes of the cane, as well as fine of up to RM5,000, if found withholding information on sexual crimes against children.¹⁰

3 – Notable Areas for Reaching the Minimum Protective Frameworks

Child pornography is an issue which can be related to the competence of states. Therefore it is necessary to create the basis for the application of the protection of children.

3 -1 Necessity to Adopt Systematic Laws

Child pornography is one of those crimes which has various forms. This variation also exists among the perpetrators. This results in different elements in various countries with various legislations to be linked with each other.

Differences in legislative systems affect how children are protected. These differences result in children's conditions in various countries not to have a good balance. Under these conditions if different actors get attached to overreaching legal system of which they have no awareness of, will seriously be hurt.

Differences between national laws, are not good in this environment and strongly require coordination and synchronisation of sensitive laws so that law application guarantees become practical. The synchronisation of laws is a complex subject which faces various challenges and for its acceptance it depends on various factors such as the level of regulations, nature of the subject, the ability and power of member states. Furthermore, in some instances states do not have much inclination to adopt foreign legal principles and this is tied to their priorities. Legal values implementation of matters and the importance of the principles being traditional and other factors affect this acceptance. Thus, most international organizations must try to find a middle ground between international laws and the variations in the domestic laws of states.

The legislation of international law in this direction takes place through the implementation of minimum standards and or protective laws, particularly with a stress on human rights. And the assumption is that these laws are the prerequisite for the implementation of protection. To this aim, the foreseeing of regulations and the practical use of the law has a determining role and international



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organizations can take control of the management of the conditions.

3-2 Attention to the Role of NGOs alongside Traditional Actors

The differences in countries in the technological, cultural and judicial system areas requires the participation of public and governmental institutions with NGOs active in the field of human rights and children's rights so that the fight against pornography system in the international law system be proposed in the form of a general and global objective. In this environment, NGOs introduce their objectives, activities and functions in the communications world, and through this path they do culture building, introduce, draw membership, partnership and raise funds. This process results in the creation of vast social networks in countries with different cultural levels and facilities, and defines new relations. In this environment

each individual – regardless of whether the crime has been defined in his or her country's domestic laws – can become a rapporteur of human rights violation cases in his or her own community and through a simple uploading of images, get the information across the world.

Lack of proper education, public and legal information dissemination, alongside the existence of taboos and cultural problems and fear of shame and disgrace particularly in Third World countries, are some of the biggest problems in the fight against child pornography. These problems are not limited to specific groups. Children and adults must be sensitised and be aware of the subject in various ways alongside each other. Although the resolving of such issues does not necessary mean the solution to these abuses, but active NGOs can through campaigns on these issues can set notable policy settings towards the restriction of these measures. Meanwhile, NGOs can put technology against technology and in the first play utilise communication tools to establish links and then through the creation of a new and suitable public space for the fight against child pornography cause changes and or expand existing norms.

In this cycle three overall groups of public opinion, governmental and international bodies supervise the policy setting process (Fox, Ward, O'Rourke 2006, 316). In this environment NGOs must pay attention to a new concept of technology management in various sectors, which not only is a solution to the management of various subjects, but also manage the most of the government's links with citizens and other actors. This way domestic and international actors

can through drawing the trust of public opinion to strengthen the norms that they pursue to reach the objective (Alguliyev, Yusifov, 2017, 8).

Conclusion

The international formulation process is in a way that it is mixed with the implementation of the minimum of laws and in this structure, both groups of national and international regulations play a key role. The international community needs to disseminate information on the subject of pornography and its repercussions in a vast and continued general way. Also from the legal aspects states must adopt tough laws and must try with the help of NGOs active in the field of human rights, raise public awareness and ask the general public to cooperate with them. Furthermore, in view of the fact that in this day and age we live in an interlinked world, international cooperations must expand in this regard. Governments must use any methods available such as setting heavy cash fines and even imprisonment sentences for perpetrators and child abusers. Governments must adopt laws that carry implementation guarantees and in practice block all paths and also consider ways for further investigations. Alongside such measures, there must be educational and cultural programmes for all of society groups. With regards to the promotion of these programmes, relevant NGOs can through identifying vulnerable countries, provide assistance to other actors active in the field. This level of diverse action by actors in various levels of the international community will result in the turning of the subject into a public discourse. When this happens, we can be hopeful that serious steps have been taken in the first place towards in the reduction of the crime and thereafter its elimination.

Sources:

Child Pornography: Model Legislation & Global Review,(2016), National Center for Missing & Exploited Children, 8th Edition.

Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS 201), (2007).

Council of Europe Convention on Cybercrime (CETS 185), (2001).

National Police Agency, (2016), the Situation of Juvenile Delinquency, Child Abuse and Sexual Exploitation of Children.

Nick Fox; Katie, Ward; Alan, O'Rourke, (2006). A Sociology of Technology Governance for the Information Age: The Case of Pharmaceuticals, Consumer Advertising and the Internet, BSA Publications Ltd, Vol.40, No.2.

Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, Adopted and Opened for Signature, Ratification and Accession by General Assembly Resolution A/RES/54/263 of 25 May 2000.

Penal Code Prohibits Obscene and Offensive Materials in Relation to Printing and Film, Indecent, Obscene and Offensive Contents are Governed by the

Communication and Multimedia Act 1998 (CMA).
Printing Presses and Publication Act 1998 (PPPA).
Sexual Offences against Children Act 2017.
Rasim, Alguliyev; Farhad, Yusifov, (2017), Electronic Democracy Mechanisms: Initiatives and Development Directions, Developments in Administration, Vol.2, No.1.
The Film Censorship Act 2002 (FCA)
<http://www.essaysauce.com/law-essays/essay-law-child-pornography-uk-malaysia>
<http://www.missingkids.com/CyberTipline> <https://archives.fbi.gov/archives/news/stories/2006/february/innocent-images-statistics-1>
<https://www.malaymail.com/s/1416041/minister-says-sexual-offences-against-children-act-2017-to-be-enforced-on-j>

References

- 1- Article 2, Paragraph C of Optional Protocol on the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (2000)
- 2-Paragraph 2 and 3 of introduction of Optional Protocol on the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (2000)
- 3-Article 9(1) of Convention on Cybercrime of the Council of Europe
- 4-Article 13(1) of Convention on Cybercrime of the Council of Europe
- 5- According to the 2016 report of the National Center for Missing and Exploited Children, 82 out of 196 countries have undertaken legislative and protective measures for the fight against child pornography. Thirty-five countries still do not have specialised legislation on this crime and out of the remaining countries that have mentioned pornography in their laws, 60 do not have a definition of child pornography in their national laws, 26 countries have still not recognised cybercrimes, and another 50 do not include child pornography in their criminal laws.
- 6- For example in 1997 the National Centre for Missing and Exploited Children launched a toll-free number and a website to make it easier for the public to report crimes <http://www.missingkids.com/CyberTipline>
- 7- <https://archives.fbi.gov/archives/news/stories/2006/February/innocent-images-statistics>
- 8- The number of child pornography victims was the highest in 2016, of which about 15% was below elementary school age. The number of sexual abuse victims also increased to 251 people in 2016, nearly 50% more than the previous year. (National Police Agency, the situation of juvenile delinquency, child abuse and sexual exploitation of children in 2016)
- 9- <http://www.essaysauce.com/law-essays/essay-law-child-pornography-uk-malaysia/>
- 10- <https://www.malaymail.com/s/1416041/minister-says-sexual-offences-against-children-act-2017-to-be-enforced-on-j>

