



The concept of territorial borders in the light of the constitution of Islamic Republic of Iran

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Abstract

The concept of territory of the state in an evolution from the beginning so far has undergone substantive and functional changes. Early scholars' emphasis was on the nature and quality of the territory in organizing a complete and desired administration in terms of material and spiritual needs of its citizens (the government). But in the contemporary understanding of territory, it is the space that relying on the concept of borders, gives a territorial aspect to sovereign rights. Independence and territorial integrity of the state are today a universal and accepted principle. Despite the predominance of people-oriented approach upon the constitution of the Islamic Republic of Iran arising from trends and the religious roots of the idea of the founders of government and macro decision-makers and emphasizing on the cultural boundaries of the Islamic world, assignment of seventh Article to the national territory shows the need to preserve and protect its boundaries as one of typical characteristics of authorities that lead to build a government based on people. Immutability of territorial boundaries except under exceptional circumstances and minor modifications and with the agreement of the three branches of powers and the leader is attentive of its kind. In this paper, an analysis of the national territory and borders of Iran is provided and also the field of evolution of theory and ideological boundaries of territorial boundaries is describe.

Keywords: territory, territorial integrity, the constitution of Islamic republic of Iran, territorial boundaries, ideological boundaries

1. Introduction

The concept of national territory and its territorial boundaries indicate the spread of the territorial jurisdiction of states. This concept is one of the pillars of forming a stable government and protecting of the boundaries is one of the basic principles of all governments.

Nowadays, territorial integrity is synonymous with independence and national integrity as something that is subject of the world's attention. As paragraph 4 of Article 2 of the UN Charter declares: "all members shall refrain in their international relations protect from the threat and use of force against the territorial integrity or political independence of other states." The slightest violation of the soil and water of each government is illegitimate. Also, according to multiple principles of constitution (Article 3, paragraph 16, Articles 9, 78, 100, 143, 152 and 176) national unity and territorial integrity are necessary condition for Islamic Republic of Iran's independence. For this reason, the ninth Article of constitution deem liberty, independence, unity and territorial integrity of state as inseparable and considers keeping of it as duty of the government and individual citizens.

Assignment of the seven principles of the constitution to the territorial boundaries and the national territory in the Islamic Republic of Iran's constitution should be a seen as a big step toward establishing a national government with a specified territory, despite the dominance of nation-centered attitudes and Islamic country approach. The main objective of this study is to provide a coherent definition and analysis of the territorial boundaries of the state and explain the impact of this concept is in the process of state-building.

2. Background of concept of territorial border

Territorial border as the second pillar that after population (after the French Revolution in 1789, it has been called

"nation") plays a role in state formation. But legally territory was recognized after the Treaty of Westphalia that ended 30 years of religious wars between European powers. Treaty is of great importance from a legal perspective because by the recognition of territory as a pillar of the regime, it placed for the first time territory on the hierarchy of power in Europe and the nationality of the person was shifted from their belief in the emperor to centrality of belief in territory. The treaty recognizes state sovereignty and interference in other states in their territory as a violation of international law.

In addition, the Treaty of Westphalia largely contributed to the emergence of international borders in the contemporary sense in later centuries and focus of lawyers shifted from unilateral study of states to investigating of the evolution and development of the territory and political power. The center of gravity of the Treaty of Westphalia after such an approach must be found in the writings of founder Friedrich Ratzel^[1]'s political geography. It seems that by the end of the nineteenth century, he had provided the most consistent explanation of territory in term of necessity and elaboration of it and relationship between political power and cultural influence of a state and its territory. He is among the thinkers who believed in social Darwinism (Mir Haidar, 6, 80). "They believe that government is the result of organic evolution and its dependent components resembles a tree whose spatial organ is in the soil and territorial development is necessary for it to grow and evolve. The bigger the government, political the further development its power and civilization" (Ezzati, 871, 13). "In his view, according to government growth theory (the theory of organism) international border cannot be permanent but only governments temporarily define the situation in the conflict area of states" (Mir Haidar, 75, 14). After Ratzel, issue of

ⁱ 1904-1843

territory of governments and their international borders was followed by his Swedish student Rudolf Killen ^[2]. He has several writings on his country's borders with its neighbors to the East and West. After World War I until World War II and in the wake of the quantitative and qualitative development of geopolitical issues, the issue of national territory of states and borders become focus of political geography, geopolitics and law.

House Hofer views geopolitical mission to persuade political leaders about the integrated and unified territory (Hofer, 80, 95). He so much continued writing about extreme territoriality for the Germans continue to make it a national ideology and political decision-makers and institutional strategy and diplomacy system. That's why he saw geopolitics as basis of the political behavior of German foreign policy. After an early decline of radical ideas in the field of geopolitics, national territory returned to its old and true place, namely, law and geopolitics and pursued by thinkers such as Hartshorne, Jones and Gutman. Among these three thinkers, it seems that Hartshorne pay more attention to the issue of territory and ways to protect it by the government. "He believed that the government meeting the challenges, both external and internal potential challenges, is involved in ongoing efforts to impose its control over territory" (Muir, 79, 199). The term territoriality means "human endeavor either individually or collectively to exercise exclusive control over certain sectors of space (or land)" (Mir Haidar, 2005, 16) ^[37].

Issue of territory like other government building bricks has been studied by political Islamic jurisprudence. Traditional jurisprudence is absolutely anti-territoriality cosmopolitan-minded, which has an undeniable impact on several principles of the constitution of Iran. They believe borders emerged as a type of violence and the government takeover of the neighbors, so it can never be effective in creating the right and legitimize legal and political domination by government over a territory (Darak Baklayi, 2001, 65) ^[14].

3. The concept of state territorial border

Lawyers have provided various definitions and analyses of the concept of territorial border of government. Some scholars believe that territory is material and is continued physical material extension of a state. This concept along with consistent political power and population, takes the form of a government structure. This represents an integral aspect of the political definition of the concept of land from the government. (Mujtahidzadeh, 2002, 38) ^[31]. Therefore, the land is the underlying material element of state. Such a concept does not just mean that the founders are required to reside in the land of their choice or their fathers', but also that the government as entity cannot exist independent of the concept of territory. The state is a territorial cooperation (Bigdeli, 2004, 182) ^[21]; in terms of political rights, territory of government is first place for human habitation, and second embodiment of concept of state, and third for applying of governance of the government, is its immediate requirements. Article 1 of the Convention of Montevideo in 1933, has defined the government with the following characteristics:

"The state as a subject of international law should possess the following conditions: 1. Permanent population, 2. Specific territory, 3. Government and 4. Governance" (Moosazadeh,

2002, 35) ^[35]. So from the perspective of international law, the territory is element of realization of government and in particular it is with given territory where state has the right to apply governance. Territorial sovereignty is a right by which a government exercises its mission and can prevent other states from interfering in their affairs (Wallace, 1999, 153) ^[41]. Hence, most lawyers and political scientists recognize territorial boundaries and territory of governments on the basis of treaties and international law and the political and legal sovereignty of each state on this basis. What is certain, territories are both identifying and have role of government building in the world, because special territories for a sovereign nation is essential, especially in the current situation, international relations with the international community is no society would be reasonable without it. "Because of international agreements, governments have signed treaties on behalf of their people, and without clear borders and the territory, the agency will have many disorders. It is a fact with no disagreement among jurists. It seems that man's relation to the land is more than economic, political and administrative considerations, and there is kind of emotional and psychological ties. This also includes ancient history and civilization of a community of people with shared interests and a sense of collective ownership, for safety and the way in which they inevitably feel a deep solidarity towards each other. There is thus collective, family and individual dignity to its integrity (Muir, 2000, 22) ^[36]. These reasons and many other reasons have always cause the desire of the people to protect territory, as far as for protecting it, sacrifice of life is considered essential, yet proud. That's why the aggressors in any land encroachments always faced with resistance from people. "The importance of land as the location and status of human groups do not view the government as much power is in the twilight of history, legend and geography and in relation to the love and habit of community members, which embodies the concept of homeland. Sometimes the weight of the land in the ideology of nations will be priority, and governments have always been sensitive to protect their territory" (Qazi, 2003, 63) ^[25]. "With this much interest and attachment to the soil and water seems to be something innate".

It seems that the independence and territorial integrity as a global principle is included in world's oldest legal document accepted by the governments, the League of Nations Covenant. According to Article 10 of the Convention, States Parties are required to respect the territorial integrity and political independence of the other members against external aggression and support them. In this regard, paragraph 4 of Article 2 of the Charter of the United Nations to pursue a world peaceful purposes declares: "All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state ^[3]." Thus, the spirit of the Charter is that any violation of any of the state of the soil and water is illegitimate. The UN's first response to aggression imperiously forces aggressive government to return to the internationally recognized borders and to ensure the right of military intervention to eliminate trouble ^[4]".

Analysis of the concept of border territory of the state in the fields of political geography, political science and public

² 1864-1922

³ UN charter, first chapter

⁴ UN charter, seventh chapter

international law leads us to the point that the "territory is imperative spatial area where the population of any state has been established and congregation of humans forms there thanks to it. It is called one of the factors forming the state and physical limits of national jurisdiction of state. Territorial jurisdiction is exclusive rights of state to perform all the functions of government and state-owned enterprises, especially within country" (Qazi, 6282, 13).

It should also be added: "Territory is part of the Earth's surface occupied by the individual, human group or a government. In association with an independent state, territory is related with sovereignty and legal control of land and clear boundaries" (Hafeznia, 2006, 151) ^[12]. "Territorial places has a special status and content that become perceived values of the peoples, governments and humanitarian groups and find particular utility and people seek interests in them and define them" (ibid., 155). From what has been said here, decisive role of territory land and its borders have fundamental value of the following dimensions;

1. The territory represents the realm of the jurisdiction of governments. General authorities of the states within their territory have full powers and all and create have the right and duty for the people living there. This rule stops naturally at known the borders of each state and thus states are distinguished and international relations are shaped in a certain order (Hashemi, 2004, 220) ^[40].
2. The soil is not only in the many theories of political science of greatest importance, but for reasons of human nature it is also valuable, the land unto all the nations of the world is the concept of honor. That is why the basic principles of territorial integrity of states exist among all governments.
3. In geopolitics, we are dealing with the concept of territory as the concept of territory is discussed in the European political geography dictionary. Territory can be defined as horizontal or physical picture of state. Concept of territory that finds a political given the concept of state, according to the phenomenon of nationhood, it realizes the territorial-politic nature of government (Mujtahidzade, 2002, 38) ^[31].
4. Territory is comparable with the deepest emotional connections and feelings and act on different scales, although the territory is the source of identity, but it is the origin of material existence that there are certain claims made about it. That's why the human relationship with the earth, is more than economic and political considerations and has the emotional and psychological bonds, in addition to emotional charge, space is one of important elements of cultural, social and political systems of a state. So territory must be seen as a means to achieve a specific goal, such as sustainment of political domination and xenophobia (Muir, 2000, 10 and 17) ^[36].
5. From the perspective of experts in international affairs and foreign policy, national goals and values of the survival of the Islamic Republic of Iran, the defense of the country, protection of territorial integrity, preventing fragmentation of the nation, control of vital areas are among strategically important national goals and values.
6. Territory is a space mixed with visions of power, domination and ownership; therefore, national governments, both simple and complex, in fact, are territorial governments (Hafeznia, 2006, 152) ^[12].

4. Contemporary understanding of the concept of the state and territorial boundaries.

In terms of geopolitics, twentieth century is the century called for government's territoriality through the Covenant of the League of Nations, the Treaty of Versailles, Yalta Conference, the United Nations Charter, as well as the collapse of the Soviet Union and Eastern European geopolitical developments. But from the beginning of the twenty-first century, what shows itself as a symbol of developments of state clearly is the emergence of the phenomenon called globalization which strictly delimited and undermine territory and territorial sovereignty and on the other hand, local and regional nationalisms in the process is eroding the national government from the bottom (Muir, 41279, 13). Gutmann recognized globalization and the weakening of the national government before others; "The trend towards globalization continues and a huge network of relations in different social, economic, cultural spheres gradually spreads worldwide and thanks to a host of technologically advanced tools, in spite of political resistance, nationalism, regionalism claims of independence and sovereignty, the global system is more coherent and focused" (Guttman. 1990, op.7) ^[1] with the spread of free-market economic system, the information revolution and changes in global communications system, current World eliminate important aspects of economic governance of state. Spread of free exchanges of capital and goods weakens the political-economic role playing of national boundaries. A group of people in the political environment goes beyond the scope of nationhood and takes the main of study to transnational political formations (Mujtahidzadeh, 2002, 268) ^[32]. Increasingly making economic decisions goes beyond the powers of national governments and goes within control of international and multinational companies. This development expanding affect the political geography of the world not only in its broad and general concept of sovereignty but also changes the approach. Scholars see international developments of economy, technology and culture beyond state borders as the main cause of such a transformation.

As a result, increasing the role of supranational institutions (UN, human rights agencies, multinational corporations, etc.) as well as the advancement of technology, satellite communications industry, explosive worldwide information distribution, economic globalization and the role of global economic institutions (the World Trade Organization 29), globalization of world politics and political institutions and the process of democratization after the collapse of the Soviet Union has caused the current structure of governments alone not be able to do their primary role of providing security and human welfare. Therefore, the governments inevitably go towards regional integration and interdependence and the regional grouping and active participation. Their national territory weakens against national interests and more valuable national interest and the concept of border that evokes stop in front of the man crumbles and only become the framework for the identification of relative scope of land and nation. (Mujtahidzadeh 2002, 246) ^[32]. On the other hand reduction of the role and influence of the state within the territorial boundaries will continue in these decades. The collapse of the role of governments started in Western Europe as transformation of community of Europe and is continuing with the Europe Union and certain other areas and regions of the world will experience this positive and successful method.

NAFTA and ASAN can be candidate to accept such an approach in the future. But this transformation and transfer in the state structure and their land border will not be linear, one-sided and integration of roles, responsibilities and partial transfer of sovereignty and federation or confederation of states. But "as governments are globalized and integrated, regionalism spread in other parts of the world, which causes new states" (Naisbitt, 1994, 59)^[3].

5. Territorial integrity of the state in constitution of Islamic Republic of Iran

The term constitutional law can be defined as the rules and regulations governing authority of state power and individual rights and freedoms. Constitution of the Islamic Republic of Iran defines cultural institutions, social, political and economic society based on the principles of Islam; but a feature of the Iranian constitution despite the attitude of classical jurisprudence of Islam in the 50s and 60s that affected Islamic revolution discourse. Existence of elements of the modern state, including the concepts of state, nation, republic, parliament, national territory and its boundaries; as Islamic Republic of Iran's constitution provides for in many of its principles, "The first objective of the Islamic Republic is territorial integrity and political independence and national government, which is a global custom and goal that each nation-state is looking for" (Sariolqalam, 2000, 52)^[17]. From the viewpoint of constitutional law, maintaining the independence and territorial integrity requires adopting of appropriate material and spiritual measures. Measures that are spiritual relies on political consciousness, deep vision and visionary leaders, and material measures are to build an equipped army, full development of military might, constant willingness of armed forces and beyond it, the use of the material and spiritual facilities to maintain the national territory through the countering internal and external threats. Hence the importance of preserving the national territory is so much so that the government has the legal duty to protect the territorial integrity of the executive branch and its defense against external attacks. Iranian constitution sees full independence of state as noble objectives and principles of the Islamic Republic of Iran and enumerates it in several articles. Based on these principles: third, ninth, seventy ninth, one hundredth, one hundred and forty three, one hundred and fifty and two hundred and seventy-sixth, national unity and territorial integrity are prerequisites of independence.

6. Preservation of the territory in the constitution of Islamic Republic of Iran

Clearly, Islamic Republic of Iran and the international borders of its territory are highly respected and have popular support and its abuses is violation of state and public authority. Also, the acceptance and recognition of rights for ethnic groups and tribes in the state should not undermine the territorial integrity and shouldn't cause separatist trends. Thus preserving the integrity of the Islamic Republic of Iran constitution is duty of the state and nation. Significant issue in the constitution of Islamic Republic of Iran is the legislative attention to preserving the integrity and immutability of borders except in exceptional circumstances and with the agreement of all the powers confirmed by the leadership. While the dominant religious approach in the fifties was nation of Islam-based approach, and Islamic country, in which the concern was not

territorial integrity, namely, nation-based approach, in which border of opinion and belief in system of Islam, Muslims was perceived, and territory and boundaries in the world today considered void and illegitimate. But a new opinion in the Muslim world appeared that tries to keep politics and religion separate and promote idea of living in parallel with each other and with respect for the principle of non-interference in each other's affairs in performing their duties, which is fundamentally different the Articles 3, 11, 52, 154 of IRI constitution that do not respect the territorial integrity, political independence and sovereignty of other states and interference in the affairs of other states. This new attitude, respect to the national territory and non-interference in the affairs of other states is a legal principle accepted by states. This principle was drafted in Article 2 (section 2 of the Statute) of Organization of the Islamic Conference in Riyadh in 1972 with the active participation of Iran and stipulated as follows: A, respect for the sovereignty, independence, territorial integrity of each of the member states; B, refrain from coercion, force or threats against the territorial integrity, unity and political independence of any State Party; C, respect the right of self-determination and non-interference in the internal affairs of member states (Salim *et al.*, 1997, 18)^[18].

7. Determining territorial boundaries in the constitution of Islamic Republic of Iran

In fact, the phenomenon of the border prevent or at least limit it the free movement of people and goods as well as dissemination of ideas, so lawyers see it as substantive and genuine in reality in the contemporary world history. "Boundary lines are conventional lines for delimitation, recognition and separation of a political unit from other units on the earth" (Mir Haidar, 2001, 161)^[38]. International borders, as common among neighboring states, plays a prominent role political and economic relations in the organization. On the other hand, borders frequently caused great tensions between governments and strongly interaction between the people who live in adjacent areas have been affected (Drisdell and Blake, 1990, 101)^[15]. Borders between states in the way of its development should undergo at least three steps to reach mainstay and reliable state between the two governments, although all borders have not necessarily undergone all of these steps. A full-fledged border boundary is one marked by the two governments concerned and recognized and efficiently managed and maintained. (S.B. Jones, 1945, 5)^[2].

Iran's territorial borders shortened with international developments in the nineteenth and twentieth centuries and upon reducing the power of the Qajar dynasty (Hafeznia, 2002, 368)^[11]. Given the unpleasant experience of Iran in the last century and territorial claims and border disputes with neighbors during the Pahlavi regime, in the Islamic Republic of Iran, maintaining limits of borders and territorial integrity is a sacred duty to maintain independence, so that the government is responsible and also the nation. Of course there may be some boundary changes, without prejudice to the territorial integrity of the state becoming necessary. Iran's constitution by accepting this fact, in the seventy-eighth Article, has accepted to makes boundary changes with specific and strict terms and conditions.

In terms of international law, internationally recognized borders are criterion limits of the territorial governments. More neighborly states have full respect for each other's boundaries.

Although considered immutable borders as a solid basis for the legislator's constitution, but delimitations and territorial reasons (natural, human), might have caused political and military problems for the Iranian government and neighboring states, minor modification of which would solve the problems in between. So IRI constitution has the utmost caution and emphasized the independence and territorial integrity of the state and do not lose sight of the necessity of minor changes provided that at least four-fifths of Parliament are in favor of this change in the direction of reform. This is the highest quorum prescribed by the constitution of Parliament for important decisions and shows the importance of territorial integrity and political independence of states as the main pillar.

8. Conclusion

Territory is part of the territorial manifestation of the government. Territorial sovereignty can be considered as a right by which a government exercises its mission and can prevent other states from interfering in their affairs. In fact, territory meaning plays a central role in two fundamental concepts of independence (the rejection of foreign domination) and sovereignty (supremacy of the civil power). Nowadays, the independence and territorial integrity is a globally accepted concept. On the other hand, despite the dominance of attitude of traditional jurisprudence in the early decades of the establishment of the Islamic Republic of Iran, many of its components manifest themselves in the form of the constitution, opposite to the view of Islamic land and ideological borders as the traditional approach to Islam, Article 7 of the constitution about protection of territorial integrity, which sees the least change as violation of political sovereignty of government, indicates the importance of preserving the territory of the nation and limits of government of the Islamic Republic. On the other hand, it indicates the fact that constitution experts have recognized part of the norms of the constitution about the national government, which are inevitable in the current international situation and are not inconsistent with Islamic values. Although the Iranian constitution's expert's intellectual mindset is affected in adopting this approach by historical experience from contracts on the territorial borders of Iran during the Qajar period in the national territory and the immutability of borders except for minor exceptions. On the other hand, IRI constitution represents the various, excited and idealistic contradictions of subjective lawmakers of this system so that while emphasizing the preservation of the national territory, in some cases, regardless of its adverse effects, permission is issued to intervene in the affairs of other states. Another consideration in constitution of the Islamic Republic of Iran is that in none of the articles, national power has been considered alone.

9. References

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