

Legal mechanisms of combating apartheid within the framework of International law

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Abstract: Apartheid (racial separation) is defined as a discriminatory policy that the racists of Republic of South Africa carry out against the native black-colored citizens and Indians of this country. Apartheid means keeping persons of non-white, obliging them to settle in specific counties and provinces, depriving them of all the political rights and the feasibility of education and progress. African National Congress (ANC), by requesting to create a liberal multi-racial society, waged war against the apartheid system. Two of the main anti-apartheid characters (personalities), Steve Biko and Nelson Mandela, were captured and were sentenced to life imprisonment. This research, besides analyzing the apartheid, its entity and the reason for its formation, is looking for considering and deliberating international legislations for struggling against this sinister human phenomenon that according to the mentioned purpose, the results showed that although the international system by using different means as using the manifestoes of the Security Council of the UN and also anti-discrimination laws and enacting international conventions on struggling against discrimination, could take effective steps to root out this phenomenon not only in the Republic of South Africa, but in the whole international society; but because of lack of political integration and expediencies of superpowers' benefits, apartheid is going to appear in other parts of the world or is formed. that the necessity of cooperation between all countries and also superpowers to confront this feeling has doubled.

Key words: *Apartheid; International law; Reservation law; International court of justice*

1. Introduction

The word apartheid lexically means keeping in segregation and in fact it means a system of racial, religious, and tribal.

Discrimination and social segregation that is often carried out by the majority group or sovereignty against the minority group (Kend 2000). such a system is often recognized by physical and territorial segregation of races and depriving some races of social privileges and services. Apartheid carries out the same situation for people that live in this situation, of course in terms of race. In the decree number 2 of the international convention on prohibiting and punishing apartheid (racism), the crime apartheid is defined in a specific manner as follows:

From this convention's point of view, the phrase "apartheid crime" which contains policies and similar actions as racial segregation and racial discrimination like what is being carried out in the Republic of South Africa is defined as: The following non-human actions that are being carried out to establish and maintain the hegemony of a racial group against other racial groups and put them under pressure systematically. The above-mentioned actions are defined as:

1-denial of rights to live and personal freedom of a member or members of groups through: 2-

intentional imposition of specific conditions and situations of life on a racial group or groups in order to destroying all or part of them. 3-any legislative action or other actions to preventing the participation of a racial group or racial groups in the political, social, economic and cultural affairs of the country and creating purposeful conditions which prevents the growth of racial groups. 4-any action, as legislative actions that is devised to divide people based on racial demarcations. 5-exploitation of the work of a racial group or racial groups or compelling them to drudgery. 6-prosecution of institutes and persons and deprive them of their rights and freedoms because of opposing apartheid (Mehrpoor, 1383).

In this manner, the international convention on prohibiting and punishing racism (apartheid), expresses apartheid as a crime against humanity and a violator of the international law principles and aims and principles of the United Nations and a serious threat against international peace and security (Sharifian, 1380). In this manner, what is realized from the series of human rights views in different levels as apartheid is that any action for the purpose of racial discrimination is abominable and anti-ethical that according to the international, territorial and national laws and codes is prohibited and is indictable and punishable.

2. Concept of apartheid

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The first usage of the term apartheid was in the parliament of the Republic of the South Africa in January 25, 1948. In this meeting, Dr. Malan, while proposing establishment of a republic in South Africa, defined the essence of his intended regime altogether as: "In order to guarantee the security of the white race and the Christian civilization through honest observation of apartheid and guardianship principles (Iagoma, 1960, :24). Malan in his words besides expressing the act of constitution for forming a Christian government that should be necessarily African (Afrikaans), explains the apartheid theory or segregate growth of non-European race under the guardianship of whites (Kortan, 1965:p.86) this word propagated slowly. But, shortly after the war, it was met with general approval, specifically because it entered in its original form and in the rendered form into the vocabulary of English. There was no reason that its translation for example the word separation not be used. But, apparently its purpose was that by using a foreign word, something foreign and sinister being imparted. Something so wicked that for it, all over the English language no word will be found. Another reason for untranslatability of the apartheid is that this word has not one specific meaning. In fact, up to know no theoretical event has happened for its exact meaning. (Iagoma, 1960). This word idiomatically refers to the policy of racial discrimination that is carried out or exercised by the national party of South Africa since 1948.

3. International actions

Simultaneously and in parallel with South African people's struggles, vast propagandistic and political struggle against racial discrimination and apartheid policy appeared internationally. International pressures during the absolute or despotic supremacy of apartheid on South Africa had a major role in its overthrow. Economic, political and international sanctions against the racist regime parallel with struggles and resistance of the underprivileged people of this country leads to the sea changes that caused the overthrow of apartheid.

3.1. The United Nations

Apartheid policies of South Africa since 1946, when the Indian government filed a complaint for the rules of South Africa against Indian residents of this country, were being discussed in the United Nations. In the 1950s, United Nations' General Assembly, by virtue of the principles of the charter of the United Nations, repeatedly asked the South African government to put the apartheid policy aside, but the mentioned government by rejecting the requests, applications and declarations of the UN's security council and the UN's general assembly, was expressing that the UN's decisions are illegal or extra judicial, unacceptable and against the non-interference policy towards that country. The most important deeds carried out by the UN since 1960

until the overthrow of apartheid for the matter of apartheid in South Africa are as follow:

1- After the Sharpeville massacre in 1960, that left 69 slain and 180 ones injured and raised the whole world's attention, the UN's Security Council in April 1960, expressed the continuation of the apartheid policy of South Africa as a threat for international peace and security and asked South African government to put the apartheid (al) policy aside.

2- In 1962, the General Assembly of the UN, stated that South Africa has rejected the requests of the UN. Thus, the assembly asked all members to interrupt their diplomatic relations with this country and while putting an embargo on its products, refuse to export their products as weapons to South Africa and close their ports and airports to this country's ships and planes.

3- In 1962, the UN's General Assembly formed a special committee to investigate the apartheid policies of South Africa. This committee continued its works under the name of special committee to struggle against apartheid and was commissioned to submit its report to the UN's General Assembly and The Security Council. This committee by dispatching counseling panels, holding conferences and seminars and execution of the UN's declarations, specifically by propagating the sports, cultural, etc sanctions, continued its work. This committee with the cooperation of the institute of struggle against apartheid, established in 1967, got help from states, international and territorial organizations to mobilize the international public opinion to support the UN's declarations against apartheid.

4- In 1963, the UN's Security Council, voluntarily put an arms sanction against South Africa and asked all the countries to stop selling and dispatching different kinds of arms ammunition and military cars to this country. Also, they asked this country to release the prisoners guilty of struggling against apartheid.

5- The UN's General Assembly in an action to absorb help for apartheid victims in the year 1965 established the UN's credit fund for South Africa. This fund, based on voluntary aids imparted to it was established. Existed aids in the fund were imparted to institutes and the institutes imparted them to persons who were in pursuit of South African government or became a refugee and their relatives helped them. 6- In 1966, the UN's General Assembly on the occasion of Sharpeville event (case), appointed March 21st, 1960 as the international day of obliterating racial discrimination and each year an occasion is being held in this day.

7- In 1967, the UN's program of education for the south of Africa was initiated by the UN's General Assembly. Based on this program, some teachers were sent for students of South Africa and Namibia which went abroad. Also, higher education scholarships for underprivileged students of these two countries were allocated.

8- In 1970, the UN's Security Council besides condemning the violation of sanctions, asked all

countries to carry these sanctions into effect unconditionally. Also, the UN's General Assembly (again) asked its members anew to put an end to their formal relations and cooperation with South Africa. Also, this assembly condemned building homelands as a case of violating Africans' rights.

3.2. Africa's Unity Organization and the Region's Countries

During the administration of apartheid in South Africa, Africa's Unity Organization, besides most of African countries, specifically South African countries, tried to make South Africa change its apartheid policies. The most pivotal deeds that countries of this territory carried out in this area are as follow:

1-Africa's unity organization that was established in 1963, asked all its members not to have any relations with South Africa.(Elahi,1368)

2- Liberation Committee of Africa's Unity Organization was established in 1964 and initiated to help and subsidize ANC and PAC.

3- In June 1974, African states gathered together in Addis Ababa approved an agreement that its main points consisted of :legitimacy of South African people's movement to achieve their rights and also accepting unconditional independence; these rights for movements that are against the colonizers are met with the approval of all members of ANC (ibid:121).

4- In 1969, fourteen countries of the region gathered together in Lusaka to discuss and exchange of views on the region and South Africa's affairs (problems).the participants issued a manifesto, known as Lusaka Manifesto. The manifesto's content is as follow:

Deeds of South Africa's government are in a way that the rest of countries in the world are responsible to take steps to defend humanity.(Bolton, the office for political and international studies of the ministry of foreign affairs,8th year,no.79,13473:55).

5-In June 1971, Africa's unity organization, voted for any kind of relation with South Africa and tacitly supported armed struggle

6-countries involved in the frontline, in order to confront aggressive policies of South Africa in the dark era of apartheid in the 1970s and 1980s, established the South African development community and preferential trade area for eastern and southern Africa (PTA) to develop economical and commercial cooperation between the region's countries, decrease the economical dependencies on South Africa and economic self-sufficiency. The frontline group was partially able to prevent aggressions and terrorist operations of this apartheid regime and support combatant groups against apartheid into South Africa wholeheartedly.(Chabhar,1997)

7-Pretoria talks, carried out with some of the African leaders and efforts for détente, were strongly criticized by African press (printed

matters), liberating movements and Africa's unity organization. The organization's council of ministers in April 1975 strongly condemned apartheid deeds (actions) of South Africa by issuing the Dar-es-Salaam manifesto. In this manifesto, any relation with the apartheid regime is considered as meaningless and leads to contempt and humiliation and is condemned.

4. Role of international court of justice (ICJ) in struggling against racial discrimination

Based on articles 36 and 38 of articles of the international court, this court can interpret human rights treaties: or if states predict the condition of referring to the mentioned court or come into agreement through a specific letter of agreement, they can investigate human rights affairs. Moreover, although a person cannot go to the international court of justice, this matter can be come true by the states. In many of the concluded contracts on human rights, ICJ is determined as the forum for settle the disputes. In the age of supporting international rights and human rights, the forum cannot stay out of human rights 'civil suits. Thus, if ICJ is asked to and the disputes bear the superficial and essential qualifications of a civil suit, human rights treaties should be interpreted and applied in settling the disputes. The quintessence of this reference is existed in the convention on the prevention and punishment of the crime of genocide. 1948(article 59) and in the convention against torture and other cruel, non-human or degrading treatment of punishment, 1948, 23 Int.legal(article 630). In fact, the majority of international law is made by the states, that's why international written instruments in the first instance concentrate on the states commitments. But ICJ during years of service has made important decisions about human rights, particularly during recent years in court cases about using force majeure and so forth, ICJ has played a major role in defending human rights. The reason for this matter is that ICJ is the main judicial organ of the UN and essentially cannot avoid decision making on human rights affairs which are supported by the UN. By considering ICJ's decisions the following principles can be deduced:

1-Basic rights of each person, binds (engages) the states towards the whole international society (Barcelona traction case, ICJ's judicial decisions), 1970, par.34)

2-such a commitment in the universal declaration of human rights, can embrace basic rights of all humans and this kind of rights is observed clearly in the universal declaration of human rights and it states: 'essential identification of equal rights for all the human family is the basis for freedom, justice and global peace. (ICJ's judicial decisions, 1980, par.91)

3-another point is that human rights bear the concept of rights with it. This case has a legal concept, that is, principally there are ones against

them that are legally bound. In other words, observing human rights is obligatory not voluntarily.

4-some of the specific commitments about human rights (like obligatory rules), are explicitly approved in the international law by ICJ as international customary law. (ICJ's judicial decisions,1951)

5. Commitments to struggle apartheid in the international law

Universal declaration of human rights in 1948 in articles 2 and 7 talks about negation of discrimination and put emphasis on enjoying equality and freedom for all humans. Also, international conventions of human have got into the story of discrimination and its negation that among them the following is stated:

1- International convention of political and civil rights, passed on 1966, that in its second article, the parties, without any discrimination reverse the recognized rights in it for all persons in their circuit under their competence and guarantees and expresses non-discrimination generalization.

2-International convention for struggle against discrimination in education in 1960 also goes to a definition of discrimination and its purpose and influence in article 1 and in article 3 binds the member states to do some deeds to lift and prevent any kind of discrimination. International convention for omission of any kind of racial discrimination on December 21, 1965, was passed by the general assembly of the United Nations. This convention has a preface and 25 articles which has two parts. Part one expresses the definition of racial discrimination and commitments of member states and part two is about the controlling organ of the convention, that is committee for omission of racial discrimination and its trend to pursue enforcement of the rules of the convention by the committee. And in this manner the conventions' regulations will enjoy legal sanctions sufficiently. the member states are committed not only to enforce racial discrimination; but they should ban it and through proper measures such as enact laws prevent any kind of racial discrimination from any one or group (Mehrpur, 1377). Based on article 3, member states are bind to condemn racial segregation and apartheid particularly and ban any deed that has such essence and eradicate it in their territory. article 4 binds the member states to condemn performing any kind of publicity or periods based on the thinking of superiority of a race or group of humans belonging to a specific skin color or race and perform necessary and positive measures to raze this theories and deeds and for this purpose, they should express according to the law any kind of racial discrimination or any publicity for it as a punishable crime and institutes and organized publicities relevant to them as unauthorized. (ibid, 86) and based on article 6 of this convention, the member states commit to support their citizens under the realm of their sovereignty which have confronted discrimination and their basic freedoms and human rights are violated; that

the support of whom is performed through competent courts and also because of sustained harms on them due to discrimination, they can claim for proper indemnity from a competent courts. Thus, the member states of the convention know what to do by committing to condemn racial discrimination under the realm of their sovereignty and preventing its generating factor. To control the enforcement of the convention's regulations, based on article 8, the committee for elimination of racial discrimination (CERD), composed of high-ranked experts that enjoy a high level of moral competence will be set. This persons are chosen from among a group recommended by the member states through secret ballot for a term of four years and work based on their own competence. (Mehrpur, 1377:87) the main duty of CERD is to investigate the submitted reports from the member states (ibid, 87), investigate about laying the complaint of the member states against each other (article 11) and investigating the personal complaints (article 14) are among the other duties of the committee. The member states' reports should guarantee enforcement of each of the three parts of the article 7 and these parts are the following:

1-education, 2-culture, 3-in forming. thus, the member states should reveal measures that are taken in the form of actualizing the three above-mentioned parts in their reports as follows: 1-measures for the elimination of bigotries leading to racial discrimination.

2-Actions arranged toward establishing mutual understanding, and camaraderie among racial, tribal and national groups (Mostaghimi et al, 1387:86).

6. Results

Changes in the international system of politics suggests that 21 st. Century will welcome the ideal of human rights even more than the previous half-century. after the second world war, the ideal of human rights for receiving the seal of approval of both sides of the cold war and the whole economical systems, including socialism and capitalism and all of their varieties traversed an uneven path. decline of communism and the empire of the soviet Union caused annihilation of the ideology that was incompatible with the ideal of human rights and in the present perspective there is no new ideology existing in this world that can substitute it. The difference among levels of personal and general tenure, economical freedom and state regulations will remain in diverse times and places. countries in this subject that putting what kinds of limitations on rights is necessary from the point of view of common interests and that in urgent conditions to what extent deviation from human rights is permissible have disunity. developments and regressions in the area of human rights will appear. Neither is any end to terrorism and disorders and civil wars, nor any guarantee to decrease the vast wave of refugees and more massacres but in the author's view the ideal of human rights and the ideology related to it, that is favoring constitution, an international ideal will

remain, while the world keeps fighting with poverty and non-development.

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