

# **The Sovereignty And Its Impact On The Multilateralism In Exploitation Of Shared Waters And Guaranteeing Human Rights**

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## **Abstract**

*With the erosion of the concept of sovereignty, the notion of cooperation between states has become more in international relations; therefore, states have chosen a multilateral approach to international life rather than a unilateral approach. Hence, instead of the existence of a absolute sovereignty in the international arena, in many cases, conditional sovereignty of several states have been shown and all these cases were based on the will of the states; Because the states, as one of the important international actors, gradually, relied on their survival and cooperation with others and applying the relative concept of their sovereignty. So, the replacement of the concept of "we" instead of the concept of "I" and the importance of collective identity instead of the individual identity of each of the sovereigns has been able to guarantee the exploitation of shared waters fairly and suitably.*

**Key Words:** *Erosion, Sovereignty, Multilateralism, Shared Waters, Rights.*

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## **I. Introduction**

Normally, governments do not face any challenge in exploiting common waters, part of which is located in their territory. The main issue arises when a government conflicts with the exercise of sovereignty by other governments in the exploitation of common waters and the exercise of sovereignty over it. In other words, governments adjacent to or opposite the common waters are trying to acquire and exploit a greater share of these waters; But it is clear that the indiscriminate exploitation of these resources leads to ignoring the sovereign right of the opposite government and as a result the violation of human rights for the citizens of that government. This is the point where the exercise of sovereignty by one government conflicts with the exercise of sovereignty by other governments. Now we will examine the scope and territory of exercising the right of sovereignty by governments regarding common waters and then its relationship with human rights; because it must be accepted that the ultimate goal of all legal requirements and obligations for governments will be to provide more and better benefits for humans in the current and future generations.

The challenge that can be raised is that when governments exercise their sovereignty over common waters according to the requirements of the country or neighboring or neighboring countries, they may give up a part of their sovereignty. On the other hand, if we want to consider in the long term, if the countries consider securing the interests of their own people dependent on the establishment of the interests of the people of other countries, they will consider the better provision of the right to water and, as a result, the human rights of the opposite country, a guarantee for establishing peaceful relations, securing their sovereign rights and establishing the human rights of the people of their land in the long term.

The main question that can be asked is, what effect has the erosion of the concept of government sovereignty over time had on the way of using shared waters and, as a result, on the provision of human rights? The main hypothesis that can be proposed is that by eroding the concept of sovereignty and applying this concept in a relative way, a better guarantee was provided for the exploitation of common waters and the establishment of human rights.

Basically, the goal of this research is to determine how the application of sovereignty rights to common waters has changed due to the erosion of sovereignty. In such a way that countries consider the way of

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establishing sovereign rights and, as a result, human rights for the people of their land, appropriate and just to the extent that the sovereign rights of the opposite country and the human rights of the people located in their land are also provided in a equitable and appropriate manner; Because the interdependence of countries' interests requires that countries do not consider themselves as mere actors on the international stage; But besides that, they consider their interests dependent on securing the interests of the opposite or neighboring countries located in a watershed. So, interdependence will lead to the erosion of the sovereignty and then cooperation among them.

This article, in four parts, analyzes the relationship between the erosion of the concept of sovereignty and multilateralism, the exploitation of shared waters in the light of each of the two approaches of multilateralism or unilateralism, the realization of human rights in the light of each of the two approaches of individualism or collectivism and the expansion of the concept of International peace and security will be examined in the light of the erosion of the concept of sovereignty.

### **Analysis Of The Relationship Between The Erosion Of The Sovereignty And Multilateralism**

With the passage of time, the traditional concept of sovereignty changed, and while sovereignty was considered as the supremacy of political authority over the land and citizens, during the changes that took place, today sovereignty is presented as a modern concept that distances itself from the Westphalian framework, and currently sovereignty can be defined with a post-territorial approach analyzed.

In this regard, we cannot ignore the important effects of globalization and its influence on the erosion of the concept of government sovereignty. Globalization creates unity by realizing trans-regional flows in various aspects of communication, including issues related to transboundary waters among countries, that institutions such as the United Nations, the European Union, NATO, the World Bank, the World Trade Organization, and the International Monetary Fund have been established in order to realize the concept of globalization (Dubey, 2021) that have changed the traditional rule.

In this way, governments involve themselves in the problems that occur in the international arena, based on their interests and capabilities, within the framework of contracts, conventions and treaties, and avoid isolation and ignoring the rights of other governments, and the scope of their national sovereignty due to international agreements in Various fields, including issues related to human rights, are largely ignored (Grinin, 2009). Therefore, the relationship between the erosion of the concept of sovereignty and multilateralism by the governments in the international arena is a direct relationship, in proportion to which, democracy for citizens and also human rights for members of the society are guaranteed in a better way.

Among the documents that have properly adopted the need for cooperation between governments and adopting multilateralism in facing the issue of shared waters, is the plan of the International Law Commission approved in 2008. Although this plan is on basins, it will be extended to the other shared water resources.

According to Article 5 of this plan, there is a list of factors that governments must observe in exploiting the aquifer. These factors include the population dependent on each water body that is related to a specific government, the economic, social and other current and future needs of the water body in question by each government, the natural characteristics of each water body, the role and participation in the geological structure and restoration of the water body, the use of alternative plans for the exploitation of the aquifer, the development, protection and maintenance of the aquifer and the costs resulting from the adoption of relevant measures and the position of the aquifer in the relevant ecosystem (ILC draft, 2008, Art. 5). In fact, the capacity of governments to exploit water bodies located within their territorial boundaries is not absolute and unconditional; rather, they should consider all these factors which are not limited. Also, according to Article 6 of this plan, the way governments use aquifers should be in such a way as to avoid obvious damage (ICL, draft, 2008, Art 6). According to the general principles of international law, obvious damage means damage whose occurrence is obvious from the point of view of custom.

According to Article 7 of this plan, the governments must cooperate with each other in the exploitation of common aquifers (ILC, draft, 2008, Art 7). In its interpretation of the articles of this plan, the commission has stated the reason for the necessity of cooperation between governments in the exploitation of transboundary aquifers is the equality of sovereignty of governments according to Article 2 of the Charter. Also, the commission noted that all countries have territorial integrity (ILC commentaries, 2008, 48). In the sense that because of the respect for the integrity of the territory, any country that has a part of the aquifer located in its territory should use it; This is subject to allowing the opposite government which has another part of the aquifer in its territory, in order to exploit it and not create obstacles for it; because the freedom of privileged states is as long as the freedom of other privileged states is not breached.

A clear example of the erosion of the concept of sovereignty in the framework of multilateralism in the European Union, the resolution of the European Parliament dated July 6, 2022 regarding the European Union and the defense of multilateralism. According to this resolution, the erosion of the concept of sovereignty and, as a result, multilateralism will be realized when governments try to achieve common goals in the form of

global partnerships with each other as well as with other actors of the international scene, including international organizations and even non-governmental actors. In this way, the alliance between the governments leads to an increase in the strategic independence of the Union, and this facilitates bilateral or multilateral negotiations<sup>3</sup>. Therefore, the erosion of the concept of sovereignty can lead to the formation of a sort of co-existence that realizes multilateralism among the member states by establishing the principles of global participation and democracy.

Around this axis, the stability of democracy among European countries and their flexibility with each other, respect for human rights and adherence to the rule of law can be considered the best guarantee for security and a peaceful future (O'loughlin, 2022: p.11). In this way, the experience of the erosion of sovereignty and, as a result, multilateralism, should be used and the methods of creating these fundamental changes should be found. By studying the obvious example of this, the European Union, it can be concluded that European countries, while maintaining cultural and political distinction among themselves, they have delegated the main power arising from sovereignty to the society (Singh, 2022: p. 12). In this way, according to their will, the countries preferred to give up a part of their sovereignty and leave it to the Union as a collective will.

### **Utilization Of Shared Waters In The Light Of Multilateralism Or Unilateralism**

Sovereignty means the dominance of the superior and undisputed political will that there is no competing will and power equal to it in the internal territory, and in the external territory as well, due to the principle of equality of sovereigns contained in paragraph 1, article 2 of the Charter of Sovereignty, no state should be dominated by the sovereignty of another state (Alam, 1375, p. 145). Therefore, due to the unique concept of sovereignty, governments should make decisions regarding the issues that are under their control by assuming an independent existence for themselves. It is worth mentioning that these decisions should not violate the principles and rules contained in the Charter. Since accountability and transparency are important criteria of democracy for governments; As long as the governments have these two characteristics and as a result of democracy, they can obtain sufficient and appropriate satisfaction from the members of their nation (Zarei, 2014, p. 77). Therefore, all actions of governments regarding the exercise of sovereign rights over natural resources, including common waters, must also have the two criteria of transparency and sufficient accountability for citizens so that democracy can be properly realized.

The gravity of the share of sovereignty forms the principle of the existence of the concept of sovereignty, during which the conditions of exercising sovereignty, the authority exercising sovereignty and the characteristics of this authority gain special importance (Saroshi, 2011, p. 21). Multilateralism is the concept of coalition between several governments to advance a common goal based on international law (Wiseman, 2011: p. 7). In more precise terms, we can believe that there are three concepts of unilateralism, bilateralism and multilateralism. If we want to examine the mentioned issue from the perspective of quantity, we find that unilateralism focuses on one government, bilateralism on two governments, and multilateralism on several governments in relations between countries; But if we want to scrutinize the issue from a qualitative and more detailed perspective, we must analyze the said issue in terms of respect and compliance with laws and regulations and legal institutions (Tago, 2017). In fact, in the study of multilateralism, a broader concept should be given to the government; in such a way that when the discussion of the interaction and cooperation between the governments regarding an issue is determined, the role of parliaments, local and regional governments, civil society and the private sector is also considered (Espinosa, 2023: p. 5). Therefore, multilateralism creates a new approach to the concept of governments and cooperation and interaction between them.

The important point regarding the adoption of each of these methods by the governments is that the governments use the mentioned methods according to the conditions and based on their interests. For example, when governments find that they can solve a problem on their own, they do not pursue multilateralism, or if they find that the opposite government has significant political power in solving a problem, they choose unilateralism to prevent the aforementioned government from enjoying future benefits (Schoenbaum, 2016: p. 290-295).

In all issues related to the environment, including the use of common waters by governments, a series of principles such as "Obligation Not to Cause Transboundary Impact" and "Prevention, Control and Reduction of Pollution" should be regarded.

According to the principle of "Obligation Not to Cause Transboundary Impact", states must avoid any adverse actions that affect other areas in terms of the environment. According to the second principle, countries should exercise their sovereignty in such a way that the amount of air pollution is controlled (Brels, Coates and Loures, 2008, p. 31). In other words, the exercise of power and control by governments should continue until it

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<sup>3</sup>. European parliament, 6 July 2022, Resolution on the EU and the defence of multilateralism, (C 47/130), para 39.

does not lead to environmental pollution; because all these measures and requirements are aimed at providing better conditions for humans, which will be violated in case of environmental pollution.

The doctrines of international law regarding the exploitation of common waters are:

- The principle of absolute territorial sovereignty
- The principle of territorial integrity (absolute integrity of the river)
- The principle of joint use of waters
- The principle of limited territorial sovereignty (equitable exploitation of waters)

According to the principle of absolute territorial sovereignty, the international river located within the territorial limits of a state is absolutely under the control of the said state; because it falls under the national jurisdiction of that government. On the other hand, it cannot have any rights to the rivers that enter and flow into that country from other countries. This theory has been developed in American and Mexican jurisprudence. Considering the permanent sovereignty of countries over natural resources, the upstream country has the right to use that water; Even if it leaves that country (McCaffrey, 1996, p. 549). According to this principle, the coastal country or countries have the absolute right to exercise sovereignty over the water area located in their territory.

According to the principle of territorial integrity or the absolute integrity of the river, coastal governments are obliged to allow the natural flow of river water to continue and cannot divert the natural flow of the river at will. According to this principle, the said coastal country or countries have the right to use and exercise sovereignty over the area of the river located in their territory; but it is more limited than the first principle; because governments cannot exercise their sovereignty in such a way as to harm the exploitation of others. According to this theory, the flow of a river in the territory of a country forms part of the territorial integrity of that country. Therefore, the right of territorial integrity of countries requires that the flow of water flows completely in the downstream country as well.

Based on the principle of common use of waters, all countries located on the banks of an international river have joint sovereignty over that river, and all the mentioned countries can use the water of the river equally (Mousavi, 1389: p. 135). In light of this principle, the entire river is considered as a general unit that all coastal countries have the right to exploit and exercise sovereignty equally; No matter what area of water is located in their land. This theory, which is known as the theory of the community of interests, is based on cooperation and joint management of the watershed, and countries are separated from each other based on the border and must provide their share of that water.

In line with principle of limited territorial sovereignty or the principle of fair use of waters, the exercise of sovereignty of each of the coastal countries is based on the obligations that they undertake according to international law, and the exercise of sovereignty is subject to the non-incurrence of damage to the country or other coastal countries (Haqshenas, 1387, p. 248). A result of this principle, the exploitation and application of common and fair governance of shared waters should be such that they do not cause any damage to the country or other coastal countries.

Currently, the accepted theory in international documents and international jurisprudence is the theory of limited territorial sovereignty. Two important principles are deduced from this theory:

The principle of fair and reasonable exploitation

The principle of prohibition of extraterritorial damage

These two principles are found in Articles 5 and 7 of the United Nations Convention on the Rights of Non-Navigational Uses of International Waterways adopted in 1997. The Islamic Republic of Iran and the country of Afghanistan have not joined this document. Nevertheless, it seems that these two principles have found a customary position due to being emphasized in documents related to international waterways, such as the Berlin Rules of 2004 and international judicial procedure. Based on the principle of equitable and reasonable use, every country has the right to use common water resources; but it should not prevent the use of other countries of the common basin. The principle of prohibition of cross-border damage is on the other side of the principle of fair and reasonable use. In the case of Trail Smelter, the principle of prohibition of cross-border damage has been identified and has found a common place (Arbitrational Tribunal, 1938: para 15).

One of the important points regarding the exercise of sovereignty by governments over a part of a watercourse that is located within their national or territorial space is that "basic human needs" should be taken into account and these needs should be prioritized; In such a way that the extent and scope of the exercise of sovereignty by countries over the water area located in their territorial space is based on the basic needs of human beings (McCaffrey, 2009, p. 275). This approach is aimed at humanizing international law and paying attention to human rights in the way and amount of exploitation of common water resources.

Also, some secondary approaches are also visible in this regard, including the historical tradition approach and the Islamic approach. According to the theory of historical succession, the priority in exploiting common water resources belongs to the country that has more history in this regard. According to this theory, downstream countries that have established water structures in the past have priority (Deshehri et al., 2017, p.

602). In fact, this theory is in favor of downstream countries. In this regard, Islamic theory has an approach contrary to the approach of historical precedent. According to the Islamic theory, the upstream countries as the owners of water resources have the right to use them, and the surplus belongs to the downstream countries; Of course, the upstream countries do not have the right to incur damages to the downstream countries. In the civil law of Iran, the approach of historical right has been accepted and the civil legal articles have made the history of land restoration a criterion.

According to all the above-mentioned contents, the doctrine accepted in the documents and judicial procedure in international law, which can be cited in lawsuits between countries, is the principle of limited territorial sovereignty or the principle of just exploitation of shared waters, which seeks to explain the reasonable and fair use of these waters and prevent harm to others during use.

Therefore, the concept of sovereignty was changed and nowadays sovereignty is relative and not absolute. Today, based on the principle of the sovereignty of the will, countries find it in their interest to refrain from exercising the right of sovereignty in an absolute manner, and this is actually in the interest of the people of the human society. Because in a short period of time, exercising absolute sovereignty may give more rights to the said government and the people located in that land; But in the long run, due to the interconnectedness of the interests of the governments in the international scene, it can leave bad effects; Because if we give credit to multilateralism and group-centeredness and avoid unilateralism and individual-centeredness in the international community; In the long term, it is possible to achieve what is called the Sustainable Development Goals.

### **The Realization Of Human Rights In The Light Of Individualism Or Collectivism**

Proponents of the natural law school consider all natural rights as the basis of law, and in fact, they consider laws beyond the control of man or his voluntary decision and the result of first principles and natural foundations (Tebit, 2016, p. 30). Therefore, the laws related to natural rights are not a set of laws that have been approved; rather, these laws must be explored (Mishra, 2021: p. 1399). According to this school, in order to ensure the natural rights and freedoms of people in human societies, governments are established among the people who exercise sovereignty and derive their authority from the consent of the governed. Also, as these governments are created according to the will of the people, the people have the right to change the said governments. Therefore, the main feature of natural law which is equality gives everyone the same rights and controls everyone equally (Myneni, 2015: pp. 61 and 62). Therefore, according to this approach, the individual is placed in the center of attention and needs, which creates the social contract and then the governments based on their needs, and the governments owe their sovereignty to the people who have granted them this power. Therefore, just as individuals are the center of attention and seek to gain rights and freedoms in line with their own interests, governments that have borrowed their sovereignty from individuals are also seeking to exert maximum power for the benefit of the owners of this power, who are the same people.

Therefore, individualism can be given a broader concept compared to its initial concept. In this sense, to go a little further and for that, behind human-centeredness, we should consider entity-centeredness. In the sense that instead of saying that the originality is with the individual, we should say that the originality is with a specific legal entity; now, this legal entity may be human or another entity such as sovereignty. If we give an absolute concept to sovereignty, it means that an identity called "I" will be highlighted and instead, other sovereignty will fade or be ignored. This will mean exercising absolute political power and creating a narrow path for the competition of other political powers. In fact, it can be said that today, due to the disappearance or at least the fading of the borders between the actors of the international scene, such a separation between humans and other actors of the international scene may be excessive.

In contrast to the school of natural law, which places the individual as the center of attention and emphasizes the fusion between law and morality, and considers government to be the result of the will of individuals, the school of positivism took over from the 19th century. Reliance of this school on the will of governments that are equal to each other. This school, which emphasizes on existing objective facts, believes that in order to achieve it, one should stay away from "shoulds" and focus on "beings" (Shahbazi, 2395: p. 55-60). In fact, this school, which is based on the will of the governments, does not try to put one government over the other because of the legal equality of these legal entities called the government. This creates the ground for the realization of the formation of a concept called "collective" or "group" against "individual" or "unit", which can realize the causes of multilateral cooperation between these legal entities called the state and the sovereignty arising from it.

Collectivism can be given a broader concept compared to its initial concept. In the sense that instead of giving authenticity to a group of human people, we should give authenticity to a group of legal entities. Now, these legal entities may be a set of governments. If we consider sovereignty as a relative concept, it means that an identity called "us" will be highlighted and in return, other governments will also find a way to express themselves. In this way, by applying political power in a relative manner, a path is provided for the competition

of other political powers, and this provides a better possibility for the fair and reasonable exploitation of common waters due to the realization of cooperation between governments.

If we believe in the theory of individualism, it should be said that since each of the governments is trying to show their wholeness and perfection, therefore, human rights are provided to their citizens in a better way. Because with absolute political power, the rights and interests of citizens can be secured, especially when there is a conflict. On the other hand, the criticism leveled at this approach is that providing human rights to citizens through the exercise of absolute political power, although it is responsible in the short term; but in the long run, it cannot provide a suitable answer worthy of attention. Because in the long term, in terms of internal and external aspects, the problem of unbridled political power of sovereigns is raised. In the sense that this absolute power will give a coercive and violent response to the little protest and political opposition of the citizens, and not only this rule will not meet the needs of the citizens' human rights, but it will probably violate their human rights in many cases. From the external perspective, if any of the governments exercise their absolute political power, the least competitive in the international scene and in relations between countries will be the scene of conflict and strife between countries, in which case, hostile relations between them will replace peaceful relations. Because, like it or not, countries are in the international scene and in relation to other international actors, including countries, and if they don't want to give up this sovereignty, it will have no result other than the loss of future benefits and violation of human rights in the long run.

If we believe in the theory of individualism, it should be said that since each of the governments is trying to show their fullness and perfection, therefore, human rights are provided for their citizens in a better way. Because with absolute political power, the rights and interests of citizens can be secured, especially when there is a conflict. For this reason, globalization, which aims at the integration of political power resulting from sovereignties, is in conflict with the traditional concept of sovereignty, which may even ignore the rights that nations have within themselves (Okibe, 2021: p.2). On the other hand, the criticism leveled at this approach is that providing human rights to citizens through the exercise of absolute political power, although it is responsible in the short term; but in the long run, it cannot provide a suitable answer worthy of attention. Because in the long term, in terms of internal and external aspects, the problem of unbridled political power of sovereigns is raised. In the sense that this absolute power will give a coercive and violent response to the little protest and political opposition of the citizens and not only this sovereignty will not be in the direction of providing the human rights needs of the citizens, but perhaps in many cases, the human rights will be violated. From the external perspective, if any of the states exercise their absolute political power, the least competition in the international scene will lead to the conflict between states, in which case.

The United Nations Development Program defines the management of water sovereignty as a part of the executive, economic, social and political system that directly or indirectly affects the use, development and management of water resources and the diversity of water services at different levels in society (Water Governance Facility, 2012). The European Court of Human Rights has established its jurisdiction based on the Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms, which has managed an increasing number of cases in the field of human rights, including the right to water as one of its important examples. Below, a sample of the cases that have been the final decision in this court and became the basis of the court's action in other similar cases will be examined and analyzed.

Mr. and Mrs. Zander owned property next to a landfill where Wafab began treating waste in July 1983. Regardless of this, the drinking water of the well located in the vicinity of these properties was also contaminated with cyanide in 1979. As a result, the health care team banned the use of water from this well and temporarily provided urban drinking water to the land owner. A petition was filed by the plaintiffs of the case against Sweden before the European Court of Human Rights, during which the plaintiffs claimed compensation for non-material damages; because they had to get their drinking water from other sources. Also, they claimed to pay material damages due to the decrease in the price of their property, which according to them, the delay in the judicial investigation has aggravated the damages caused to them. The court noted that the plaintiffs of the case are entitled to protection against well water pollution against the activities of the company according to Swedish law (ECtHR, 1993, para 24).

The court noted as follows that the described right is a civil right:

The claim of the petitioners is directly related to their right to benefit from safe drinking water. This right is one of the aspects of their rights as owners of the land where they are settled. The right to property is explicitly a civil right in the sense of paragraph 1 of Article 6 of the European Convention on Human Rights (ECtHR, 1993, para 27). In this way, the court ruled that the Swedish government should pay 30,000 Swedish kroner to each of the claimants as non-material damages (ECtHR, 1993, para 2). Therefore, environmental issues, including those related to sanitary and safe water, were analyzed and investigated as a civil right in the European Court of Human Rights.

The important point in this case is that the principles and analytical rules of the court can be used in other cases related to water, including shared waters; because the principle followed by the court in this case was respect for the property of the owners, which required the defendant to compensate due to the damage. According to this method of analysis, the European Court of Human Rights has respected the right to property. This should also be observed in cases related to transboundary waters; because if the principle of ownership of neighboring or opposite governments is respected in transboundary waters, no government has the right to encroach on the property rights of other governments in transboundary waters.

In fact, it can be said that this approach of the court is related to the "theory of limited territorial sovereignty"; because the sovereignty of all persons, both governmental and non-governmental, is not unlimited. For example, in this case, although the Swedish government is able to do a number of things in the natural and public environment related to the performance of sovereign duties; However, it is right to exercise this sovereign authority to the extent that it does not harm anyone's private right, and this is exactly in line with the concept of limiting the aspect of territorial sovereignty. Therefore, as seen in this case in the court's jurisprudence, the realization of human rights is dependent on reduced and limited sovereignty; Because in this way, it is possible to realize multilateralism and peaceful relations between countries, and as a result, the realization of human rights in a more appropriate and better way.

In this way, the decision-making process regarding the allocation of fresh water is a two-faceted issue. On the one hand, it is an international issue; Because the limits related to the sovereign right of the opposite state and, accordingly, the human rights of the citizens of the opposite state should be considered, and on the other hand, it is an internal issue (Brels, Coates and Loures, 2008, p. 10); Because the manner and amount of allocation depends on the internal policies of each country, in which the human rights of the citizens must also be taken into account, as wrong decision in this regard leads to ignoring the sovereign right of a government and, as a result, attacking the interests and interests of the established nation. It will be in that land.

For example, a large human population in Sistan has been affected by various disasters and material and human damages due to the construction of a dam on the Hirmand River and, as a result, the lack of access to water; While the governments of Iran and Afghanistan had to manage common water resources based on public interests. In this way, the violation of the right to water of the people living in Sistan has created serious issues in various fields such as livelihood, food supply and living standards; While the upstream country cannot stop or reduce the flow of water to the downstream country even because of the need for water for its economic development; Especially since this will cause irreparable damage to the livelihood of people dependent on water in that area; Because the governments have violated their international obligations based on the customary principle of preventing the entry of harm by any operational measures such as the construction of a dam that leads to the reduction of water flow and the drying of agricultural lands downstream. Therefore, the downstream countries such as Iran, which have been damaged by the dam construction operation of the upstream country such as Afghanistan, can invoke the responsibility of the aforementioned government based on international rules and regulations, especially the international customary rule of non-admission.

### **Development Of International Peace And Security In The Light Of The Sovereignty**

Erosion of the concept of sovereignty and the introduction of human concepts in international law, have changed the concept of international peace and security also. In this regard, terrorism was considered as one of the destructive phenomena of international peace and security. One of the forms of this phenomenon appeared in the framework of ecoterrorism that the unfair allocation of shared water resources as a result the violation of the right to water can be analyzed in this framework. So, with the erosion of the concept of sovereignty and the expansion of the concept of international peace and security, the powers of the Security Council expanded.

In this section, two important topics of the Security Council's obligations to support transboundary or shared waters and the relationship between terrorism and the issue of transboundary or shared waters will be analyzed.

### **The Obligations Of The Security Council For The Protection Of Shared Waters**

Water security was stated for the first time in the Executive Declaration of the Second World Water Summit in The Hague and is considered one of the types of human security; Because nowadays, security is not only considered as the concept of military security of states. Water security in this new framework means providing people with safe access to sufficient amounts of water of acceptable quality; it is defined for livelihood, human well-being, socio-economic development and ensuring protection against pollution and natural disasters and protecting the ecosystem in a peaceful and political stable environment (UN water, 2013). Hence, today the Security Council, according to paragraph 1 of Article 24 of the Charter, as an institution whose main task is to maintain international peace and security, is not only responsible for providing military security; But besides that, it is obliged to protect human security and then water security. Therefore, all the

measures to verify the violation of peace, threats against peace and aggression which are the responsibility of the Security Council according to Article 39 of the Charter, can be analyzed in two narrow and broad interpretations. It is a narrow interpretation to interpret the concept of peace and its violation only in the meaning of maintaining military security. On the other hand, the broad interpretation of international peace and security includes the concept of human security and, accordingly, water security and does not refer only to the concept of military security.

Mentioning the statement of the Secretary General of the United Nations on January 10, 1947 addressed to the Security Council, may not be without benefit, during which the powers stipulated in Article 24 of the Charter are not limited to Chapters 6, 7, 8 and 12 of the Charter; because it considers the Security Council to be the main responsible for maintaining peace and security and in order to achieve this, it must have powers commensurate with the responsibility. So, all goals and fundamental principles stipulated in the first chapter of the Charter must be observed by the Security Council in order to fulfill its responsibility and exercise its powers (ICJ, 1971: para 40). In fact, these principles and goals are considered as the foundations of values and beliefs in the international community that must be respected.

In January 1992, the Security Council also proposed that, with the consensus of all its members, it intends to work with a broader and more powerful approach to protect human dignity and noted that all sources of instability in the economic, social, humanitarian and environmental fields are a threat to peace and security<sup>4</sup>. It can be said that according to this approach of the Security Council, human security is somehow tied to national security.

Therefore, the Security Council has carried out routine actions with an extensive interpretation of the concept of international peace and security and expanding its powers to the field of human security. For example, regarding the spread of infectious diseases, it has taken measures; Whereas if security is considered in its traditional concept and framework, it only means the absence of war; but today, international peace and security has a broad meaning that cannot be achieved only by the absence of war; rather, it can only be said that international security and peace have been fully achieved when other components such as poverty, disease and etc. are eradicated.

For example, according to Resolution No. 2237 approved in 2015, the Security Council decided to end the travel and financial transactions imposed by Resolutions 1521 approved in 2003 and 1532 approved in 2004 (United Nations, 2018: p. 9). The Security Council approved two resolutions and issued three statements regarding the situation in Burundi. In 2014 and 2015, the Security Council focused on the challenges facing peace consolidation in Burundi. In 2015, the Security Council delegation visited Burundi (United Nations, 2018: p. 13). In its decisions, the Council developed its concerns regarding alleged human rights violations. At the end of 2015, under the influence of the worsening political situation, the Security Council requested the General Assembly to prepare the preparations for attending another case. The General Assembly proposed multilateral peacekeeping measures under the seventh chapter of the charter to fulfill the political mission<sup>5</sup>. The Security Council is aware of human security in the Burundi area and has taken measures for this purpose and it has involved the General Assembly; because according to Article 24 of the United Nations Charter, the main task is to maintain international peace and security with the Security Council. Therefore, the United Nations General Assembly can be given a secondary and secondary role in maintaining international peace and security. In the resolution of Alliance for Peace, the mission of maintaining international peace and security has been specified for the General Assembly in a secondary position.

### **The Connection Between Terrorism And The Issue Of Shared Waters**

During the challenge of confronting states with terrorism and choosing to prefer one of the two categories of security or freedom over the other, in most cases, states prefer security over freedom and this approach is contrary to the approach adopted by international judicial authorities, including the European Court of Human Rights; because these authorities, by choosing an intermediate approach always try to maintain security and freedom parallelly with each other. Only where both categories cannot be established together, human rights that can be violated have the ability to be limited temporarily; but at the same time, it should be noted that the inviolable human rights listed in Article 4 of the International Covenant on Civil and Political Rights should not be violated (Mazloumi, 2017). Since new types of terrorism have emerged today, therefore, it is not possible to speak and analyze the matter in traditional frameworks. Today, in many cases, one of the forms of fighting between states and war between them has taken place in the space of limiting the amount of water for each other. Therefore, the issue of water rights can also be analyzed and investigated in the framework of terrorism according to the principles, foundations and available resources.

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<sup>4</sup>. UN Doc: S/23500, 31 January 1992.

<sup>5</sup>. UN Doc, GA/RES/926 (2016), 17 June 2016.



For example, regarding shared waters, in many cases, the states of a watershed that have deprived each other of their right have taken a path to a part of struggling and war against each other. Because it has a political motive and can be happened through terror among the public. Therefore, it can take on the face of terrorism and since this type of terrorism can be directed, controlled and managed by states, it is considered as state terrorism; because today, eco-terrorism is one of the new forms of terrorism that is considering.

In this regard, if states try to create terror among neighbors by limiting each other's water resources and not giving the right to neighboring states, terrorism will occur in the framework of environmental terrorism. On the other hand, the states that have been exposed to this damage can adopt any of the freedom-oriented, security-oriented and intermediate approaches towards the violator state which, of course, regardless of the theoretical field and only in the functional field, the states choose the security-oriented approach. In the meantime, states also use violence to maintain their national security that can be manifested in the framework of reciprocal behavior, breaking diplomatic relations or even war. This can be spread to the space inside and among the members of the nation; because in order to maintain their national security, states may create restrictions to the extent that they actually deprive the members of their nation of their freedom which will not only help to maintain national security; but also It will make it difficult to establish security.

The expansion of the concept of terrorism also expanded the cases of threats against international peace and security. Therefore, today the concept of international peace and security cannot be compared with the past and many components are needed to be able to analyze that international peace and security has been realized. In this regard, the global strategy of the European Union<sup>6</sup> states:

"Climate change and environmental degradation exacerbate potential conflicts because of their impact on desertification, land degradation and scarcity of water and food resources." This strategy considers climate change as a threat to water and food resources and as a result, the spread of infectious diseases. In 2018, the Intergovernmental Panel on Climate Change, as the United Nations body for assessing climate change, established strong cause-and-effect links between climate change and environmental factors in the earth, climate and its impact on social and economic life (European Parliament, 2022). Therefore, according to the expansion of the concept of international peace and security, the European Union took into account the issue of climate change and challenges in the field of water resources and its impact on the level of economic and social life in the global strategy of the Union.

On this occasion, the European Union approved the resolution of the European Parliament to resolve some of the problems raised in this regard, dated January 18, 2023 regarding the implementation of the common foreign and security policy. According to paragraph 48 of this resolution, the strategic control of rivers at their source by some states unilaterally and without respecting the integrity of the performance of all the beneficiary states leads to the most severe conflicts. On this occasion, this resolution encourages states located in areas facing the most serious water-related conflicts to sign the 1992 Convention on the Protection and Use of Transboundary Watercourses or International Lakes<sup>7</sup>. So, the participation of states in carrying out multilateral actions along with the conclusion of agreements and conventions can solve some problems related to water rights<sup>8</sup>. This will lead to the improvement of the weather conditions and the quality and quantity of water resources and as a result, the economic and social conditions of life will improve and the main goal of achieving international peace and security can be properly fulfilled.

## **II. Conclusion**

With the erosion of the concept of sovereignty from the important constituent elements of a country, multilateralism by governments became important in the international scene, and governments did not consider themselves as the only ones in the field. As a result, the way of using common waters should be in such a way as to ensure the sovereign rights and human rights of all parties. In this way, with the gradual movement of international law from purely state-oriented towards individualism, the provision of human rights is considered one of the important pillars of a democratic government. Accountability and transparency, one of the important pillars of democracy, are also well fulfilled when human rights are established for the citizens of that society in a favorable and effective way. The exercise of sovereignty in all parts of a country's territory, including water, air and soil, must be established. Because of being located on the border between several countries, common waters are subject to the application of this right by several countries. While exercising sovereignty, governments should also respect the sovereignty rights of other governments and use them according to the principle of limited territorial sovereignty and for equitable exploitation in such a way that they do not violate

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<sup>6</sup>. EU global strategy, 28 June 2016.

<sup>7</sup>. 1992 Convention on the Protection and Use of Transboundary Watercourses and International Lakes.

<sup>8</sup>. European Parliament resolution of 18 January 2023 on the implementation of the common foreign and security policy – annual report 2022 ([2022/2048\(INI\)](#))

the sovereignty rights of other governments. Because today, due to the erosion of the concept of absolute sovereignty and the emergence of the concept of humanity in international law, the rights of the state and the nation are intertwined, and the violation of the sovereign rights of a state will also result in the violation of the human rights of its members.

According to the mentioned contents, there are three approaches. One approach is for the mentioned country to exercise its sovereign right without any regard for the sovereign right of other states in common waters. The second approach is that the said government does not exercise its sovereign right. As a result, in favor of the government or opposite or adjacent governments, it provides the field for exploitation. The third approach is that the said government, while exercising its sovereign right, does not encroach on the sovereign rights of the government or other governments and provides the grounds for exploitation for them as well. The criticism of the first approach is that the exercise of rights should not be unlimited and accompanied by damage to other interested parties; because in this case the right will lose its true meaning; because rights and obligations are two sides of the same coin, and the rightful persons also have a series of obligations, and compliance with these obligations provides benefits to other interested parties as well. The criticism of the second approach is that if this is realized, a vicious circle will be created; because if the governments refrain from exercising their sovereign right under the pretext and justification of respecting the rights of others, then no government will exercise its right and each one refrains from exercising the sovereign right under the pretext of respecting the rights of others, which will result in nothing but indecision and confusion in terms of fulfilling duties and rights.

Following the criticisms of the first and second approaches, the third approach can be considered a logical and equitable approach; because according to the true philosophy of right, while exercising and implementing the right of sovereignty by governments, the obligation to respect the sovereignty of other governments or governments with shared water resources is also provided. In this case, while transboundary water resources will not remain undecided, the grounds for the just exercise of the right to sovereignty will be achieved and the interests will be provided in a fair manner for the nations of each of the beneficiary territories; because the main goal of international law is the desired realization of rights for all human beings, and the establishment of an institution such as governments is in this direction to facilitate these matters in a more equitable manner; because the governments are considered as the representatives of the nations that should strive to achieve their rights. Following such a performance by the governments, the possibility of violating the rules and regulations and as a result the fulfillment of international responsibility is seen to a lesser extent. Also, in this case, the government as a legal entity will enjoy more legitimacy and legality at the international level.

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