

Priority of the laws of international treaties of Islam (Shia) to the laws of international treaties of the West (Contemporary)

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Abstract: About one thousand and four hundred years ago, Islam has referred to the discussion of treaties (commit to contracts), but despite this, the Western people believe that the laws of treaties is the product of Christian countries' relations and nothing more and there don't mention Islam in this regard at all. In this article, we will present some reasons and show that firstly, this statement caused by a kind of prejudice and being self-centered and such discussions cannot reduce the attention that Islam has given to the discussion even a little, because Islam pays a special attention to treaties, so much that it introduces them as divine covenants and therefore, they must be considered. Secondly, treaties in Islam are very different than and superior to similar discussions in contemporary international laws whether in terms of implementation or in terms of purposes and so on. Undoubtedly, discussions like the laws of international laws have a further history and deeper background in Islam than similar discussions in contemporary international laws.

Key words: Treaties; Covenant; Islam's laws; International laws; Comparative review

1. Introduction

The discussion regarding international laws of Islam (Shia), in the sense of general regulations in order to regulate the relations of nations and governments in an international society based on Imam Ali's justice and in the respect of providing peace and safety, is a very pleasant issue and it depends on the time. Unfortunately, over the centuries that has passed since Islam arose, a very prominent and outstanding work in the specific field of developing international rules from the perspective of Shia hasn't been done. Undoubtedly, in this stage, refreshing the heritage of international laws of Islam won't be easy, but the Islam that wants to make an applicable plan practical throughout the international community and introduce a system that would be a proper alternative for the UN organization in the respect of providing global peace and justice, shall be brave enough to exit the theoretical shell and move toward becoming applicable and such evolution, undoubtedly, is not limited to one country and one nation and its result will be achieving the old ideal of man in the respect of providing fair safety and peace between nations and throughout the world (Falsafi, 2004). Among the issues of international laws in Islam (Shia) that can be effective in the mentioned purpose is the discussion of Shia Islamic international laws.

A treaty can make Islam's lofty purposes practical internationally and sooner or later it will happen. In

this article, we will answer these questions: what is the ultimate goal of Islam's laws? Have the people of the West been able to achieve this goal in the UN charter which has been created through a huge treaty? Is this goal in contrast with the veto right of the charter of the UN organization for a few particular countries? And are the enforcers of the treaty of the charter of the UN organization after providing global interests or are they after their own colonial goals. Our goal is to make the true face of Islam known to the world by considering its orders. Our hypothesis is like this: treaties have a high position in Islam and before anything, Quran's existence makes committing to a treaty or contract essential. The method of our research is theoretical and the method of information collection is a library method.

2. Evolution of Shia Islamic international laws

This article will show us that treaties in Islam are very different compared to treaties of contemporary international laws whether in terms of enforcers or in terms of goals and the goal of treaties in Islam with enforcement guarantee that

<<In the distant past in which war was the only criterion for specification of right in the relations between governments, rulers of far and near lands were constantly fighting with each other and at that time, their men were reduced or one of them overcame the other and they became at peace and concluded a contract to forget their hatred>>:

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World's history is full of frequency of war and peace or treaty and perjury, and that is why the philologists have said that peace means the treaty of surrender.

Nonetheless, the concept of treaty became valid (since the time of formation of congress of Vienna) in the realm of international relations and went through a whole lot of astonishing developments in about one and a half century so much that now, treaty has achieved a privileged position as a basic tool of international relations for itself.

The main reason for which the range of the concept of treaty has become wider is the increasing coherence of governments or people of the world with one another. In other words, treaty is a concept which has grown and developed in proportion to the rate of correlations of various governments, unity of general interests of human beings and effort of the people of the world in creating a global culture and civilization and the fact that international public opinion has gained importance (Ziayi Bigdeli, 2006, 39).

After the Second World War, the charter of UN funded the fundamental rules of international relations as the founding document of the United Nations. After the formation of the UN organization, several international treaties were set and developed in various fields.

When the West, church and Christianity on one hand, and feudal regime on the other hand, were in at the peak of power, in the East, one of the very important incidents of the world's history happened and that was the rise of Islam religion in the late sixth century (AD) in Arabia.

The rise of Islam became effective in the evolution of international laws in two terms: one of them is in terms of international regulations that exists in the religion of Islam and the other one is in terms of the date and time of Islam's emergence which overlaps the time of the unity of the European community through Christianity and the subsequent the occurrence of crusade.

Comprehensiveness of Islam's laws is in a way that not only it includes complete rules in an internal field, but it also contains very evolutionary legal rules in terms of international ones. Knowing Islam's laws only as a religious legal system, one of contemporary legal systems in the system of comparative legal studies of the world, proves this itself. Islam considers the treaties as divine covenants that have been concluded in the name of god and based on the ordinance of God and it emphasizes committing to the promise (Matin Daftari; 1962).

3. Approach of Islam and international laws toward the determined goals in charters and international treaties

The goals of international laws are not the same in terms of significance, but sometimes some of them are the introduction and provide the ground for another one's realization; although it is not

independently unimportant, for example in contemporary international laws, providing peace is one of the most important goals of the international laws.

It is noteworthy that practically, international laws, to a large extent, are a means for hegemonic powers to enforce penetration and its main goals are sacrificed for their interests and ambitions and in fact becomes forgotten. For example, it has been stated in the introduction of the charter of UN:

We, the people of the UN, have become determined to be kind and tolerant and to live at peace with each other with a spirit of good neighborliness and to make our powers united to maintain the international peace and safety... by attempting to maintain the future generations from the harm of war which brought indescribable damages to men twice during a lifetime... .

These were how things appeared, but by reviewing the content of treaties and contracts and performance of the founders of international organizations, we figure something else out and this might have been because of the fact that the above plans didn't provide for the invisible goals of the politics (Moeen, 1978).

Here, the emphasis Islam puts on peace is stated in a compressed way in order to compare it with other international rules. We can consider peace as one of the actual goals of Islamic laws; in Islamic rules and teachings, generally, peaceful life and reformation among people have been emphasized which refers to international peace in a way and this issue also confirms the way to invite other nations through Islam.

One of the principles of Islam's teachings is peace and reconciliation and Islam's recommendation is to treat your enemies in a way as if yesterday's enemies are today's best friends. Selecting the name "Islam" for this religion was another emphasis on this holy goal.

Among other goals of the treaty of the UN organization, is the equality of societies and in this regard, the charter pretends that all of the international activities and relations are set based on this. Although some sections of the charter refers to this issue that nation's equality against each other is one of the most important goals of international laws and the charter, but this principle has been broken explicitly in several cases in the charter itself including: the veto right for a number of countries, being a permanent member of the security council for some particular countries and so on, and also not being committed practically and the fact that great countries don't believe in this principle is not a secret to anyone. On the other hand, we see in the Medina charter that Islam condemns nationalism and racism and considers human societies as equal.

Behind the scene incentives and agreements in the emergence of the UN organization, which is the largest contemporary international organization that has been created through a treaty, takes the reader's mind toward finding out that the goal of this charter is not what has been stated within the content and

context of this treaty. There is a question here. How have powers that have plundered weak governments and even also quarreled with one another throughout the story suddenly decided to end war and quarrel and use all of their power in the respect of the sublimation and improvement of weak nations? If this is the goal, then what does the veto right says in all this? Is it something else than this that founders of the UN organization have taken control of nations' fate through the veto right? In this way, they have closed the way for any decision against themselves and this means absolute injustice; whereas in Islamic international laws there is no such thing but providing justice is considered as the first goal.

4. Guarantee of implementation of treaties in Islam and contemporary international laws

The UN organization is not a powerful reference for solving international differences, because this organization does not have essential and proper qualifications and most important of all, still a few of international lawsuits are brought to the court of justice. Therefore, if it is claimed that a treaty is not valid due to breach of a peremptory norm, there is no international reference to give an absolute opinion about such claim. In addition to this, in the international laws, describing any illegitimate action and mentioning the international responsibility of the governments and guaranteeing violation of international rules is always one-sided and decentralized. Thus, governments' authority in describing illegitimate actions is like a weapon that has tempted the powerful people and bullies in the unorganized international community to abuse it and therefore, it has produced some corruptions (Ziayi and Bigdeli, 2006).

But the enforcement guarantee of Islamic laws is not only caused by coherent governmental organizations, but at a higher level it is believing in the afterlife and judgment day. Therefore, spiritual and moral incentives and disincentives of sin are more effective than worldly orders. Thus anyone, not because of legal forces, but even when there is no obstacle for his quest, due to the fear of being infamous, believes that he is committed to comply with law. In other words, the enforcement guarantee of Islamic laws and provisions in the divine judgment in the afterlife and determining that doing something is good or it is bad and he shall avoid doing it is only and only by God and no human has except to obey his Lord in this regard.

On the other hand, we see that the holy Quran, not only has considered committing to a promise as an incumbent provision for Muslims in various verses, but it also considers it as a holy tradition in the lifestyle of God's prophets. It has been quoted from the prophet that one who is not committed to his promises is faithless.

In the early Islam, we see Islamic leaders and also their agents respecting the treaties, because it has been mentioned in some verses that respecting

treaties is also necessary even when it is about enemies; as Imam Ali expresses in his order to "Malik Ashtar":

And if you concluded a treaty with your enemy or took responsibility of something, be committed to your promise and do it and be the armor for the promise you made; because there is no necessity among the divine necessities like respecting your commitment to the promise that people are loyal to despite their disagreement and difference. A little attention to the above statements is enough to make the reader aware of the intensity of Islam's leaders' loyalty to their social and individual treaties and commitments; because this commitment has been emphasized. In fact, Islam considers a promise between two persons as a divine treaty and breaking it as breaking the promise to God.

5. Conclusion

Certainly, many of the principles of the laws of treaties and etc. have grabbed Islam's attention and have had a very serious enforcement guarantee which is a legal and religious support and also Islam's position is the reason why these laws have also been mentioned by other nations and ultimately, it has achieved its relative perfection in the present age. The problem that is considered by the western jurists for the treaties in Islam is that the treaties in Islam belong to about 1400 years before and at the time of the prophet and has not continued after. We answer that it is how it appears but the heart of the issue is different. It is true that we didn't understand the time of the prophet's life but we have Quran as true evidence throughout which friendly enforcement of treaty and promise has been emphasized and in fact before anything, Quran's existence makes committing to a treaty or contract essential. But in contrast, we see the treaty of the charter of the UN organization that the people of the west are its trustee and not only they are not committed to the content of such great treaty, but they are seeking to achieve their own colonial and political goals; whereas, Islam has gone so much further and considers it as a religious necessity.

By considering the interpretations of this article and the process that the contemporary international laws have, we can only hope for the future of the global system so much, unless a new plan would be thought of and Islam would go towards practicality.

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