



Islamic International Law Concerning law of Treaties

Jaber Seyvanizad

Affiliation: Young Researchers and Elite Club, Urmia Branch, Islamic Azad University, Urmia, Iran.
sayvania@gmail.com

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Abstract

The annals of the Islamic international law has been always replete with humanistic principles. One of those dimensions appears in the framework of treaties that is largely resulted from the Islamic international mechanisms. Some western jurists believe that the history of treaty system comes back to the Christian societies in Middle age. Through a library method, this article is promised to refute the previously mentioned claim and shows that how Islamic International law established the only justice-based world legal system of history. In terms of the performance bond, purposes, structures and procedures, The Islamic treaty system has an evident superiority over the current treaty system of international law. As much as possible, this research addresses these dominations evidence primaries.

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I. Introduction

Talking over the Islamic international law includes the presentation of some general rules concerning the legalization of States relations which are based on the peace and justice. Unfortunately with elapse of centuries after appearance of Islam, no specific works concerning the exploration of Islamic international law borders have seriously done. This massive lack has been realized along with teaching the tenets of Islamic international law in the world noted academies and universities. Moreover such a tendency towards Islamic international law sometimes has been along with translation of them into the time important academic languages; such as French and English. Undoubtedly, the revision of Islamic international law inheritance, in this period of time will not be easy to be conducted. The ideal of Islam is the presentation of a world practical prescription that is going to be replaced with the UN based-system to maintain world factual peace and security. Such a great goal will not be achieved unless all world States unanimously have Consensus on it. In this case being optimistic for establishment of world peace based on the principle of justice will be rational.

One of the most important titles of Islamic international law which is valuable to be analyzed is

law of treaties. Because a treaty has this potential to collect the majority of States around each other and represent their will in order to exercise the primary of peace and justice in world level. This article is going to answer this question that what the final aim of Islamic law is and whether United Nation which was created whereby an agreement, could realize its final purpose or not? Does contradict the Veto right with gaining those purposes? Do the executors of UN Charter follow international interests or just pursue their colonialist purposes?

Under the primaries of Islam, treaties are well-respected, because Quran orders Muslims to fulfill their commitments (Zanjani, 1965). The method of this research is theoretical and data have been collected in the library method. This research will show us that, in terms of executors and treaty purpose, there is a yawning gap between Islamic international law and modern international law, because the only aim of Islamic law is just the realization of the world peace and justice whereas the purpose of modern international law in field of treaties is not necessarily taking steps toward "world" peace and justice, because sometimes the interests of super powers as the founders of present international law do not fit in the framework of the collective peace and justice.

II. Evolution of treaties

In far history, the only way for determining the right side was battle and bleeding among the lands rulers. When one overcame the other or there was not the possibility of war continuation, they conciliated with each other. History is replete with wars and conciliations. Conciliations mostly were manifested in form of somethings that nowadays are called treaty or agreements. However, treaties containing present meaning appeared after 1815 Congress and experienced the incredible evolutions over 150 past years so that treaties have obtained the first position among the time internationally legal mechanisms. The principle reason of treaties domain development is the interconnection of States and world people. On the other words, treaty is a concept that has been developed and such a broadening has been along with world synergy for gaining shared culture and civilization, States unanimity and growing rate of public international minds. After the second war, as the founding document of UN, UN charter underlay the fundamental rules of international relations. Subsequently, many treaties were codified and ratified after the formation of United Nations.

When the West, Church and Christianity on one hand and Feudalism on the other were at the peak of the world power, one of the most important event of the history happened in the East and that was appearance of Islam in the late sixth century AD. Appearance of Islam was effective in the evolution of international law; first because Islam introduced many internationally new rules and second because appearance of Islam coincided with the integration of European societies through Christianity and after that ignition of Crusades. Universality of Islamic law not only contains the various dimensions of domestic law but also includes many noble transnational rules. Recognition of Islam as the only religious legal system in the academic system of the world comparative studies, indicates the importance of Islamic law. Islam recognizes the treaty system because treaties under the Islamic law are being created to exercise the justice-based peace.

III. Contact of Islam and International law in the Field of Purposes

In terms of importance, the purposes of international law are not dependent on each other. However, some of those purposes are ground-making for realizing the other ones. Moreover, some of them are individually important, such as the maintenance of international peace and security. It must be considered that the present international law – in practice- to large extents, has been victimized by the so-called super powers. For example in the Charter of the UN it's written: "we the peoples of the United Nations determined to save

succeeding generations from the scourge of war, we the peoples of the United Nations determined to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind, and to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, and to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained, and to promote social progress and better standards of life in larger freedom...."

Those wishes were the façade of building and nobody was cognizant of inner events. By the investigation on the content of international treaties and agreements and also function of international organizations founders it is clear that they were following some purposes other than the abovementioned aims. Some critics call the purposes derived from "power and profit" as invisible goals of UN founders. Here, intensively the approach of Islam is presented to be compared with other world legal trends. Peace is one of the factual targets of Islamic law.

Generally, under the Islamic thoughts and rules there are many emphasizes on the peaceful life of people and necessity of conciliation among them in case of disputes appearance (Zanjani, 1965). Such an approach a fortiori includes the peace realization in the world level; the way of inviting several nations to Islam confirms the previously mentioned approach. Peace is one the fundamental principles of Islam. Islam largely offers all people to behave towards enemies in a way that to absorb their heart to humanity and honesty and finally create the base of friendship with them.

Basically, the philosophy of the Islam name is peacefully friendship under the divine obedience (Farsi, 1970). One of the objectives of United Nation Foundation is nation's equality. In this respect the UN charter pretends that all international relations lie in this basis. Even though some parts of charter symbolize the nation's equality, this principle has been numerously breached in the charter itself. The veto right of some States, permanent membership of some specific States in Security Council and non-commitment of PM of SC to the independency and territorial integrity of States are some related examples. On contrary, in the Madinah charter any kind of racism and sectarianism has been forbidden and all human societies have been considered equal in primary rights (Rashid, 1974).

The hidden motivations of the UN founders in backstage guide its followers to this idea that the aim of UN charter is not somethings that have been stipulated in content and articles. The question that can here be raised is that how the powers who in during history ransacked the weaker nations,

suddenly worried about their welfare and security and channelized their energy in sake of their development? If their objective is nation's equality, then how the existence of veto right is justifiable? The founders of UN control the States destiny through exercising the veto right. Through veto right, PMSC has banned any way of decision-making against themselves and this is a flagrant breach of justice. On contrary, Under Islamic international law there is no any kind of superiority of States over the others and justice maintenance is the first step (Zamani, 1965).

IV. Treaties Performance Bond under Islam and International Law

United Nations is not a potent authority for settling the international disputes, because this organization does not enjoy the merit jurisdictions and more importantly, the trifle number of international disputes are litigated before the international court of justice. Therefore, if it's claimed that a treaty is invalid because of inconsistency with Jus Cogent, there is no any international authority to comment on it. Furthermore, the description of per illegitimate act, arising the international responsibility of States and the performance bond of international provisions breach, have been always unilateral under international law. Hence, the authority of States in description of illegitimate acts has been like a weapon that has incited super powers to abuse against the weak States in the scene of international unorganized society.

Differently, the performance bond of the Islamic rules does not root in coherent governmental system, but roots in the belief in the life after death and resurrection (Farsi, 1970). Accordingly, the moral motivations and deterrent from sin is remarkably more important than the fatal order. Therefore, not based on the legal coerce, but when there is no any obstacle for committing a sin, because of retaliation in life after death, people comply themselves with law. On the other words, the performance bond of the Islamic law is divine referring in the life after death. Determining the good that must be bided and evils that must be forbidden is only under the authority jurisdiction of God and people just obey God in this respect.

Holy Quran, not only considers the fulfillment of commitments indispensable in various verse and binding for Muslims, but also sees it as a sacred method in life of divine messengers; Holy Muhammad says: there is no any faith for the person who is not committed to his commitments. In early Islam, many instances of respecting the commitments and covenants by the Islamic leaders are evident. In some narrations has emphasized on respecting the agreements with enemies; in this respect Imam Ali in his order to Malik States: "If you

conclude a treaty with your enemy, be loyal to your commitments and fulfill your promises; because no indispensable act like the fulfilling the commitments has this potential to encourage people towards divine moralities" (Shariati, 1979). Thinking about the mentioned cases can aware everybody towards the position of treaty and fulfilling the commitments resulting from them under the Islamic legal system. Under the Islamic law, an agreement between two persons is considered as an agreement with God and its breaching is considered as breaching an agreement with God as well.

V. Rejecting the Treaties by the Western Jurists before the Twentieth Century

According to the western jurists, codification of international law for the first time has been done in the late 18 century (Rosenne, 1989). After the first war, codification of international law entered into new round. Subsequent to formation of United Nations, Charter ordered general assembly to design a framework for codification and development of international law. By hearing the mentioned annals of international law which has been narrated by jurists this question can be raised that whether the life of this major comes back to 150 year ago i.e. the date of the holding of peace conferences of Hague! Was not there any international legal system under the Islamic standards? Do such claims result from a scientific approach or something else? In order to answer these questions some points must be considered that come as follows:

I: International jurists must pay attention to this point that if the term of international law is accompanied with the term of "modern", in this case that would be possible to be hypothesized that international law has been created as a result of Christianity. And just the term of "possible" is used because the various dimensions of discussion is really vast and complicated.

II: Why the treaties which have been concluded after the ninetieth century have been considered law-making? And why the treaties which have been concluded before this time are not important? In short and in terms of the legal character and binding nature, there is no any difference between treaties after and before twentieth century. Just some treaties like law enjoy the generality, whereas some others like contracts relate to a specific and partial subjects. There has not been any treaty enjoying the generality in during the history? Is it only the peculiarity of ninetieth and twentieth centuries that human reason could explore such an unprecedented event?!! If a jurist disbelieve in the existence of such treaties, it is one of the biggest lies of history. But if they acknowledge their existence and in spite of it deny the existence of international law in the past, it won't

be anything other than a clear dogmatism. In order to deny the existence of international law in ancient and medieval – that a fortiori contains Islamic international law- deniers have to bring one of the following reasons:

A: They have to say there were not any law-making treaty before the nineteenth and twentieth centuries. Such a claim as mentioned is completely baseless.

B: Or they have to say these treaties have been really simple and are not merit to be considered equal with present treaties. Such a deduction is like this logic in which one claims: there was not any transport in the past because animals are not comparable with new transport tools. Such a deduction is ridiculous as well.

C: Moral or religious rules, because of their nature are excluded from the scope of law, accordingly they may not call international law. Regarding this fact that law includes the kind of rule that society has accepted their generality and binding character; as a result religious rules have entered into Statute law. Therefore, such a society may not considered without the legal system.

D: As long as the States with sovereignty and same rights did not appear, international law could not be formed as well. In response it must be said that, being a superior State over the others has not been a common custom in history; but States existed with the same level of power and enjoying the same rate of rights. Such an equality has existed just in the mind world and has limited to the ideals. Moreover, in the past the principle of equality before the treaty system was used to be prevalent. But even such a principles also was breached and has no many defenders in modern international law. On contrary, the treaties and international commitments of holy Prophet are innocent of such claims. Therefore, it can be concluded that the mentioned deductions fail to tarnish the jurist's minds towards the existence of Islamic international law, specifically treaties.

Conclusions

International law and law of treaties have not been the phenomenal of the present age, but this thought since the far history has been the concerns of many people. However, only in early Islam could enjoy from certainty. Undoubtedly, lots of treaty law

principles have been significant under the Islamic law and enjoyed very strong performance bond which was manifested in framework of legal and religious values. Some western jurists address some objections over Islamic law of treaties. They believe that the existence of treaties in Islam comes back to 1400 years ago and such a legal mechanism did not continue after the death of holy prophet. Even though such a claim apparently seems to be right, there is a vital document prescribing other news. Quran as an undistorted act, repeatedly orders on fulfillment of obligations and in fact Quran has guaranteed the loyalty of Muslims to their commitments. Differently, the Charter treaty exists that the western States are responsible to exercise it. It is observed that these States not only are not committed to the provisions of Charter but also widely pursue their colonialist policies. Whereas under the Islamic International law all States enjoy the same level of rights and no one has superiority over the other one. And besides, complying with the principle of commitment fulfillment is indispensable for all Muslims even concerning the agreements with atheists and enemies.

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