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A Review of Inconvertibility of Iran Nuclear Deal into an International Treaty

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Abstract: *International treaties become legal rules based on a social reality. The lawyers are convinced that JCPOA (Joint Comprehensive Plan of Action) is something novel and this has led them to identify the type of this agreement and to understand the scope of the requirements and obligations of the parties to the negotiations. The present study, based on analytical-descriptive method and by using the documents available in this field, has examined the differences and reasons for not converting Iran's nuclear deal into an international treaty, and by understanding the nature of this contract, ultimately concludes that such an agreement, because it is more political in nature based on the distribution of power and the power equation in the international arena rather than having a legal nature, therefore it cannot be converted into an international treaty.*

Keywords: *international treaties, JCPOA, Iran.*

INTRODUCTION

International treaties have long been a source of international law for regulating the relations between the main and primary actors of international law, that is, the countries. Today, this source provides for the establishment of relationships among a new group of international law actors, i.e. international organizations with countries, as well as relations between international organizations. On the other hand, the expansion of relations between countries on various aspects, on the one hand, has led to an increase in the number of numerous bilateral or multilateral economic, social, technical, etc. treaties, and on the other hand, has changed the methods of concluding treaties (treaty making).

Given the developments in international relations and the recent desire to reduce formalities, in many cases the formal way of treaty making, including negotiating, signing, approving of competent institutions, and publishing, seems to be laborious and slow. An official style is suitable for treaties that involve costs, changes in domestic law or relate to fundamental issues of international relations. But this method is not appropriate for agreements with technical characteristics or limited scope or agreements that require a quick fix and implementation regardless of the subject matter.

In the meantime, the Iran nuclear deal case is one of the most striking examples of the conflict between international obligations stemming from various sources of international law, in which the involved parties, each refer to rights and obligations arising from a source. While Iran, on the basis of the Non-Proliferation Treaty, regards enrichment and attainment and use of nuclear energy one of its inherent rights, Western countries, in accordance with the obligations arising from the Security Council resolutions attempt to prevent

attainment of such rights. Of course, in accordance with the international procedure under developments and Article 103 of the United Nations Charter, in the event of a conflict of obligations between international agreements and the obligations arising from the Charter, including obligations arising from Security Council resolutions, the latter obligations seem to be superior. By the same token JCPOA was presented as a document that could meet the requirements of the two parties. Therefore, it seems that JCPOA cannot be converted into an international treaty. Also, the characteristics of the international treaties are such that JCPOA cannot be converted into an international treaty.

In this regard, although all lawyers consider JCPOA a new and emerging phenomenon, they do not agree on legal description of JCPOA. Some argue that a documents set out in the framework of JCPOA as soft law which has a mandatory format, but in its content and practice is flexible and lacks a conventional legal enforcement guarantee, and its mandate is a political obligation based on the distribution of power and power equation in the international arena that sometimes is more effective than international rights enforcement guarantee. So, they want to categorize JCPOA in the field of international relations and not the international law. Therefore, the present research seeks to answer the question that why JCPOA cannot be converted into an international treaty. Moreover, what are the conditions and characteristics of international treaties?

Subject background

Katzman & Kerr (2016), in a study titled *Iran Nuclear Deal*, examined the joint commission on issues arising from the implementation of JCPOA, and stated that the majority of the members believe Iran would act in accordance with its provisions. As Obama and the 1 + 5 leaders emphasized, the goal of the joint comprehensive plan of action is to ensure Iran would not have access to nuclear weapons technology. US Secretary of State, Wendy Sherman, said in October 2013 that given the high volume of enriched uranium in Iran, the country could achieve the necessary facilities for building nuclear weapons over the next year. She also referred to the JCPOA legal merits and prevailing Iran's political and legal atmosphere in the Security Council and the UN .

Also, Einhorn & Nephew (2016), in a research entitled *Iran Nuclear Treaty: Advancing Expansion and Expansion in the Middle East?* examined the challenges facing maintaining cooperation and the continuation of the JCPOA (Joint Comprehensive Plan of Action) and mentioned its major problem as the approach of opposition in Tehran and Washington. Therefore, they believe these challenges are mainly due to differences between executive branch and legislative branch and military forces. In Tehran, these differences are related to the process of lifting sanctions and how to integrate Iran into global economy which can lead to Western influence.

Theoretical Framework

The Legal Nature of JCPOA (Joint Comprehensive Plan of Action)

JCPOA was signed based on the final agreement of the Foreign Ministers of the 5 + 1 group and the Foreign Minister of the Islamic Republic of Iran on July 14, 2015. In order to consolidate the practical foundations and safeguard execution of this agreement, the United Nations Security Council adopted Resolution 2231 on July 20, 2015 at its session 7488 and requested the JCPOA signatory States to fulfill their obligations and in this regard, all previous sanction resolutions against Iran were canceled (Fatahi Zafarqandi, 2015: 18).

The program is a 159-page agreement. It contains 21 pages of main text and 5 attachments with a total of 139 pages. In the main text, 5 pages are divided into two sections: Preface, Introduction, and General Provisions. In these two parts, as in any agreement or contract, the generalities of the agreement are referred to. In the other 15 pages, there are four sections: Nuclear, Sanctions, Implementation Plan, and Dispute Resolution Mechanism, and the provisions of the agreement and the commitments of the parties are discussed. The attachments include: Appendix 1: Nuclear-related activities; Appendix II: Obligations relating to sanctions;

Appendix III: Peaceful nuclear cooperation; Appendix IV: Joint commission; Appendix V: Execution plan (Shapouri, 2016:8).

There are two perspectives on the legal nature of JCPOA: on the basis of one perspective, JCPOA is an international formality or political agreement, and it is unnecessary to follow the conventions stipulated in The Constitution in relation to the conclusion of treaties, and, according to the second view, JCPOA is an international legal agreement and it requires the conventions stipulated in The Constitution for the conclusion of treaties. Between the two aforementioned views, the former seems to be more correct, therefore, in the following some arguments are made to prove the validity of this opinion.

The position of treaties in the international law

The international treaty, as the most important source of international law, shapes the activities of countries and other international law actors in the international scene and is a fundamental expression of international cohabitation. On the other hand, although the treaty is the official symbol of state or organizational authority, it also limits this authority. As a result, the treaty is a normal legal practice that is carried out by international law actors under international law and, while expressing their authority, restricts that authority and gives rise to their competencies (Ziaie Bigdeli, 2009: 61).

Consequently, international treaties are considered as the main axis of international legal relations, and the agreements contained therein are divided into explicit and implicit agreements and both explicit and implicit agreements are considered valid from the point of view of international law.

So, from the viewpoint of some scholars on the law of treaties, it can be stated that the law of treaties in international law is equivalent to the contracts law in private law. Because in international law the international obligations can come from treaties, although not exclusively, and also in the domestic law, it is one of the sources of creating commitment, and of course, the most important of them is the contract (Olomi Yazdi, 2011: 198).

The treaty, although it is a part of domestic law, is superior to ordinary law and in the hierarchy among domestic law, should be after The Constitution and before ordinary law. The reason for this is the contractual nature of the treaty and its essence, not its sanctity or the sanctity of international law, nor the monism theory with the superiority of the international law. In other words, the problem is that the treaty is an agreement between states, and the creation and execution of a contract is subject to the will of the parties who conclude the contract. Consequently, treaties in international law do not differ from domestic law contracts, and in principle in domestic law it is not possible to collapse previous bilateral will by a later one-sided decision; in international treaties, in principle the treaty cannot be unilaterally terminated (Musazadeh, 2015: 204). Thus, the conclusion of each treaty consists of three stages, including signature, ratification, and enforcement. According to the fundamental rule of treaties, the provisions of the treaty are not legally binding until it comes into force (Asada, 2002: 92), and only in Article 18 of the Vienna Convention on the Law of Treaties of 1969, in the form of the provisions, the scope of this rule has been restricted. According to this article, a country or an organization which signs a treaty, up to the time it approves of the treaty or declare its intention not to be a party to the treaty, shall not commit acts prejudicial to the purpose and subject of the treaty. For the interpretation of this article, one can add that the authors of the Vienna Convention mostly emphasize the aspect of refraining to act and do not impose any positive action on the parties in this article (Rogoff, 1980: 297).

Types of treaties

Treaties in general international law can be divided into several categories, which are referred to below:

Based on concluding formalities, there are official and simple or execution treaties.

Based on nature of concluding, there are general or legislative treaties and special or contractual treaties (Ziai Bigdeli, 2015: 99-100).

In terms of number of the parties, bilateral and multilateral treaties can be mentioned. (Evans, 2014: 825)

In terms of subject matter, political, substantive or administrative, legal or other treaties can be categorized (Evans, 2014: 826).

Therefore, the features of these treaties are discussed below.

Characteristics of treaties in terms of formalities

Features of simple treaties

In this context, it is necessary to note that although simple treaties are usually referred to with titles such as letter of exchange, exchange of notes, supplementary protocol, and so on; and the terms like treaty, convention, charter, etc. are used in case of official treaties, but change of name does not have an impact on the creation of an international obligation (Harris, 1998: 771), as referred to in paragraph 1 of Article 2 of the Vienna Convention of 1969 this subject is expressly referred to in the definition of the treaty. In addition, terminology is by no means consistent. Therefore, the title and form cannot be a good indicator of differentiation.

A simple treaty is valid without the intervention of the head of state and approval of the parliament, by signature of the Secretary of State or diplomatic representatives, in the form of letter of exchange, exchange of notes, memorandum and so on.

Official treaties

The official treaty has a longer formal procedure, in which the intervention of the head of state and the approval of the legislative branch is necessary. Compliance with this procedure is a matter of controversy with the urgent implementation of certain treaties. Hence, a mechanism called the temporary execution has been established to solve the problem and to consolidate the need for a speedy implementation of the treaty and compliance with extensive formalities.

Official treaties, unlike simple treaties, are not immediately exchanged at the time of signing. After the exchange of documents, the treaty will not be implemented immediately, and this will diminish the countries' inclination toward these exchanges (Watts, 1994: 28).

Subject-matter of treaties

Legal treaty

Each treaty has a political aspect, because governments make or join a treaty when it can meet their political or other interests. In this sense, all international treaties are political. However, any treaty in the general sense of the word (a treaty created by international law for the creation of international rights and duties between governments) is a legal document.

Features of treaties in terms of the number of parties

Bilateral treaty

The bilateral treaty is a treaty of mutual nature, and there is a kind of balance and coordination between the rights and duties of the contracting parties, and the benefits which each of the contracting parties gains from them is balanced with the task imposed upon them (Falsafi, 2014: 65).

Multilateral treaty

A multilateral treaty is a treaty that is the result of the will of two or more governments and in principle, cannot be terminated unilaterally by a state, and if a state abrogates the treaty in its own right, it has in fact violated it and the violation of the treaty entails the responsibility of the state (Shariat Bagheri, 2011: 286).

Political or decency treaty

In some cases, governments have pledged conventions among themselves which did not entail any legal obligation. The nature of such treaties was to declare the rules or to express the mutual obligations of the

governments that participated in the conclusion of those treaties (Falsafi, 2014: 99). In international law, political commitments are referred to as non-binding agreement, honorable or decency agreements and such obligations are not legally binding, which of course, does not undermine the legal effects of such measures (Allen & Thompson, 2011: 230).

Therefore, along with international treaties, there are other agreements that are called non-legal or decency agreements. These agreements create obligations of a purely moral or political nature and do not entail any legal obligations for their parties. These agreements are excluded from the international law and their conclusion is not limited to the international law actors. The distinctive criterion of such agreements from legal agreements is the intentions of the parties to the agreement .

Characteristics of international legal treaties

The international treaty is the result of an international agreement of wills.

The international treaty is a document that creates a duty .

The international treaty is merely the result of the will of the main international law actors, that is, countries.

The international treaty is governed by international law regulations.

The international treaty is set up in writing.

The international treaty can have various titles.

The international treaty can be arranged in one, two or more related documents.

In fact, all treaties are international agreements, but not all international agreements are treaties.

Terms and conditions of international legal treaties

Treaty and agreement essentially need signature.

The parties to the treaty would mention in the document that it is a treaty.

Use of the terms in the Vienna Convention of 1969 for the purpose of signing, accepting, reinforcement, ratifying and so forth in the text.

The mentioning of its ratification in the countries party to the treaty and binding the parties to the negotiation to it.

The multilateral treaty essentially has a Treaty Trustee (Ziai Bigdeli, 2015: 72).

Existence of intent and consent in the treaty .

There is a requirement for the implementation of treaties, and the parties do not volunteer to do something (Das, 1995: 146).

Treaties concluded between the two governments or more are published in the United Nations publications (UNTS) (translation of the Vienna Convention of 1969:226).

Systems and institutions arising from treaties

The institutions arising from treaties are organizations that have been created by various conventions related to that subject and, in fact, are the executive arm of the relevant conventions. The main task of such institutions is to monitor the proper implementation of the relevant convention and to provide recommendations and interpretations to further the good practice of the convention. These institutions are only funded by the voluntary contributions of the parties to the treaty.

Research Methodology

The research methodology of this study, to investigate and prove the hypotheses according to the nature of the subject, is the descriptive-analytical method and the method of collecting information is the library method using written sources.

Definition of concepts and terms

Treaty

Treaty means oath and pledge, and in Webster Dictionary, apart from the use of Latin words such as *compact*, *concordat*, *pact*, and *treaty*, this term is defined as follows: a written contract between two or more political authorities, whether government or sovereign, signed officially by their authorized delegates and usually approved by the legislator (Webster).

Generally, any bilateral or multilateral agreement between international law actors is called a treaty. Provided that such an agreement is governed by international law and the provisions of which rule over the agreement and as a result, provides certain legal effects (Ziai Bigdeli, 2015: 73).

In fact, treaties, contracts, and agreements, are international instruments that governments join them through signing and other legal acts, and oblige themselves to execute its provisions. In fact, signing means the agreement of the representatives present at the conference on the text of the treaty and that they are willing to accept it and refer it to their respective governments to take any necessary action (Moqtader, 2016:288). At the same time, governments can agree to or refuse to accept these documents by inclusion of conditions by the use of a condition clause announced by another government (Enayat, 2015:31).

Analysis of the Findings

One of the reasons for not converting JCPOA (Joint Comprehensive Plan of Action) into an international treaty is that the comprehensive and final Vienna agreement with the well-known and official title of JCPOA was adopted in line with the comprehensive agreement on Iran nuclear deal and pursuant to Lausanne nuclear agreement on July 14, 2015 in Vienna, Austria, between Iran, the European Union and the 5 + 1 group, including countries such as China, France, Russia, the United Kingdom, the United States and Germany. After concluding the final text of JCPOA by the negotiating parties, based on the agreement, a United Nations Security Council resolution relating to confirmation of JCPOA was approved and adopted within a short period of time.

Other reasons include that the agreements must point to a future behavior and affect the future relationships of the parties. Therefore, any joint statement or multilateral document is not an agreement. These two criteria are also required in treaties as well. Although there are qualitative differences in the nature of expectations of normal behavior, but due to the popularity of decency agreements, many forms, structures, execution procedures, and even withdrawal rules, apply to these agreements as well as the treaties .

Among other reasons in this regard, it can be noted that the title of the JCPOA, i.e. Joint Comprehensive Plan of Action also indicates that the parties were not seeking ratification of a official treaty, since otherwise they would use titles such as agreement convention, charter, articles of association, protocol, declaration and so on, and since in accordance with Article 77 of the Iran Constitution, these matters must be approved by the Islamic Consultative Assembly, therefore, this JCPOA is one of the conditions for the conversion of JCPOA into an international treaty to pass these phases.

Another reason for not converting JCPOA into an international treaty can be found in the phrase contained in this document, because the provisions of the joint plan of action of Geneva do not imply a direct mandate, but each of the parties with its discretion and will, accepts commitments that will provide the settings for concluding the final treaty at the final stage. In other words, the intention of joint plan of action document in the use of certain terms and expressions indicates that this discretion does not mean the term “freedom of wills in concluding a contract” and implies that each party, by doing so, prepares and stage for conclusion of the final treaty and legally, failure to implement these obligations does not create any effect.

Of course, the political implications of this breach of duty are necessarily revealed, and consequently legal effects may arise. But in any case, in the first instance, the failure to fulfill the obligations contained in the contract does not result in the appearance of legal effects. Also, other terms that show this document is not a treaty and the inability to become a treaty is emphasis on voluntary action, as well as the lack of a binding

clause with certainty, the avoidance of the use of words and verbs that indicate the necessity of taking action, show that it is non-binding.

All of this, excludes the document from the legal treaty perspective and it can only be considered a political or decency agreement, which deals with the planning of actions and the framework of a cooperation.

Therefore, JCPOA is a political or decency treaty, as it is stated in the context of the report of the Special JCPOA Inspection Commission in the Islamic Consultative Assembly: the commission as a whole has concluded JCPOA is a political agreement between the government of the Islamic Republic of Iran and the other negotiating parties (1 +5 countries and the European Union), and believes that the government should take care of the nuclear infrastructure and its achievements with all necessary measures in order to make decisions appropriate for national interests in case of violation of the treaty by the other party (the text of the Special JCPOA Inspection Commission report in the Parliament, 2015).

Whether the two sides have reached an agreement or that it is a written agreement, and in the context of an issue that has a particular aspect in the nuclear rights, cannot cause a mistake in distinguishing it from international legal treaties. The important criterion is the application of international law to that agreement. In this regard, the parties have never expressed their consent to the rule of international law. Thus, the legal literature can hardly be found in the agreement (not in the title or provisions, nor in the organizing of its clauses). On the contrary, the parties have explicitly stated that the document is not a legal treaty.

Since the condition of an international treaty is the adoption of it by the legislative branch of the countries party to the treaty, another reason for not converting JCPOA into an international treaty is non-approval of it in the parliament of other countries. However, although the second part of the second principle of the US constitution stipulates that the convening of the formal treaties is subject to the consent of the Senate, in the opinion of American lawyers this document is not legally binding and as an international agreement does not require reinforcement by the American legislative assembly (Garcia, 2013:2).

Summary and Conclusion

The Islamic Republic of Iran and the 5 + 1, after nearly two years of negotiations during the eleventh administration, and to resolve the issues related to the Iranian nuclear problem and removing the cruel sanctions against our country, in July 2015 set up the draft of JCPOA (Joint Comprehensive Plan of Action) and then within a short time, based on agreement reached between the negotiating parties, the United Nations Security Council Resolution on this matter was adopted. In this regard, the analysis and examination of the reasons for not turning JCPOA into an international treaty is critical because of its binding nature and having an enforcement guarantee. Since one of the most challenging and controversial aspects of the final text of the JCPOA is the examination of the legal dimensions, the limits of the competences of the domestic institutions and the manner in which commitment to obligations are made on the basis of the legal system of the Islamic Republic of Iran. Therefore, the present study examines the legal nature of the JCPOA, status of treaties in international law, types of treaties and features of each of them, characteristics of international legal treaties, conditions of international legal treaties, and systems and institutions arising from treaties, to investigate this issue. Thus, the results of the present study indicate that this agreement, since it is more political in nature rather than a legal nature, based on the distribution of power and the power equation in the international arena, cannot be converted into an international treaty.

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