

The Iranian Legal System Challenges regarding Accession to the Human Rights Treaties from the Perspective of International Law

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Abstract

The challenge between international law and the Iranian legal system has always been a controversial issue, either at domestic or international level. These challenges not only are related to the ideological and theoretical differences, but also the incorporation and implementation of international obligations (from the practical perspective) have always been faced with various difficulties. An analysis of the rules on the incorporation of international law in the Iranian law, along with the status of international law within the Iranian law show that only a limited direct use can be made of international law in Iran. Consequently, this issue has influenced the practical impact of international conventions at domestic level. This is the case, particularly, when the human rights treaties deal with issues such as the rights of women, sexual crimes, etc. While to date, much research has been conducted to criticize the human rights instruments, very limited research has addressed this issue from the international legal perspective. To provide a proper basis for dialogue and discussion and in order to minimize the gap between the both systems, it is necessary to analyze these challenges from the perspective of international law as well. To hold a fair discussion, it is crucial to know how the international community perceives Iran's incorporation of international treaties or Iran's violation of international obligations. It also brings great opportunity for Iranian researchers to convey appropriate responses and reasonable arguments for the international community regarding Iran's international obligations. Therefore, by applying descriptive and analytical methodology and thorough analyzing international treaties, reports of monitoring bodies of the UN and other relative sources, this paper categorizes and analyzes the different challenges between the Iranian legal system and international law regarding this issue. In doing so, this paper discusses that the reservation is one of the solutions of the international community to provide the maximum countries contribution in international law. However, based on the Vienna Convention on the Law of Treaties (VCLT), an appropriate reservation should fulfill some requirements which maintain the identity of treaties itself and also preserve the international order as well. In addition, the international community, when making international treaties, has to consider the cultural, political and religious context leading to the localization of human rights and consequently practical implementation of treaties at domestic level. Therefore, while maintaining the principle of sovereignty of each country, it assures the participation of the majority of countries with different cultural and religious backgrounds in international law.

Keywords: Iranian legal system, International treaties, international obligation, international perspective.

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