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Exploiting the Bed and Subbed of the Seas from Juridical and Law Perspective

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Abstract

Exploiting the bed and subbed of the seas which are outside the governments' sovereignty is always discussed since the countries severely need to these resources and the technological progress makes it possible to exploit these areas. Present study aims to respond this question that how resources of bed and subbed of the seas outside governments' sovereignty are exploit based on law perspective, and how can analyze juridical attitude in this issue. In law perspective, according to the 1982 Convention on the Law of the Seas, these areas are the common heritage of humanity and International Seabed Authority is responsible in this field. In Islamic jurisprudence, exploitation of properties which do not belong to a specific person and freely are in access the public is named Anfal. But the bed and subbed of the seas are not included in any of the territories such as Dar al-Harb defined by the jurists, because no government have the right to claim sovereignty over these areas, and Dar al-Kofr is not in charge of these areas either. It is necessary to act based on international treaties and customary in such a situation. It means that Dar al-Islam is committed to act in accordance with existing international treaties and customary. Even if Dar al-Islam has not accepted any treaties regarding the bed and subbed of the seas, it is committed to implement international regulations based on international customary since international customary has known the bed and subbed of the seas outside the governments' sovereignty as the common heritage of humanity.

Keywords: Bed and Subbed of the Seas, Governments' Sovereignty, International Law, The Law of the Seas, Common Heritage of Humanity.

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1. Introduction

Marine resources were not very important in traditional international law, and the sea was merely geographically significant for the coastal countries. The states which were located next to the maritime boundaries just had to strengthen their naval combat forces in order to maintain their independence against the menaces of other countries. Since, at that time, the only usage of marine resources was restricted to fishing in the internal waters or territorial sea due to the lack of technological progress, it was not considered as the protective of states' interests, from an economic viewpoint. In the second half of the 20th century, technological progress, increasing growth of the world population, and economic pressure caused by the lack of mineral resources made mankind look for other sources of raw materials. Therefore, human beings become aware of the rich food, mineral, oil resources, and supplies in the depths of the seas and began to exploit them. The bed and subbed of the seas are rich in mineral resources.

In many areas, the bottom of the seas is covered with manganese, nickel, cobalt, and other metals (Akehurst, 1994, Vol. 1, p. 255). In addition, since most countries are facing a shortage of necessary mineral resources on the earth and such resources do not meet the needs of industries as well as all countries do not have access to these resources, they inevitably turn towards the sea and notice the resources in the bed and subbed of the seas. The necessity for the fair distribution of these mines and rich resources and the maximum use of the principle of freedom of the seas for the development of international trade and shipping led to be gradually compiled and development of the international law of the seas in the 20th century. The existence of rich supplies which stimulated industrial and technological countries to exploit and the fruitless efforts of the third-world countries to share in this exploitation clarified the necessity to compile international legislation. The lack of any agreement among coastal governments of each water domain on achieving a fair solution leads to the loss of natural resource capacities and creates security challenges in strategic water regions (Jafari et al., 2020, p. 51). The central issue of the present study is to identify how to exploit the bed and subbed of the seas out of the control and authority of

governments. In addition to the law approach, how to look at the bed and subbed of the seas outside the governments' sovereignty is an important issue to be discussed from the Islamic jurisprudence viewpoint.

According to the juridical viewpoints, it is possible to investigate whether the bed and subbed of the seas can be exploited based on the rules determined by Islamic jurisprudence or not, and what the nature of properties outside the government's authority is. This can clarify the path of our Islamic country to join numerous conventions which are approved regarding properties outside the government's sovereignty, and if necessary, domestic regulations corresponding to the aforementioned conventions should be approved in order to protect the operators. The present study aims to investigate how the bed and subbed of the seas outside the governments' sovereignty are exploited from juridical and law viewpoints.

The hypothesis of this study is that "exploitation of the bed and subbed of the seas from law viewpoint is subject to the defined rules of the 1982 Convention on the Law of the Seas which is called common heritage of humanity (Tanaka, 2016, pp. 20-50), and since in jurisprudence, the Islamic State is committed to implementing international obligations, it is required to comply with international rules regarding the bed and subbed of the seas outside the governments' sovereignty". For this purpose, first the bed and subbed of the seas from law viewpoints are examined, then the jurisprudence approach in this regard is analyzed.

2. Exploitation of the bed and subbed of the seas from law perspective

The seabed refers to the bottom surface of the oceans and seas' water, and the sea-subbed includes mineral resources which are located under the seabed. The seas are not just a vast expanse of water which are outside the sovereign territory of the world's states, but rather the seas possess valuable things including mines and aquatic animals in themselves. The 1958 Geneva Conference was the first significant legislation on the law of the seas, however reaching an agreement on some issues such as the width of the territorial sea and the fishing rights of coastal countries was unsuccessful.

The rapid progress of technology caused mankind to seriously and increasingly exploit the oceans and seas in order to achieve economic and military goals so some complex issues arose that the law system of 1958 was

unable to solve. Along with the factor of technology, decolonization led to emerging new countries all of which lacked the necessary technological facilities to exploit the depths of the seas (Malcolm Shaw, 1995, pp. 235-236; Kazemi, 1987, p. 55). Since the depths of the seas have long been outside the national authority of the governments and considered as a part of the high seas (Salehi, 2020, pp. 283-308), and the coastal government had no control over these resources, an opportunity was provided for the major industrial countries to exploit them unilaterally as well as the developing countries, which lacked the necessary technology and resources, deprived of the resources.

The creation of new countries, especially landlocked countries in the process of decolonization in the 60s as well as the demand of third-world countries to reform the traditional law of the seas and create a new system of the international economy led to the approval of Resolution 3201. This resolution was approved in favor of the majority of third-world countries and caused changes in the traditional law of the seas. On August 17, 1967, the Government of Malta asked the United Nations General Assembly to include the proposal regarding the Declaration and Convention on the maintenance of the seabed and the ocean floor exclusively for peaceful purposes and the use of their resources for the benefit of mankind in the agenda of the twenty-second session of the General Assembly. Then, the head of the Malta delegation in the United Nations, Mr. Arvidpadu, announced in an exhaustive speech on November 17, 1967, that the international system of the seas' depth should be based on "new", "fair" and "ethical" principles, thus "common heritage of humanity" is the principle which has such characteristics (Mir Abbasi, 1999-2000, p. 59).

With the emergence of this concept in the international law of the seas and the developing countries' efforts, especially in the framework of the United Nations General Assembly, it was necessary to revise the 1958 Convention on the law of the sea and arrange a convention, which included the new approach of the international community on the law of the sea. Therefore, numerous conferences were held in the 70s for this purpose, which finally led to ratifying the 1982 Geneva Convention on the Law of the Seas. It is a remarkable development in one of the most important issues of international

law, i.e., the law of the seas (Mosazadeh, 1996, pp. 6-8). The eleventh chapter of the 1982 Convention, as the most important part of it, was dedicated to this issue and has a complex legal system. Since advanced governments with superior technology began to oppose this complex legal system, it was not executed correctly. Although they signed agreements among themselves to create a mutual transaction system (Aghaei, 1994, pp. 93-94), the countries which were part of the system, accepted the principle of "common heritage of humanity". They later determine the way to reach this principle by accepting the executive agreement annexed to the resolution of July 28, 1994, of the United Nations General Assembly, which is a development in the eleventh chapter of the 1982 Convention and in the direction of balancing of the interests of the developed countries.

Therefore, the acceptance of this progressive principle, especially its description as a jus cogens in modern international law plays an important role in order to provide the interests of the international community, especially developing countries as well as establishing and developing the new international economic system (Encyclopedia of Public International Law, 2002, p. 693). However, in practical terms and due to the lack of necessary technology in the developing countries on the one hand; and the rights of its holders (developed countries) and the legal and customary requirements for its recipients (developing and less developed countries) on the other hand, the main operators who directly exploit the depths of the seas within the national jurisdiction or outside of it, are developed countries. Just as the exploitation of air space, including the moon and other celestial bodies or the Antarctic, which are the other symbols of the common heritage of humanity, the situation is similar.

2.1. Rules governing the exploitation of the bed and subbed of the seas from the law perspective

The aforementioned developments on the subject of the bed and subbed of the seas led to the creation of the concept of the common heritage of humanity. This concept is created in the structure of international resource management and tries to share the entire human race in the use of international benefits. The principle of the common heritage of humanity has been made in recent decades with the support of the international community

and includes things such as the depths of the seas outside the governments' sovereignty. Recently, this principle has been extended to things like human and humanitarian rights, ancient and historical heritage, cultural values, and the human genome (Habibzadeh; Mansouri, 2013, p. 94).

Article 136 of the Convention on the Law of the Seas under the title of the common heritage of humanity stipulates that the bed and subbed of the high seas and oceans and the resources contained therein are beyond the national jurisdiction. Thus, they are the common heritage of humanity. The protection of the common heritage is the responsibility of the international community, including coastal countries, landlocked countries, as well as relevant international organizations. However, this common responsibility varies among countries. In particular, the coastal countries must act in goodwill in fulfilling their obligations and enforcing the rights established under the convention, legally and considering the seabed area. The International Seabed Authority is responsible for the implementation of the principle of the common heritage of humanity as the right of all countries.

Thus, in accordance with the 1982 Convention, the United Nations with the efforts of Group 77 established International Seabed Authority to monitor activities on the seabed (Talaei, 2019, pp. 20-100). According to Article 136 of the Convention, all rights and resources in the region as a whole were assigned to International Seabed Authority and it operates based on Article 132, Clause 2. The United Nations established the office of the International Seabed Authority in 1983 in Montego Bay, Jamaica. In the beginning, the Director of the Convention was responsible for its administration (Organs of the International Seabed Authority,1994). On November 16, 1994, it was accredited by enforcing the 1982 Convention and the United Nations Secretary-General inaugurated it by holding the first meeting from February 7 to March 17, 1995, however, its main activity began in 1996. Since the 1982 Convention and the New York Agreement are considered the statutes of the International Seabed Authority, the members of these two institutions are also its members. Now, it has 167 members, which consists of 166 countries and the European Union(Organs of the International Seabed Authority,1994). It has a protocol on the privileges and immunities which was approved by the Authority General Assembly on March 26, 1998.

According to this protocol, it has a juridical person owns the movable and immovable property as one side of the contract in legal processes(Organs of the International Seabed Authority,1994).

At first, International Seabed Authority was financially affiliated with the United Nations, then in 1998, the Authority General Assembly approved its financial regulations of it. Since that time, it has been operating as an independent organization from the United Nations, and its relationships are limited to representing the annual report of its activities in the United Nations General Assembly. Since October 24, 1996, it participates in negotiations of the United Nations General Assembly as an observer, somehow it is a subset of the United Nations (United Nations , 1982).

In addition, the United Nations acknowledged the International Seabed Authority's responsibilities within the framework of the charter and other international documents in the subjects like peace, security, and economic, social, cultural, and human development. They cooperate with each other in the fields of information exchange, publications, reports, and mutual interests, providing technical assistance in the fields of scientific research, transferring technology, and preventing and controlling marine environmental pollution.

The common heritage of humanity consists of three legal elements. The first element is the non-proprietary (non-allocation) of the region and its resources. In this regard, Clause 1 of Article 137 specifies that no country or any natural or juridical person should claim sovereignty over the rights governing any part of the region and its resources. In this article, the principle of sovereignty and allocation of resources is clearly removed. The second element is related to the peaceful use of the region. Article 141 also specifies that the region should be free for all governments to use for merely peaceful purposes (Yoshifumi Tanaka, 2012, p. 171).

The third element is related to the interests of humanity as a whole. Clause 1 of Article 140 clearly states that the activities in the region should be for the interests of humanity, then Clause 2 of Article 140 calls for creating an organization in order to fair sharing of economic interests resulting from activities in the region, through an appropriate mechanism, in accordance with Clause 2 of Article 160. Exploitation, exploration, and extraction of resources in the region are subject to the provisions of the United Nations

convention on the law of the seas and under the supervision of the International Seabed Authority (Salehi, 2021, p.1). The International Seabed Authority has the power to legislate and enforce based on the activities fulfilled in the region. It should give uniform instruction to enforce the regulation listed in the 11th part of the Convention and the following issues based on the jurisdiction of Clause 1 of Article 17 of Annex 3 of the Convention and Clause 2 of Article 160. These issues are administrative procedures related to exploration and exploitation in the region, financial affairs, implementing the decisions based on Article 151(1) and Article 164(2_5), legislating to protect human life based on Article 146, protecting the marine environment based on Article 145, sharing equitable financial resources and other economic benefits resulting from activities in the region, and legislating on how to explore and exploit in the region. In general, the jurisdiction of the International Seabed Authority is unique, which means that doing any activity on the sea bed requires its approval (Yoshifumi Tanaka, 2012, p. 176). It can be considered that the jurisdiction of the International Seabed Authority is the same as the territorial jurisdiction of the countries.

2.2 Rules governing the exploitation of aquatic species

Aquatic animals and living resources are one of the high seas' resources that all persons are allowed to exploit in the international structure. This exploitation is accepted as one of the rules of customary international law.

The permission to catch fish in the high seas is one of the basic principles of the oceans system. This is the principle of customary international law, which is codified in the 1982 International Convention on the Law of the Sea in the second part of Articles 116 to 120. Concerns about protecting fish resources and preventing the depletion and extinction of existing species of these resources are the issues posed about fish resources on the high seas. The protection of these resources both from the environmental aspect and fishery industry and related economic issues has finally led to the creation of environmental standards, protection, and management of fish resources on the high seas. The principle of freedom on the high seas is a historical issue

that has two practical consequences. First, the freedom of use and exploitation of the high seas by all governments is the positive consequence, second is no disturbance, no destruction, and no waste in the sea as the negative consequence. The negative consequence originates from applying the principle of freedom of the seas for several years. It has been formed in the process of the development of international regulations related to the law of the seas. Article 1 of the 1958 Geneva Convention, which was approved regarding fishing and protecting living resources of the high seas, deals with the freedom of fishing on the high seas and continues until the end of the convention with the issue of protecting the living resources of the high seas. In addition, the 1982 Convention deals with the protection and management of living resources on the high seas. In this regard, Article 116 stipulates the exploitation of these resources: "All citizens of the states have the right to participate in activities related to fishing in the high seas if they comply with their obligations in the treaty as well as consider the rights, obligations and the interests of the coastal countries listed in the Clause 2 of Article 93 and Articles 64 to 67 of this convention.

3. Exploitation of the bed and subbed of the seas from Islamic Jurisprudence perspective

3.1. The bed and subbed of the seas as an instance of Anfal

Although at first glance, it is not possible to find a specific opinion regarding property outside the government's sovereignty from jurisprudence perspective, and basically, Islamic jurists had no history and motivation to deal with this issue, we can reach effective juridical conclusions through looking at the general rules of jurisprudence about property and ownership.

In Islamic jurisprudence, there are mechanisms in order to use and derive benefit of public properties which are in the possession of the Islamic ruler or freely available to all members of the society. According to international documents, all states are allowed to use the benefits of the bed and subbed of the seas which are outside their sovereignty. Specific regulations are determined to exploit such properties. Based on the regulations established in Islamic jurisprudence, there are three institutions to exploit properties outside the government's sovereignty. They are

acquisition of unclaimed property, cultivating waste lands and priority rule. Application of these methods to exploit the properties outside the government's sovereignty depends on the type of property and the customary way of exploiting it.

There is no difference between the properties outside the government's sovereignty and properties in the Islamic government in terms of being a property. Therefore, each of the properties outside the government's sovereignty, such as seas, waste lands, mineral resources, marine and wild animals, are included in the existing categories of Shiite jurisprudence. The absence of Islamic sovereignty in the territories outside the government's sovereignty is a major problem. As a result, it is not possible to implement governmental orders such as Anfal, which includes most of the properties outside the government's sovereignty so that the Islamic ruler is not obliged to implement foresaid orders in these lands. Nevertheless, whenever the Islamic government accepts a treaty or a jus cogens which is obligatory and based on customary rules, it should adhere to provisions of the treaty based on "fulfill your contracts" rule. Thus, the rules of Islamic jurisprudence are not enforced in the areas under the treaty.

Seas are one examples of Anfal. This example is mentioned in some narrations, as the late Kulayni in his book, al-Kafi, while enumerating Anfal, writes that forests, mines, seas, and deserts belongs to Imam (Kulayni, 1986, vol. 1, p. 538). However, many jurists do not consider it as Anfal and states that those who believe that the seas are Anfal, do not represent a compelling reason.

Those who believe that seas are in the category of Anfal, represent some general reasons such as "The world and everything in it is for God, Prophet and Imam", or "The world and the hereafter belong to God, He places it wherever He wants and bestows it on whomever He wants", or "God created Adam and gave him the world, thus what was for Adam is for Mohammad and for the leaders of his family (PBUH)" (Kulayni, 1986, vol. 1, pp. 608-609). Moreover, a group of jurists infer from the traditions related to Anfal that any land which has no owner is part of Anfal (Mousavi Khomeini, 1999, Vol. 3, p. 27). Here, land means everything which is without an owner since the land has no characteristics and its instances can be developed. As this

group of jurists believe that naming several properties in the category of Anfal is merely for giving example and is not limited to specific items. (Montazeri, 1988, Vol. 4, p. 101). According to these reasons and traditions like "The whole earth belongs to us", or "The world and what is in it belong to the infallible Imams", high seas are not exceptions to this rule and are considered part of Anfal. Since these areas of the earth do not have a specific owner as well as are part of the world and the earth, they are categorized in Anfal so that they are under Anfal rules. They are under the authority of Imams, thus their permissions are necessary to sail and pass through the seas. A number of jurists refer to general arguments such as "The whole earth is ours, so whatever God brings out it is ours" (al-Hurr al-Amili,1988, Vol. 9, p. 568) and conclude that as long as the mentioned arguments are valid, the order of Anfal should be implemented. However, this order is not perfect and it is preferable to observe the precaution side; especially in cases such as the issue of the high seas, it is necessary to follow the way of rational persons in different centuries and treat the seas the same as acquisition of unclaimed properties transaction (Makaram Shirazi, 1995, p. 132).

According to Article 136 of the Convention on the Law of the Seas, the mineral resources of the bed and subbed of the high seas are beyond the limits of the exclusive economic zone and the continental shelf and known as the "common heritage of humanity". However, in the categorization of properties in Islamic jurisprudence, mines do not have a specific place in the jurists' words, and a difference of opinion is on whether they are Anfal or not.

In general, some jurists do not consider mines to be part of Anfal, and others consider all types of mines to be part of Anfal. A group believes in division and states that mines under the surface of the earth are considered part of Anfal and mines on the surface of the earth are considered part of unclaimed properties. Therefore, whatever needs reclamation is called Anfal, and what can be exploited through Hiyazat (Occupancy) is considered as Mobahat-e Ammih (Public Possessions). Others consider mines which are located on the land of a private owner, regardless of whether they are on the surface of the land or under it, belong to the owner of the land. Finally, a group of jurists consider the mines located on the land owned by a private owner as part of Anfal.

Since the mines in the high seas have special situations, they are under specific locative conditions. As the position of the bed and subbed mines of the high seas takes them out of the ownership of private individuals, thus they are not located in private property. Furthermore, the mines in the high seas are divided into exterior and interior. For example, minerals which exist in the form of manganese, zinc and cobalt lumps scattering on the seabed at a depth of several hundred meters or several thousand meters, are considered as exterior mines in the seabed. Manganese lumps, due to the fact that they are located at a great depth in the oceans, need measures and facilities to be extracted from the depth of the water. However, this is not considered a kind of reclamation, since the aforementioned lumps are ready to be extracted and collected from the water depth, which is possible with devices. Therefore, considering that these mines are ready to use, their exploitation is under the title of Hiyazat due to the amount of minerals which are extracted, and the use of tools does not change the rule of occupancy, as it is possible to do hunting or fishing with specific tools or use the water applying the desired tool. Therefore, mineral lumps should be considered as part of exterior mines, which is a matter of occupancy.

Another type of mines in the high seas are the ones in the subbed of the seas, which generally include oil and gas sources. Since these resources are located under the seabed, they firstly require preparation, exploration, and extraction. It is necessary for the providers to access the mentioned resources by using huge facilities such as deep sea mining platforms as well as large and advanced drilling rigs. Thus, this is a definitive example of reclamation. As a result, based on the opinion which considered interior mines which are in need of reclamation as part of Anfal (Tusi, 2008, Vol. 3, p. 276), we can say that these mineral resources are also included in the category of Anfal.

Nonetheless, according to jurists who consider mines of any kind, whether they are exterior or interior, whether they are located on private property or on waste lands as part of Anfal, the mines in the high seas are also considered as part of Anfal. The reason for this theory can be both the traditions which point to the belonging of the whole world to the Imams, and a rational reason for the administration of mines as a public property by the Imam of the community. Therefore, the mines in the bed and subbed of the high seas are

a part of Anfal and their exploitation is under the authority of the Imam. He allows competent operators to exploit high seas based on society interests.

In jurists' attitude, all members of society have right to exploit wild and marine animals, which are part of main possessions, thus they become the owner of occupancy resources as much as they hunt. Hiyazat, which is related to properties susceptible to occupancy, is the method to exploit these Mobahat (Muhaqqiq ai-Hilli, 1987, Vol. 3, p. 278). Accordingly, fish and aquatic resources of the high seas are part of the Mobahat-e Ammih which all people are allowed to exploit. This issue is close to the principle of the freedom to exploit the living resources of the high seas which is mentioned in the Conventions on the Law of the Seas approved in 1982. However, public possessions are part of Anfal based on the Anfal principle as well as the rule of belonging any property without an owner to Anfal. Possibility of exploiting them is provided based on the Imam's general permission or confirming the behavior of rational persons in the form of tradition as well as the prohibition of distress and constriction rule. Consequently, aquatic animals of high seas are part of Anfal which is allowed to be used by all persons with the general permission of Imam. By regarding these resources as Anfal, in addition to the fact that individuals are allowed to exploit them, the possibility of managing and protecting endangered species as well as determining the fishing season and creating other restrictions on hunting of aquatic animals are provided sine they are in the authority of Imam and he imposes appropriate restrictions on protecting limited resources according to various conditions.

As a result, aquatic animals of high seas are not included in public possessions since the concept of public possessions in strict meaning does not match the concept of Hiyazat which is provided through ownership of occupant property, while fish resources of the high seas can be possessed according to the extent caught.

3.2 The feasibility to implement Islamic jurisprudence orders and regulations regarding the bed and subbed of the seas

Each property of the bed and subbed of the seas outside the governments' sovereignty due to its characteristics and structure has capability to put in

Shiite jurisprudence. Now, we intend to evaluate the enforceability of jurisprudence orders and regulations in the areas outside the governments' sovereignty. Since the properties outside the governments' sovereignty are located beyond the political borders of the countries, is it possible to implement juridical regulations and rules in these regions of the world?

Each government has characteristics such as having territory and population. Therefore, regulations are applied to the population and territory under the sovereignty. In Islamic law or jurisprudence, "Dar" (House) is the closest concept to territory, which is seen in various jurisprudence books under numerous titles such as "Dar al-Islam" (House of Islam), "Dar al-Kofr" (House of Atheism), "Dar al-Harb" (House of War), "Dar al-Ahd" (House of Agreement), "Dar al-Hadneh" (House of Armistic) and other related titles. Each of these Dars (Houses) has a specific definition as well as its own rules and conditions in various jurisprudential matters. Therefore, jurists have called the countries "Dar" which choose a specific religious and political position against Islam. In other words, this kind of naming refers to the belief and political position of those countries' people (Amid Zanjani, 1989, Vol. 3, p. 215). Jurists determine Dar al-Islam and Dar al-Kofr based on various criteria. The most important criteria are the possibility of implementing Islamic rules, the predominance of the Muslim population, and the existence of an Islamic government.

At first, jurists divide the world into Dar al-Islam and Dar al-Kofr in terms of "execution of Islamic rules". In this attitude, Dar al-Islam has more expanded, and even non-Islamic countries where Muslim habitants can freely implement Islamic rules are considered part of Dar al-Islam. Jurists such as Sheikh Tusi (Tusi, 2008, vol. 3, p. 290) believes the execution of Islamic rules is the criterion of Dar al-Islam, and do not consider the Muslim population as the criterion in this determination. Also, according to ash-Shahid al-Awwal, Dar al-Islam is either a territory in where Islamic rules are implemented and the infidels live in the form of covenants, or it is a Dar al-Kofr where the rules of Islam are current.

Therefore, he chooses the criterion of the possibility of implementation of Islamic rules by Muslims (al-Makki al-Amili, 1996, Vol. 3, p. 78). Second

criterion for dividing the world into Dar al-Islam and Dar al-Kufr is the composition of the population exists in a region. An area is called Dar al-Islam if the majority of its population is Muslim (Montazeri, 2008, p. 71).

The third criterion, which is noticed by most jurists to divide a territory into Dar al-Islam or Dar al-Kofr, is the territory of a government. In fact, in this criterion, Dar al-Islam is distinguished from Dar al-Kofr if there is an Islamic government and leadership in the region, whether Muslims have a numerical and demographic majority or not. Thus, Dar al-Islam includes all the countries are under the rule of Muslims (Hosseini Amili, 1998, Vol. 6, p. 113; Tabatabaei Borujerdi, 1995, p. 301).

The aforementioned criteria indicate different situations for distinguishing Dar al-Islam from Dar al-Kofr. However, there are cases that reinforce the third criterion. It is not necessary for Muslims to immigrate if they live in an area that freely performing religious orders and rituals. In fact, Dar al-Kofr is a place where is not possible to implement Islamic rules, and the presence of Muslims does not change it to Dar al-Islam.

It is obvious that Dar al-Islam, which is remarkable for the entry of foreigners, is not merely the residence of Muslims, but rather is the territory of the Islamic government, otherwise this discussion is useless (Amid Zanjani, 1989, Vol. 2, pp. 225-229). Rules that state how to treat the People of the Book are logical if there is a government since the government has the authority to implement these requirements, thus the territory which has such power is Dar al-Islam (Yazdi, 2008, p. 20-22). According to the aforementioned criteria, the best criterion for recognizing Dar al-Islam from Dar al-Kofr as well as implementing Islamic rules, especially the rules related to Anfal and kharaj (tax), is the theory of the existence of an Islamic government, and this is considered the most reliable method to implement Islamic rules.

Consequently, bed and subbed of the seas outside the governments' sovereignty do not put under any of these criteria i.e., the existence of an Islamic government or Muslim population in a region. In fact, no population live in the areas outside the governments' sovereignty, or the Islamic government does not have control over those areas. In addition, they are not Dar al-Kofr since none of the world's country govern over them. Rather, there are some titles which ascribed to those areas due to various agreements or conditions. For example, Dar al-Hadneh is a region which was in war and

now a ceasefire is declared due to a treaty, or Dar al-Aman is a place in which security is provided for invaders based on a treaty, or in Dar al-Solh, a peace treaty is signed, and Dar al-Hiyad is a territory its rulers declare neutrality. All of these examples show that a conflict happened in an area, but is now over somehow. However, there is basically no conflict in the bed and subbed of the seas outside the governments' sovereignty. Furthermore, these treaties indicate that a government exists in these territories which are at war or peace with another government, or declare neutrality, or demand for Estiman (Demanding for security). However, as the title suggests, there is no authority in the areas outside the governments' sovereignty, and no country has right to claim ownership over them. Therefore, the bed and subbed of the seas outside the governments' sovereignty are not included in any of the aforementioned titles and should be regarded a new type of territory which requires special rules and conditions.

In fact, since bed and subbed of the seas are not subject to any juridical rules regarding the different territories which have been discussed above, thus they should be regarded in accordance with the areas that have an international treaty. Accordingly, different countries have signed agreements and conventions to determine the state of the bed and subbed of the seas, of which Dar al-Islam is one of the signatories. As a result, when the Islamic ruler sign such a treaty, it means that he agrees to the rules governing that territory and replaced the agreed rules with the Islamic ones. This matter is in the guardianship of the Islamic jurist's authority. Therefore, Dar al-Islam is committed to implement and comply with the provisions of the convention or treaty it has signed. Moreover, the citizens of Dar al-Islam are obliged to comply with the provisions and requirements of the treaty.

In the Islamic religion, in political and social issues, there is no principle more important and extensive than the principle of keeping a covenant. This principle is so important that is considered one of the criteria of religiousness, as the Prophet of Islam (PBUH) says: "Fulfillment the covenant is of faith" (Isfahani, 1989, Vol. 75, p. 179), and "Those who do not fulfill to the covenants have no religion" (Isfahani, 1989, Vol. 81, p. 252). Holy Qur'an in verse 1 of Surah Ma'ida says: "O you who believe, fulfill your covenants." Also, in verse 34 of Surah Al-Isra' in this regard states:

"Fulfill (every) covenants. Verily! the covenant, will be questioned about". These verses clarify that in general, it is necessary to fulfill the covenant, thus fulfillment of the covenants is a kind of responsibility. Allamah Tabatabai writes in his commentary on verse 34 of Surah Isra:

"This noble verse, like most of the verses praising the fulfillment of a covenant and condemning its violation, includes both individual and interpersonal covenants, as well as social and inter-tribal, ethnic, and national covenants. However, in Islam, keeping social covenants is more important than individual covenants, since social justice is so important and its violation is a major public disaster" (Tabatabai, 1995, Vol. 5, p. 209).

In addition, verses 3 and 4 of Surah at-Tawbah states: "Announce to disbelievers a painful punishment! Except for the polytheists with whom you have made a treaty, then they have not failed you in anything and have not backed up any one against you. So fulfill their treaty to the end of their term. Surely Allah loves those who are the owners of piety". This verse discusses about keeping covenant with polytheists as long as they adhere to it, and emphasize to keep the covenant even with the polytheists. This adherence to the covenant is one of the examples of piety that God refers to it in the end of the verse (Tabatabai, 1995, Vol. 9, p. 201). Keeping covenant is also emphasized in hadiths (traditions), lives and even letters of infallible Imams, which refers to transparency of the issue.

The structure of international law is based on treaties and conventions. These treaties are sometimes bilateral or multilateral, and sometimes among all countries of the world and the international community. According to the 1969 Vienna Convention on the Law of Treaties, "Treaty means an international agreement concluded among States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation." (Part A, Clause 1, Article 2). Nonetheless, every international treaty is an international agreement and subject to international law. The necessity to adhere to it leads to the formation of international law and order, however every international agreement cannot be considered an international treaty. International agreements which are not considered as international treaties are outside the international law, an example of which is agreements between a state and a non-state (Ziaei Bigdeli, 2014: 90-91). The most significant Convention on the Law of the Seas is the 1982 Convention which the Islamic

Republic of Iran signed on December 10, 1982, but has not yet ratified it. However, this convention which includes customary rules, has reached an enforceable stage on November 16, 1994, since 60 authorities based on the determined number in Article 308 of the convention, approved it. Consequently, since this convention includes international customary rules (Article 38 of the Vienna Convention), Islamic Republic of Iran as an Islamic country, is required to comply with its content and observe the rules of this convention regarding the high seas. Islamic Republic of Iran is a part of Dar al-Islam since its legal structure is based on Islam and Shiite, as well as guardianship of the Islamic jurist is at the head of its sovereignty. Considering that Iran signed the agreement, it is committed and must comply with the provisions of the agreement according to the verse: "Fulfill the covenant".

Regarding the agreement related to the implementation of the 11th section of the Convention on the Law of the Seas approved in 1982, our country did not sign this agreement, thus basically does not adhere to its content about the bed and subbed resources of the deep seas. However, if the content of a convention is of the type of treaties, which include international customary rules and Dar al-Islam has not joined it, it should be obeyed in order to respect international public order. The contents of these treaties exclude the rules related to Anfal. If the treaty is of the second type, i.e. contractual treaties which do not include customary rules and Dar al-Islam has not joined it, there is no need to comply with its content and the rules of Anfal are valid. However, implementing the rules of Anfal in the region under that treaty depends on the authority of the Islamic government, otherwise it is impossible due to distress and constriction rule.

4. Conclusion

After the efforts of the developing countries to recognize the region as a common heritage of humanity came to an end, and since some countries were exploiting the seabed with their internal laws, it was necessary to establish an efficient and dynamic organization i.e., International Authority to protect and properly exploit seabed resources. Consequently, based on the 1982 convention, International Seabed Authority was established for the protection and normal use of seabed resources. The principle of belonging to all can be inferred from the concept of the common heritage of humanity. This means that all countries have the same right to exploit the enormous wealth of the region and can explore and exploit it based on the International Seabed Authority rules. For this purpose, General Assembly of the Authority approved the general rules of exploration and exploitation after doing investigation. The assembly, which is the general pillar of the Authority, approves the general rules and budget of the Authority. However, approval of regulations and instructions for exploration and exploitation, which are in the form of exploration work plan, is the responsibility of the Council. As a result, the most important task of the Council is to issue the exploitation permission for the applicants. The Authority Council has two technical and legal commissions and a financial committee. These two commissions work towards the Council's goals, and they plan for all financial, technical and legal issues of the Authority.

It is possible to put bed and subbed resources of the seas in juridical categories and enforce the rules of Islamic jurisprudence especially Shiite one on such properties. In other words, it is possible to identify the bed and subbed of the seas outside the governments' sovereignty from Islamic jurisprudence viewpoint. Regarding such international issues, it is necessary to align all these approaches and rules in accordance with international custom. After determining the nature of the bed and subbed of the seas outside the governments' sovereignty from the viewpoint of international documents provisions and Shiite jurisprudence rules, since the property outside the governments' sovereignty is located beyond the political boundary of the countries as well as the common feature of these properties is that they are not under the sovereignty of any countries, thus the enforceability of the rules related to Anfal in these areas depends on many factors, which should differentiate among them.

The bed and subbed of the seas outside the governments' sovereignty belong to neither Dar al-Islam nor Dar al-Kofr. The reason is that according to Islamic jurists, the criteria for considering a region as Dar al-Islam is either the presence of an Islamic government or a Muslim population in a region, while there is neither an Islamic government nor a Muslim population in the regions outside the governments' sovereignty. In addition, they are not Dar al-Kofr since they are not under the rule of any country in the world. In jurisprudence attitude, since these territories have unique conditions and features, it is necessary to be enforced special rules regarding them. According to the verse: "Fulfill covenant", Dar al-Islam is obligated to implement and comply with the provisions of the convention or treaty it has signed. Another situation is related to the time that there is an international treaty regarding a region and many countries have signed it. Thus, the treaty has reached an enforceable stage, or its provisions have been written based on international customary and then become obligatory, but the Islamic ruler has not signed it and has not any commitment towards it.

The existence of international customary or provisions of treaties, which become binding later is considered as international law and order. Considering the fact that Islam has not only provided social order in various fields, but also supported the existing orders in the society as long as they do not interfere with the basic Islamic values and rules, therefore there are cases in the field of international law considered mandatory and must be observed by all countries of the world. For example, there are treaties which include basic customary rules and are considered as international laws related to international public order so that compliance with them is mandatory for all countries and international organizations, both contracting parties and non-contracting parties. Consequently, even though some countries of the world do not join to these treaties, they are required to comply with its provisions since these treaties contain customary rules and somehow include the international public order.

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