Fraudulent Treaties: The Covenant with the Gibeonites in the Biblical Book of Joshua

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I

Introduction

In his monograph on the Vienna Convention on the Law of Treaties, Sir Ian Sinclair wrote that instances of fraud vitiating consent to be bound by a treaty “are rare, if non-existent, in State practice”. It should therefore not be surprising if the treaty discussed in this essay comes from a distant past (a past that is ever present, though, and speaks to the mind and heart of man as only the word of God can).

Nor is there any need to investigate whether the one that is being examined here is in all respects a treaty in the technical sense that the term has in modern international law. As one reads in Oppenheim’s classic work, treaties from pre-modern times that may not have been based on international law “were nevertheless considered sacred and binding on account of religious and moral sentiment”. Moreover, the treaty in question was discussed by Grotius: certainly, a treaty that attracted Grotius’s attention is worthy of study by other international lawyers too!

The treaty was concluded at the time of the Israelite conquest of Canaan, presumably around the middle of the 13th century BC. It is the treaty between

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3 As A. Stellini (Giosuè (4th edn., Cinisello Balsamo, 1995), 10–11) has summarized, to establish the date of the conquest of Canaan one can take as a starting point the date of the exodus and count the years down, or the date of the foundations of the temple in Jerusalem and count the years up. Both approaches lead to the same approximate date of the middle to the later part of the 13th century BC.
Israel and the Gibeonites, the conclusion of which is narrated in Chapter 9 of the book of *Joshua*,\(^5\) which in the Christian canon is the first of the ‘historical books’ of the Old Testament, and in the Jewish canon is the first of the ‘former prophets’. The significance of the episode within the Old Testament is that it explains why, despite the Deuteronomic law enjoining Israel not to come to terms with the peoples living in the land God had given them, Gibeonites (who were living in Canaan at the time of the conquest) would still be found in Israel, providing fuel and water for the rituals at the sanctuary. To save their lives, the Gibeonites misrepresented to the Israelites that they came from a distant land and succeeded in concluding a (fraudulent) treaty with the Israelites. When these discovered that they had been deceived, they did not renege on their word. While affirming the validity of the treaty, they sanctioned the Gibeonites to be hewers of wood and drawers of water.

As Chapter 9 of the book of *Joshua* is relatively short, and not every reader may be familiar with it, here is its text in full:

(1) When all the kings who were beyond the Jordan in the hill country and in the lowland all along the coast of the Great Sea toward Lebanon, the Hittites, the Amorites, the Canaanites, the Per’izzites, the Hivites, and the Jeb’usites, heard of this, (2) they gathered together with one accord to fight Joshua and Israel. (3) But when the inhabitants of Gibeon heard what Joshua had done to Jericho and to Ai, (4) they on their part acted with cunning, and went and made ready provisions, and took worn-out sacks upon their asses, and wine-skins, worn-out and torn and mended, (5) with worn-out, patched sandals on their feet, and worn-out clothes; and all their provisions were dry and moldy. (6) And they went to Joshua in the camp at Gilgal, and said to him and to the men of Israel, “We have come from a far country; so now make a covenant with us.” (7) But the men of Israel said to the Hivites, “Perhaps you live among us; then how can we make a covenant with you?” (8) They said to Joshua, “We are your servants.” And Joshua said to them, “Who are you? And where do you come from?” (9) They said to him, “From a very far country your servants have come, because of the name of the Lord your God; for we have heard a report of him, and all that he did in Egypt, (10) and all that he did to the two

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