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THE FUNCTION OF THE OATH IN THE ANCIENT NEAR EASTERN INTERNATIONAL TREATY

*By Donald L. Magnetti **

INTRODUCTION

Few areas of the world have had such a profound effect upon history as that of the Near East. Egypt, Babylonia, Assyria, the Hittite Empire, Phoenicia, Syria, ancient Israel and Judah, and the smaller kingdoms and states of the area interacted through three thousand years until Rome occupied almost the entire area.¹ The Fertile Crescent is not a vast area, so the various civilizations and cultures were in frequent contact.

The law codes of the ancient Near East have been available to scholars for many years,² and the civil and criminal law of the area over the centuries has been studied in depth.³ To speak of a developed international law is not realistic, but the right ordering and security of international relations demanded that parties involved in an agreement speak the truth and that they remain true to their word. International relations required that certain promises be followed by actual realization of what was promised, and methods and forms were perfected by which that realization could be guaranteed. At the basis of any treaty or covenant on the international level must be a form or institution that will ensure that what was agreed will be respected and observed.

An instance of nonobservance of a binding contract under civil law can result in an appeal to a court of law or to the ruler, and such was the case in the ancient Near East. But in an agreement between states, the agreed points can only be enforced peacefully by an appeal to an international legal structure. In the absence of such an established structure, as was the case in the ancient Near East, only an appeal to the gods could be an effective means to guarantee observance of the treaty—other than a resort to military force. The solemn appeal to the gods to bear witness to the promises made and to punish nonrealization of those promises was subscribed under oath. As such, the oath by the gods was the constitutive element—that which provided the sanction—in the ancient Near Eastern international treaty.

Although the treaty texts have been available for study for many years, it was not until 1931 that Viktor Korošec published his analytic study

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¹ Some familiarity with ancient Near Eastern history must be presumed. Efforts will be made in the text to relate civilizations to each other.

² For English translations of the various law codes, see *ANCIENT NEAR EASTERN TEXTS RELATING TO THE OLD TESTAMENT* (2d ed. J. B. Pritchard 1955).

³ The bibliographical material is so vast that it is impossible to cite here even a representative selection.

of the Hittite suzerainty and parity treaties.⁴ Following Korošec's work, various studies have appeared which have stressed a connection between the international legal structure of the treaty form and the form of the Old Testament covenants.⁵ However, the function of the oath as the means of providing sanction in the treaty form and its place within the structure of the ancient Israelite covenants have not been thoroughly examined. Even though this step in concluding a treaty is not always mentioned in the actual treaty text, the swearing of an oath in support of an agreement and the consequential sanction of the gods were an essential part of treatymaking. A chronological examination of extant ancient Near Eastern international treaties will illustrate this fact.

EXTRA-BIBLICAL EXAMPLES OF ANCIENT NEAR EASTERN TREATIES

Although there is not an abundance of materials from early Mesopotamia, there are some early Sumerian examples of treaty texts which resemble in many ways the later Hittite and Assyrian examples. The Vulture Stele, discovered at Lagash, dates from c. 2500 B.C. and relates the victory of Eannatum, the ruler (*ensi*) of Lagash, over the city of Umma.⁶ After the attack and subsequent defeat of Umma, Eannatum imposed a treaty upon the defeated city. The beginning of the stele is destroyed, and unfortunately it is impossible to reconstruct the text, which most probably was an historical introduction. After the divine favors bestowed on Eannatum are recounted, we read:

. . . Eannatum laid the *šušgal*-net of [the god] Enlil upon the Ummaite, [and] he [the Ummaite] swore to him [Eannatum]: "By the life of Enlil, the king of heaven and earth! The fields of Ningirsu I will eat [only] up to one *karu*, [and only] up to the old dike will I claim; but never unto wide eternity will I violate the boundaries of Ningirsu, nor will I infringe upon their dikes [and] canals; nor will I rip out their stelae. If I violate [this treaty], then may the *šušgal*-net of Enlil, by which I have sworn, be hurled down on Umma from heaven."⁷

The same oath is repeated six or seven times, but with the substitution of different gods, *viz.* Ninhursag, Enki, Sin, Utu, and Ninki. The oath in

⁴ See V. KOROŠEC, *HETHITISCHE STAATSVERTRÄGE: EIN BEITRAG ZU IHRER JURISTISCHEN WERTUNG*, LEIPZIGER RECHTSWISSENSCHAFTLICHE STUDIEN No. 60 (1931).

⁵ See G. E. MENDENHALL, *LAW AND COVENANT IN ISRAEL AND THE ANCIENT NEAR EAST* (1955), originally published in 17 *THE BIBLICAL ARCHAEOLOGIST* 26 (1954). A development of Mendenhall's comparison of the treaties and the Old Testament covenants can be found in his article *Covenant*, *THE INTERPRETER'S DICTIONARY OF THE BIBLE*, s. v. (1962). See also K. BALTZER, *DAS BUNDESFORMULAR* (1960), where the author arrived at conclusions much the same as Mendenhall's; D. J. MCCARTHY, *TREATY AND COVENANT* (1963); D. R. HILLERS, *TREATY-CURSES AND THE OLD TESTAMENT PROPHETS* (1964).

⁶ See F. THUREAU-DANGIN, *DIE SUMERISCHEN UND AKKADISCHEN KÖNIGSINSCHRIFTEN*, No. 4a, at 10 (1907).

⁷ Translation is basically that of S. N. Kramer. See S. N. KRAMER, *THE SUMERIANS* 310 (1963).

each instance is followed by a curse. In so far as the matter under consideration in the Vulture Stele is limited to adjustment of a territorial boundary, it is not an example of the fully developed treaty form, although of course the delineation of boundaries is a typical treaty feature.

The Naram-Sin treaty,⁸ discovered at Susa, commemorates the covenant between Naram-Sin of Akkad and the king of Elam, perhaps Hita.⁹ Dating from between 2275 and 2250 B.C., the text does not mention the situation which led to the alliance. The Elamites may have been conquered by Naram-Sin, for they are in an inferior position in the treaty. In the text the gods of both parties are invoked, the Elamites swear an oath of vassalage, and it is said that "the enemies of Naram-Sin are the enemies of Elam; the friends of Naram-Sin are the friends of Elam." (III, 10-16). The oath of fidelity is sworn several times, and various curses and blessings are mentioned.

The letters from Mari in northern Syria make direct references to treaties sworn between early Mesopotamian kings. Išme-Dagan of Assyria wrote to his brother Yasmaḥ-Addu of Mari about 1718 B.C. and proposed: "Let us swear a great oath by the gods."¹⁰ Some years later, Zimrilim of Mari received a letter concerning Yarimlim's relations with Amut-pî-ila of Qatanum, in which Yarimlim said that Amut-pî-ila would come to him at Ḥalab and that "we will establish good relations between me and him, an oath by the gods and a firm treaty."¹¹

Despite limited evidence, it appears that the form of treaty in use in Mesopotamia in the third millennium and the first half of the second millennium B.C. involved an appeal to the gods, the swearing of an oath as the support of the stipulations, and various curses and blessings. This procedure is consistent with the established form of the treaty used by the Hittites, as will be seen below.

The oldest extant treaty from Syria records the bestowal of Alalakh on Yarimlim by Abba-AN.¹² An earlier vassal treaty must be presupposed, for total control over Yarimlim had already existed. The agreement should be considered as a treaty, however, for it is a solemn sworn agreement between two rulers.¹³ Yarimlim is ordered to remain faithful to Abba-AN under pain of forfeiture of territory. It is also stated that: "Abba-AN placed himself under oath to Yarimlim and cut the neck of

⁸ See V. SCHEIL, *TEXTES ÉLAMITES-ANZANITES, MÉMOIRES DE LA DÉLÉGATION EN PERSE*, No. 11, 1 (1911). See also Hinz, *Elams Vertrag mit Narām-Sin von Akkade*, 58 *ZEITSCHRIFT FÜR ASSYRIOLOGIE* 66 (1967).

⁹ See W. HINZ, *DAS REICH ELAM 63-64* (1964).

¹⁰ See G. DOSSIN, *CORRESPONDANCE DE ŠAMŠI-ADDU*, 4 *ARCHIVES ROYALES DE MARI*, No. 20 (1951). It should be noted that the text was written after the death of Shamshi-Adad, so a new relationship had to be established (see line 5).

¹¹ See DOSSIN, *Iamḥad et Qatanum*, 36 *REVUE D'ASSYRIOLOGIE* 51 (1939).

¹² For a comprehensive study of treaty-making at Mari, see Korošec, *Les relations internationales d'après les lettres de Mari*, in *LA CIVILISATION DE MARI, XVE RENCONTRE ASSYRIOLOGIQUE INTERNATIONALE*, 1967, at 139 (1967).

¹³ For a denial of the appellation of this text as "treaty," see Huffmon, *The Exodus, Sinai, and the Credo*, 27 *CATHOLIC BIBLICAL Q.* 105 n. 18 (1965).

a lamb."¹⁴ Abba-AN binds himself under oath to his vassal, over whom control must have been total, and promises protection for Yarimlim who must be unswerving in his loyalty. At the end of the text it is mentioned that Yarimlim swore allegiance and cooperation with other vassals of Abba-AN.

The earliest of the Hittite treaties, discovered in the royal archives of Boghazköy, date from c. 1500 B.C. The archives have yielded about fifty treaty texts, some of which are complete.¹⁵ In his study of the treaty form, Korošec distinguished six elements in the typical Hittite treaty: (1) Preamble; (2) Historical prologue; (3) Stipulations; (4) Provision for deposit in the temple and for periodic public reading; (5) List of gods as witnesses; and (6) Formula of curses and blessings.¹⁶ Composed over a more than two hundred year period from Zitantas I to Tudhaliyas IV, the great majority are "vassal treaties," imposed by the Hittite king on an inferior. Thus, the obligations are upon the vassal. The one complete extant parity treaty involved Hattusilis III and Ramesses II of Egypt—a treaty preserved on temple walls at Karnak in upper Egypt as well as in the Akkadian version from Boghazköy. Though slightly different, both versions state that there shall be brotherhood and peace between Egypt and Hatti. The more concrete stipulations concern peace, mutual defense, legitimate succession to both thrones, and extradition of fugitives. The obligations to observe the various stipulations lay on both parties.

The Hittite vassal treaty was formally the same as the parity treaty, with the exception that the obligation to observe the stipulations lay only upon the vassal. Of course, the political situations from which the vassal and parity relationships arose were radically different.

The constitutive element of the Hittite treaties is not always specifically mentioned, but there must have been a form by which the terms of the treaty were ratified. The formal oath, by which the parties involved swore fidelity to one another in a parity treaty and by which the vassal promised obedience to his suzerain in a vassal treaty, would seem to have been that constitutive element. Mendenhall mentions three additional parts to the typical treaty, *viz.* the formal oath of ratification, some solemn ceremony which accompanied the oath, and perhaps some form for initiating action against a rebellious vassal.¹⁷ The frequency with which the expressions "break the oath"¹⁸ or "the oath and the treaty"¹⁹ occur prove

¹⁴ See Wiseman, *Abba and Alalah*, 12 J. OF CUNEIFORM STUDIES 126 (1958).

¹⁵ For the most important collection of texts, see E. WEIDNER, *POLITISCHE DOKUMENTE AUS KLEINASIEN: DIE STAATSVETRÄGE IN AKKADISCHER SPRACHE AUS DEM ARCHIV VON BOGHAZKOI*, BOGHAZKOI STUDIEN Nos. 8-9 (1923); J. FRIEDRICH, *STAATSVETRÄGE DES HATTI-REICHES IN HETHITISCHER SPRACHE*, Pt. 1 (1926), Pt. 2 (1930).

¹⁶ See KOROŠEC, *supra* note 4, at 12-14.

¹⁷ See MENDENHALL, *supra* note 5, at 34-35.

¹⁸ See, *e.g.*, the treaty between Mursilis II and Duppi-Teshub, in FRIEDRICH, *supra* note 15, at 1, D, col. ii, line 12, or the treaty between Zidantas and Pilliya of Kizzuwatna, in H. Otten, *Ein althethitischer Vertrag mit Kizzuwatna*, 5 J. OF CUNEIFORM STUDIES 129, line 10 (1951).

that ratification of the treaty required a solemn oath to observe the stipulations. The elaborate oath by which a soldier swore allegiance to the Hittite king²⁰ and the various rituals before battle²¹ also suggest that an oath ceremony accompanied ratification.

Evidence of Syrian-Palestinian treaties from the same centuries is somewhat sparse. The statue of Idrimi refers to a treaty with the Hurrians, with whose aid Idrimi secured the throne of Alalakh.²² The inscription dates from the first half of the fifteenth century B.C.²³ and relates how "the mighty oath" was made. Although parts of the text are broken, it would seem that Idrimi reminded the Hurrian king of the loyalty of his forefathers and promised his own loyalty. After reciting "the terms of the oath," Idrimi states: "Then I became king." The entire agreement is called in Akkadian *māmītu*, "oath."

The text of another treaty involving Idrimi was discovered by Sir Leonard Woolley.²⁴ The treaty was sworn with Pilliya, the king of Kizuwatna.²⁵ Lines 3-5 read: "they took an oath by the gods and made this treaty between them."²⁶ Both Idrimi and Pilliya appear to have been vassals of the Hittite king Baratarna, for lines 40-43 require that Baratarna approve the treaty before it could become effective. Fugitives would be exchanged only after the Hurrian king approved the agreement.

Another treaty text from Alalakh involved Niqmepa, Idrimi's son and successor, and Ir-Teshub, king of Tunip.²⁷ The text is entitled "tablet of the oath by the gods" and enumerates stipulations to be observed by both parties concerning fugitive slaves, interterritorial theft, and marauders. There are provisions for the abrogation of the treaty should either party rebel against their common Hurrian suzerain.

Of the various treaty texts discovered at Ugarit,²⁸ the treaty between

¹⁹ See, e.g., the treaty between Mursilis II and Duppi-Teshub, in FRIEDRICH, *supra* note 15, at 1, D, col. iv, line 23.

²⁰ See "The Soldier's Oath," in Friedrich, *Der hethitische Soldateneid*, 35 ZEITSCHRIFT FÜR ASSYRIOLOGIE 161 (1924).

²¹ See 4 KEILSCHRIFTURKUNDEN AUS BOGHAZKÖI 1 (1924). See also M. WITZEL, HETHITISCHE KEILSCHRIFT-URKUNDEN, KEIL-INSCHRIFTLICHE STUDIEN, No. 4, at 60 (1924), and the translation by Goetze, in Pritchard, *supra* note 2, at 354.

²² See S. SMITH, THE STATUE OF IDRIMI (1949). For the reference to the treaty with the Hurrians, see *id.* 16-19, lines 43-58. See also Landsberger, *Assyrische Königsliste und "Dunkles Zeitalter"* (cont.), 8 J. OF CUNEIFORM STUDIES 55 (1954).

²³ See Albright, *Some Important Recent Discoveries: Alphabetic Origins and the Idrimi Statue*, 118 BULL. OF THE AMERICAN SCHOOLS OF ORIENTAL RESEARCH 14 (1950).

²⁴ See D. J. WISEMAN, THE ALALAKH TABLETS no. 3 (1953).

²⁵ See discussion by WISEMAN, *id.* 32n, and the discussion by Korošec, *Quelques remarques juridiques sur deux traités internationaux d'Alalah*, in 17 DROITS DE L'ANTIQUITÉ ET SOCIOLOGIE JURIDIQUE, MÉLANGES HENRI LÉVY-BRUHL 171 (1959).

²⁶ Note the parallelism between "oath" and "treaty."

²⁷ See Wiseman, *supra* note 24, no. 2 (1953), and H. KLENGEL, GESCHICHTE SYRIENS IM 2. JAHRTAUSEND V.U.Z., Pt. 1, NORDSYRIEN 221, 232-33 (1965).

²⁸ The archives of the royal palace of this city-state on the Mediterranean coast near the modern Syrian port of Latakia yielded hundreds of important texts which shed light upon the culture of Syria-Palestine during the middle of the second millennium

Niqmadu II of Ugarit and Aziru of Amurru should be mentioned.²⁹ The political situation in the area in the middle of the fourteenth century B.C. is unclear, but it would seem that Amurru held a position of superiority.³⁰ Lines 4-5 of the treaty state that Niqmadu and Aziru "make between themselves this oath." Niqmadu was to pay Aziru five thousand shekels of silver, and mutual defense was guaranteed. The end of the tablet is badly broken, but the word *māmītu*, "oath," appears several times.

Another reference to a sworn treaty dating from about the same period, but from Mesopotamia, is found in the Synchronistic History of Babylon and Assyria.³¹ The fifteenth century B.C. kings Karaindash of Babylon and Ashurbelnisheshu of Assyria made a treaty concerning the establishment of settled frontiers by swearing an oath (*māmītu*).

Although the Egyptian evidence is very sparse, some texts are illustrative of treaty practice. The oath of allegiance sworn by the people of Megiddo in Palestine to Thutmosis III shows the importance of the oath in guaranteeing stability and fidelity.³² After the siege and surrender of Megiddo, it is written: "Then My Majesty caused them to swear an oath, saying: 'We will never again act evilly against Menkheperā, may he live forever, our Lord, in our lifetime, for we have seen his glory.'" ³³ While it is true that this is more an example of an oath of fealty, it is still significant to note that the solemn oath was the effective element which brought peace to the area through subjection to Egypt and the subsequent vassalage.

Not many examples of Assyrian treaties exist, for the Assyrians completely subjugated neighboring states and brought them under the direct rule of their god, Ashur.³⁴ Thus, it is not surprising that the first extant Assyrian treaty text should date from a time when the power of Assyria was dramatically curtailed. Shamshi-adad V of Assyria and Marduk-zakir-shum I of Babylon were the parties involved.³⁵ No mention is made

B.C. The Old Testament Psalms are now understood in a new light as a result of analysis of the Ugaritic hymns and epics.

²⁹ 4 LE PALAIS ROYAL D'UGARIT, 284-86 (published by J. Nougayrol, 1956).

³⁰ The lands from Byblos to Ugarit, virtually all of the Lebanon, were hostile because they were following Amurru. For a discussion of the political situation, see M. LIVERANI, *STORIA DI UGARIT NELL'ETÀ DEGLI ARCHIVI POLITICI, STUDI SEMITICI* No. 6, 32 (1962). Dussaud thought that Ugarit was in the superior position. See R. Dussaud in a communication to the *ACADÉMIE DES INSCRIPTIONS ET BELLES-LETTRES, COMPTES RENDUS* 130 (1956).

³¹ See 34 *CUNEIFORM TEXTS FROM BABYLONIAN TABLETS & C. IN THE BRITISH MUSEUM*, pl. 38, i, 1-4 (1914).

³² See G.A. & M.B. Reisner, *Inscribed Monuments from Gebel Barkal: Part 2. The Granite Stela of Thutmosis III*, 69 *ZEITSCHRIFT FÜR ÄGYPTISCHE SPRACHE UND ALTERTUMSKUNDE* 24 (1933).

³³ *Id.* at 32, line 24.

³⁴ "Hier glaubten sich die Könige . . . vor allem dazu berufen, die ganze Welt der Herrschaft ihres Gottes Assur zu unterwerfen." Von Soden, *Religion und Sittlichkeit nach den Anschauungen der Babylonier*, 89 *ZEITSCHRIFT DER DEUTSCHEN MORGENLÄNDISCHEN GESELLSCHAFT* 143, 152 (1935).

of an oath sworn to ratify the treaty, but this is probably due to the poor state of preservation of the text.

Ashurnirari V of Assyria, although very weak in power when compared to his successor Tiglathpileser III, nevertheless was able to make one campaign to the west in 754 B.C. To consolidate his position in Syria, he endeavored to make the Syrian ruler, Mati'ilu of Arpad, his vassal.³⁶ After the stipulations are listed, the text ends with the words: "You have sworn by Ashur, king of heaven and earth." The same phrase is repeated several times but with the substitution of the names of other gods. Thus, the ceremony during which an oath was sworn by Mati'ilu was integral to the ratification of the treaty.

A few years later, the same Mati'ilu made a treaty with Bir-Ga'yah of Katak.³⁷ Evidently Arpad's allegiance to Assyria had ended. Three Aramaic texts were discovered, and it is uncertain whether the stelae are three distinct agreements or three variations of the same treaty to be deposited in different sanctuaries. The exact date of the stelae is disputed.³⁸ The most complete text is that of Sefire I, where the structure is: (1) title and names of the parties involved; (2) gods who are witnesses; (3) curses upon Mati'el should he violate the treaty; (4) ceremony accompanying the treaty; (5) sacredness of the treaty; (6) stipulations of the treaty; (7) reminder for the future observance of the agreement; (8) blessings; and (9) curses upon anyone who disturbs the stele. There is no explicit indication that the treaties are anything but vassal treaties.

There is no express provision for swearing an oath to ratify the agreement, yet Sefire I is entitled in Aramaic "'dy.'" It is related to the Akkadian "*adē*," likewise always plural in form. The word in Aramaic may be a loan word from Akkadian, while there is also the possibility that the Akkadian "*adē*" is a loan word from Aramaic. The word in Akkadian only appears at a relatively late date. Wiseman defines Akkadian "*adē*" as "a solemn charge or undertaking on an oath."³⁹ That an *adē*-agreement was sealed with a solemn oath is evident from many sources, e.g., "the kings broke the *adē*-agreement with me; they did not heed the oath by the great

³⁵ Weidner, *Der Staatsvertrag Aššurniraris VI. von Assyrien mit Mati'ilu von Bit-Agusi*, (A. "Der Vertrag Šamši-Adads V. mit Marduk-zâkir-sumi I."), 8 ARCHIV FÜR ORIENTFORSCHUNG 27 (1932).

³⁶ *Id.* at 17-27.

³⁷ See Dupont-Sommer, *Les inscriptions araméennes de Sfiré (stèles I et II)*, in 15 EXTRAITS DES MÉMOIRES PRÉSENTÉS PAR DIVERS SAVANTS À L'ACADÉMIE DES INSCRIPTIONS ET BELLES-LETTRES 197 (1958); Dupont-Sommer, *Une inscription araméenne inédite de Sfiré*, 13 BULL. DE MUSÉE DE BEYROUTH 23 (1956); J. A. FITZMYER, *THE ARAMAIC INSCRIPTIONS OF SEFIRE* (1967).

³⁸ For a discussion of the date of the Sefire materials, see FITZMYER, *supra* note 37, at 2-3; MCCARTHY, *supra* note 5, at 62; Noth, *Der historische Hintergrund der Inschriften von Sefire*, 77 ZEITSCHRIFT DES DEUTSCHEN PALÄSTINA-VEREINS 122-23, 128-38 (1961).

³⁹ D. J. WISEMAN, *THE VASSAL-TREATIES OF ESARHADDON* 81 (1958); reprinted from 20 IRAQ, Pt. 1 (1958).

gods"⁴⁰; "I made him enter an *adē*-agreement with an oath by the great gods."⁴¹ Thus, it would seem that Wiseman's definition of "*adē*" in Akkadian should likewise be applied to the cognate in Aramaic.

There is no evidence of Egyptian treaties during the late eighth century B.C. However, the oath of allegiance was still used to guarantee the loyalty of vassals. Within a generation after the Assyrian and Syrian treaties involving Mati'el, Piankhy invaded Lower Egypt and subdued the princes of the Delta. On the Piankhy Stele it is written that the prince Tefnakhte proclaimed his allegiance to Piankhy by giving gifts and by going to the temple, where "he cleansed himself with a divine oath, saying: 'I will not transgress the command of the king . . . I will do according to that which the king says.'"⁴² The swearing of the oath ratified the act of allegiance.

The treaty which Esarhaddon of Assyria contracted with Baal of Tyre in 677 B.C. is badly preserved and offers no mention of an oath, although curses are included. At the end of the fourth column, however, the treaty is called the *tuppi adē*, so it would seem that the stipulations imposed upon Baal were acknowledged and ratified by an oath sworn by the vassal to the suzerain, Esarhaddon.⁴³

The vassal treaties of Esarhaddon, as the texts discovered at Nimrud in 1955 are commonly called, consist of one fairly well preserved tablet and fragments of at least eight copies of the stipulations imposed by Esarhaddon on rulers of small areas to the east of Assyria in order to ensure the succession of Ashurbanipal to the throne.⁴⁴ The best preserved text is the agreement between Esarhaddon and Ramataya of Urakazabanu. While the structure of the agreement is much like that of the regular vassal treaty (*i.e.*, title of the agreement and naming of the parties involved, gods as witnesses, stipulations imposed, mention of preservation of the text, and curses), there are several obvious differences. Every paragraph is in the form of an oath, which is not the case with the earlier treaty form. Also, the parties with whom the treaty was made were already Assyrian vassals, and their unswerving loyalty in the matter of orderly succession to the throne, while only an incidental stipulation in other treaties, *e.g.*, Ramesses II-Hattusilis III treaty, is the main, indeed the only, object

⁴⁰ See M. STRECK, ASSURBANIPAL UND DIE LETZTEN ASSYRISCHEN KÖNIGE BIS ZUM UNTERGANG NINIVEH'S, Pt. 2, TEXTE 12 (1916) (ANNALEN, i, 118).

⁴¹ *Id.* at 68 (ANNALEN, viii, 45). See also other examples in CHICAGO AKKADIAN DICTIONARY, A, Pt. I, at 131b. See also San Nicolò, *Materialen zur Viehwirtschaft in den neubabylonischen Tempeln*, V, 25 ORIENTALIA 25 (1956); Dellar, *Zur Terminologie neuassyrischer Urkunden*, 57 WIENER ZEITSCHRIFT FÜR DIE KUNDE DES MORGENLANDES 31-33 (1961).

⁴² See 4 J. BREASTED, ANCIENT RECORDS OF EGYPT 881. For the text, see H. SCHÄFER, URKUNDEN DER ÄLTEREN ÄTHIOPIENKÖNIGE, URKUNDEN DES ÄGYPTISCHEN ALTERTUMS, Hft. 1, No. 3 at 51-53 (1905).

⁴³ For the text of the treaty, see R. BORGER, DIE INSCHRIFTEN ASARHADDONS KÖNIGS VON ASSYRIEN, ARCHIV FÜR ORIENTFORSCHUNG BEIHEFTE, no. 9, 107-09 (1956); see also Weidner, *Staatsvertrag Aššurniraris*, *supra* note 35, at 29-34.

⁴⁴ See WISEMAN, VASSAL-TREATIES, *supra* note 39.

of the entire text. But, the Esarhaddon vassal treaties must be considered a variation of the usual treaty type, in so far as they are solemn agreements, entitled *adē*, between the Assyrian monarch and foreign princes, and imposed by the Assyrian suzerain on his vassals in the form of an oath and under threat of curses and divine retribution should the vassals act contrary to the stipulations. The fact that each stipulation is in the form of an oath and that the gods are invoked under oath leads to the view that the solemn affirmation by the gods was the constitutive element in the vassal treaties.

The various states and civilizations of the ancient Near East engaged in the practice of making treaties and forming alliances throughout the three millennia under review. Beginning with the first extant text, the Vulture Stele of c. 2500 B.C., up to and including the treaty of Hannibal of Carthage with Philip V of Macedonia,⁴⁵ the general structure of the treaties is the same. In the absence of any international legal authority and frequently despite genuine cultural and religious discrepancies, *e.g.*, Mesopotamia–Egypt–Anatolia, a common structure nevertheless appears by means of which promises made between different states were realized. The promises made had to be sanctioned by, and thus derive their validity from, a power above the parties involved. Since the supernatural or theological dimension thoroughly permeated life and activity in all of the ancient Near Eastern civilizations, that power was the gods.

But what was the relationship between the gods and order? Why should there be such a connection? Mesopotamia believed man and the world in which he lived were governed by an order and law which was supra- and extra-human. Protected by the gods, this law was even above the king. Indeed, final authority was found only in the community of gods as a whole and not with any individual god.⁴⁶ Egypt believed law and order were inherent in the divine. *Maat*, the daughter of Re, was that order in a universe that was essentially static. It was man's duty to bring mortal activity into consonance with the divine order—to bring the physical into line with the metaphysical.⁴⁷ The Hittites, though, thought of law and order as protected by the gods, but essentially it was a physical, historical entity. There was no law among foreigners, and other states participated in law and order only in so far as they were partners in the legal

⁴⁵ For a fine example of traditional Near Eastern practice not considered in this study, see Bickerman, *Hannibal's Covenant*, 73 AMERICAN J. OF PHILOLOGY 1 (1952); Manni, *L'Alleanza Punico-macedone del 215 A. C.*, MEMORIE DELLA REALE ACCADEMIA DI BOLOGNA; CLASSE DI SCIENZE MORALI, Ser. IV, No. 3 at 5 (1941); David, *The Treaties between Rome and Carthage and Their Significance for Our Knowledge of Roman International Law*, in SYMBOLE AD IUS ET HISTORIAM ANTIQUITATIS PERTINENTIS JULIO CHRISTIANO VAN OVEN DEDICATAE 231 (1946).

⁴⁶ For a discussion on these points, see von Soden, *supra* note 34, at 150–51; Boyer, *De la science juridique et de sa méthode dans l'ancienne Mésopotamie*, 4 SEMITICA 6 (1951–1952); Speiser, *The Biblical Idea of History in Its Common Near Eastern Setting*, 7 ISRAEL EXPLORATION J. 203 (1957); Lambert, *Nebuchadnezzar King of Justice*, 27 IRAQ 1 (1965).

⁴⁷ See, *e.g.*, H. FRANKFORT, ANCIENT EGYPTIAN RELIGION 49 (1948).

structure of a treaty with the Hittites. Then, both parties were bound by that law which was protected by the Hittite gods.⁴⁸

Although the concept of law and order differed from area to area, there was in each civilization a connection between the supernatural and law. Thus it would be expected that an agreement made between states would involve an appeal to the supernatural to witness and to enforce the promises made by one or both parties. Once the oath had been sworn, the treaty received, as it were, an existence of its own. This reality, backed by the gods, had influence over him who swore it. As long as the oath was not violated, the party who swore remained free from the evil which would follow from a violation. If it were broken, then the curses inherent in every oath and spelled out in colorful detail in many treaties would naturally follow and come to rest upon the violator.

As such, the oath was the effective means employed to insure that promises made in treaties would be kept.⁴⁹ In the absence of an international authority, the sanction of the gods was the effective guarantee and constitutive element of the ancient Near Eastern treaty.

BIBLICAL EVIDENCE OF TREATIES

The Old Testament comprises a wide variety of literature, developed over almost a millennium. Thus, one cannot speak of one Old Testament theology or one Old Testament viewpoint. Central to the relationship between the community of ancient Israel and Israel's God was the covenant. In order to make the relationship real, ancient Israel employed the legal form of the international treaty.⁵⁰ In this article it is impossible to study the covenant as a variation of the treaty form, confirmed by the solemn oath of the nation of ancient Israel. Rather, only actual evidence of international treaties will be considered.

Because of the nature of the Old Testament, it would be surprising if there were preserved an actual text of a treaty made between ancient Israel and another state. But, that the technique and form of contracting a treaty were well known in ancient Israel is an established fact. The prohibitions against making treaties with the Canaanites and Philistines (Ex. 23: 32, Dt. 7: 2, Jgs. 2: 2) lead one to believe that there was a definite fear of the establishment of parity treaties with the inhabitants of the

⁴⁸ See, e.g., Güterbock, *Authority and Law in the Hittite Kingdom*, in J. A. Wilson *et al.*, *AUTHORITY AND LAW IN THE ANCIENT ORIENT* 16 (1954); Güterbock, *Die historische Tradition und ihre literarische Gestaltung bei Babyloniern und Hethitern bis 1200*, 44 *ZEITSCHRIFT FÜR ASSYRIOLOGIE* 94 (1938).

⁴⁹ Some scholars maintain that the oath was the principal feature in the treaties from the first millennium B.C., but not in those from the second millennium where the elaborate ceremony and ritual was of primary importance. This writer cannot agree in such a conclusion, for there is ample evidence that the oath and the ritual were integrally connected in the earlier treaties and that the ritual accompanied the oath in the later treaties, even though it may have been less elaborate. For the view that there was a definite development from ritual to oath, see Gelb, *BOOK REVIEW* of Wiseman, *supra* note 39, in 19 *BIBLIOTHECA ORIENTALIS* 161 (1962).

⁵⁰ See, e.g., MENDENHALL, *supra* note 5.

land. The consequential closer ties with the religions of other peoples following treaties sworn by their gods would have been incompatible with the religion of ancient Israel, which categorically forbade such activity.

Despite the lack of primary sources, such as stelae, and of direct quotation in the Old Testament, there are certain references to treaties contracted. Beginning in Gen. 20, the narrative of Abraham's sojourn in Gerar of the Negev tells of the covenant made between Abraham and Abimelech (Gen. 21: 22-32, 34). Stemming from a possible combination of sources,⁵¹ the account is much the same as that of Isaac's covenant with Abimelech in Gen. 26: 1-33: (a) the wife-sister motif of Abraham and Sarah and of Isaac and Rebecca and (b) the treaty with Abimelech of Gerar at Beersheba. The answer to the problem must lie in the fact that traditionally one of the patriarchs settled near Beersheba and made a treaty with a local ruler, Abimelech. According to the first account, the patriarch was Abraham; according to the second, Isaac. In the first account, Abimelech, accompanied by his general Phicol, came to Abraham and said:

"God is with you in all that you do; swear to me by God here, then, that you will never be false to me, nor to my children, nor to my descendants, but that you will treat me and the land in which you are settled as an immigrant as kindly as I have treated you." "I swear it," said Abraham. So Abraham took some sheep and oxen, which he gave to Abimelech, and the two of them made a covenant.

There follows another narrative concerning a dispute over a well in the vicinity, and a covenant between Abraham and Abimelech resolved the dispute (vv. 25-26, 28-30, 32). The aetiology of the name Beersheba is given as "well of the oath" in this account (v. 31).

In the account of the treaty between Isaac and Abimelech, it is likewise a water dispute that forms the background against which the treaty was concluded. Abimelech came to Isaac (again accompanied by his general Phicol) and made the following proposal (Gen. 26: 27-31):

"Let there be an oath between us, between ourselves and you; let us reach an agreement with you that you will do us no harm, since we did not hurt you, but only did you good, and let you go amicably." . . . Rising early next morning, they took oath with each other . . . and they departed from him [Isaac] on friendly terms.

In Gen. 31, after the confrontation between Jacob and Laban, Laban spoke to Jacob (v. 44): "Come then, let us make a covenant, you and I, and let X be a witness between you and me."⁵² A commemorative pile of rocks was erected and a meal was eaten next to it. Laban invoked a blessing (v. 49): "May Yahweh keep watch between you and me when we are out of one another's sight," and bade Jacob remain faithful to his daughters, Jacob's wives, and remember that (v. 50): "God is a witness

⁵¹ Virtually all scholars accept the fact that the Pentateuch (or Torah) is a combination of at least four different sources over a four or five hundred year period.

⁵² The Massoretic Text is not correct. The translation adopted here is neutral, for it seems impossible to construct a conclusive text.

between you and me." Finally (v. 54), "so Jacob took the oath by the Kinsman⁵³ of his father, Isaac." A sacrifice was offered, and the relatives were invited to the sacred meal.

Although undoubtedly the narrative has been corrupted, as is evident from the two different meals (vv. 46 and 54) *inter alia*, what remains is a reference to a treaty concluded in the time of the patriarchs between one of the patriarchs and a local ruler. Notable is the integral part of the oath in the ceremony of making the treaty.

Jos. 9 tells of the covenant sworn between Joshua and the Gibeonites.⁵⁴ Pretending to be newly arrived immigrants, the Gibeonites approached Joshua and requested that they be permitted to settle among the Israelites. Actually the Gibeonites perpetrated a ruse, for they were among the inhabitants of the land to be killed by the Israelites. Tricking Joshua, they concluded a treaty with him: "Then the men partook of their provisions, without asking the advice of Yahweh; and Joshua came to terms with them, and made a covenant with them to let them live, and the leaders of the community swore an oath to them" (vv. 14-15). After finding out that the Gibeonites were not in fact newly arrived immigrants, the Israelites could not kill them,

for the leaders of the community had sworn an oath to them by Yahweh, the God of Israel. The whole community grumbled at the leaders, but the leaders all said to the whole community: "We have sworn an oath to them by Yahweh, the God of Israel, so now we cannot touch them" (vv. 18-19).

The Gibeonites were allowed to live so that evil would not come to the Israelites "because of the oath" (v. 20) which was sworn to them.

In addition to the historical prologue, partaking of the food in a ceremonial meal, and the possible imposition of stipulations, the agreement, so similar to the classical vassal treaty form, was sealed with an oath. Once sworn, the oath could not be broken, even though the Gibeonites had misrepresented themselves through deception. Years later when Saul tried to slay the descendants of the Gibeonites, David made amends because "the Israelites had sworn to them" (2 Sam. 21: 2).

Other references to treaties concluded by the Israelites are not so specific.⁵⁵ An internal Israelite affair which, although not involving a treaty illustrates in a way the importance of the oath in an agreement which was not a civil contract, is related in Jgs. 21. After the crime of Gibeah

⁵³ The usual translation is "Awesome One"; see, e.g., Alt, *Der Gott der Väter*, in 1 KLEINE SCHRIFTEN ZUR GESCHICHTE DES VOLKES ISRAEL, 24-26 (1959). The translation should most likely be "Kinsman" on the basis of Palmyrene Aramaic and Arabic cognates. See W. F. ALBRIGHT, *STONE AGE TO CHRISTIANITY* 188-89, 327 n.71 (2d ed. 1957).

⁵⁴ See Fensham, *The Treaty between Israel and the Gibeonites*, 27 *BIBLICAL ARCHAEOLOGIST* 96 (1964); see also Grintz, *The Treaty of Joshua with the Gibeonites*, 86 *J. OF THE AMER. ORIENTAL SOC.* 113 (1966).

⁵⁵ Other treaties undoubtedly did exist, but the references are usually vague. See, e.g., Fensham, *Did a Treaty between the Israelites and the Kenites Exist?* 175 *BULL. OF THE AMER. SCHOOLS OF ORIENTAL RESEARCH* 51 (1964).

had been avenged, the people gathered together at the sanctuary of Bethel to offer sacrifice, but the Benjaminites were not present following the defeat at Gibeah. It is related that when the Israelites had assembled at Mizpah, before the attack on Gibeah, "a solemn oath had been taken concerning him who did not come up to Yahweh at Mizpah, as follows: 'He shall be put to death'" (v. 5). After a change of heart came over the Israelites concerning the tribe of Benjamin, they set about getting wives for the survivors, which was a problem, "for the Israelites had sworn, saying: 'Cursed be he who gives a wife to Benjamin'" (v. 18). Reference is being made here to some sort of parity agreement sworn by the amphictyony concerning the tribe of Benjamin, since we are told that the tribes had gathered together before Yahweh, that stipulations had been imposed on the parties involved (the tribes), that a curse had been invoked on anyone who did not obey the terms of the agreement, and that a "solemn oath" had been sworn. Although this agreement cannot be called an international treaty, the method of contracting it closely resembles that of the treaty. The importance of the sworn oath reflects the place the oath had in the treaty form.

A treaty contracted between Ahab and Ben-Hadad of Aram towards the middle of the ninth century B.C. is mentioned in 1 Kgs. 20: 34 following the account of the war with Syria. Shortly before 875 B.C., Ben-Hadad had invaded Israel during Baasha's reign at the behest of Asa of Judah, and he probably had occupied certain border towns. Following his defeat by Ahab of Israel, Ben-Hadad had agreed to return the border towns and to allow the Israelites to have extraterritorial commercial rights in Damascus. The agreement, despite the stipulations imposed on Ben-Hadad, seems to have been more along the lines of a parity treaty than along those of a vassal treaty.⁵⁶ Unfortunately, we know practically nothing of the ratification of the treaty.

Another reference to a treaty is 2 Chr. 36: 13, where it is written that Zedekiah "rebelled against Nebuchadnezzar, who had made him swear by God." In all probability, Nebuchadnezzar of Babylon had imposed a vassal treaty upon Zedekiah when he was installed as ruler of Judah in the place of the young Jehoiachin, who was deported to Babylon in 597 B.C. following the death of his father, Jehoiachim, who had rebelled against the Babylonian hegemony about 600 B.C. This treaty is said to have been "sworn."

In Neh. 6, the futile efforts to frustrate Nehemiah are recounted. One of the enemies was Tobiah, the Jewish governor of Ammon, and when the plotting of Tobiah is mentioned we read (vv. 17-18): "Moreover in those days, the nobles of Judah sent letters to Tobiah, and those of Tobiah came to them, for many in Judah were under oath to him . . ." Although the "oath" in question is clearly not sworn in a treaty context and is rather an oath of allegiance, the *swearing* of fidelity in such a situation shows that

⁵⁶ In 853 B.C., both Ben-Hadad of Aram and Ahab of Israel joined in the coalition which met and successfully stopped the Assyrian advance of Shalmaneser III at Qarqar on the Orontes River.

the bond of allegiance became effective when an oath was sworn. Therefore, the incident is illustrative of treaty practice.

Under the same category of Biblical evidence of treaties, those few personal relationships which are referred to as "covenants" should be considered. In 1 Sam. 18: 3, it is written that "Jonathan made a covenant with David, because he loved him as himself." Later we read (1 Sam. 20: 17): "So Jonathan again took oath to David, because of his love for him, for he loved him as himself." This covenant must have been a pledge of undying friendship between David and Jonathan. Similar to the classical parity treaty in so far as both parties were obliged to remain true to one another, two private individuals nevertheless cannot be said to have contracted a "treaty." That the oaths sworn by both men constituted the "covenant" and made the "covenant relationship" a real entity in itself is shown from 1 Sam. 20: 42: "[W]e have both sworn in the name of Yahweh," and from v. 23, where Jonathan says to David: "As for the word which we have spoken, you and I, behold, Yahweh is between you and me forever." The fact that Jonathan is said to have initiated this relationship would not imply that the obligations to remain true to it lay only upon Jonathan and not upon David as well. Besides, David may well have already sworn allegiance to King Saul and his family. Later David as king spared the life of Meribaal, Jonathan's son, "because of the oath of Yahweh which was between them, between David and Jonathan, the son of Saul" (2 Sam. 21: 7).

There is evidence of such a pledge of friendship, described with actual treaty terminology from the epic literature of Mesopotamia in the story of Etana and the Eagle.⁵⁷ In the Middle Assyrian version, it is written that "in the shade of that poplar, the eagle and the serpent formed a friendship, taking an oath to remain companions."⁵⁸ The serpent appealed to the god Shamash after the betrayal by the eagle and said: "To the eagle I extended goodwill; I revered and honored your oath . . ."⁵⁹ The mutual oaths between the eagle and the serpent closely resemble those sworn by David and Jonathan—"covenants" between private individuals very similar to international treaties in form.⁶⁰

Although the evidence is not abundant, the treaties concluded by ancient Israel were made along the lines of the customary treaty form used throughout the ancient Near East. Furthermore, it is evident that the swearing of an oath—in the case of Israel, an oath by Yahweh, although treaties with the Assyrians undoubtedly contained oaths sworn by the Assyrian gods also—was the constitutive element which ratified the covenant

⁵⁷ Old Babylonian version published by S. Langdon, *The Legend of Etana and The Eagle, or the Epical Poem "The city they hated,"* 12 BABYLONIACA 1, plates i-xiv (1931); for the Middle Assyrian and Neo-Assyrian versions, see Ebeling, *Ein mittelassyrisches Bruchstück des Etana-Mythus*, 14 ARCHIV FÜR ORIENTFORSCHUNG 298 (1944).

⁵⁸ *Id.* at 14, pl. 9, i, 10-11.

⁵⁹ See Langdon, *supra* note 57, at 23, r. 12-13.

⁶⁰ See also the covenant between David and Abner in 2 Sam. 3.

and made it, for all practical purposes, inviolable. (*See, e.g.*, the treaty of Joshua with the men of Gibeon.) Through the oath something outside of and higher than the parties involved was created. The relationship was essentially changed and raised to a higher level. The presence of Yahweh was between the parties to the treaty, as it were, and this separate entity was holy and sacrosanct. As Jonathan said to David: "Behold, Yahweh is between you and me forever." Violation of the sworn bond would be punished by Yahweh, whose sanction had been obtained, for such an act would let loose the curses embodied in the oath. The terms of the treaty were guaranteed through the oath, and one could be confident that the promises made would be respected and brought to fulfilment.

In the absence of international sanctions by which the terms of the treaty could be enforced, ancient Israel had recourse to the use of the oath in the same way as the other ancient Near Eastern peoples had. Even if effective military means were at hand, the gods provided the only written sanction. A treaty was not actually in effect unless it involved the solemn affirmation by the divine that one would be faithful to the details of the agreement.