The "Unwritten Laws" of the Hittites:* The Case of the *natta āra* Expression

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This article will describe a set of Hittite legal formulations which are not part of the canonized Hittite law code. As such, these legal formulations can be defined as belonging to a type of laws conventionally termed 'unwritten laws' (leges non scriptae) or 'customary laws' (leges consuetudinis), laws which have been devised outside the formal frame of a canonized corpus, that is the law code. The "unwritten laws" to be examined here make use of the formulaic and conservative Hittite expression natta āra, which basically means 'not right' or 'not correct'. It will be argued that this expression, while absent from the Hittite Law Code, is distributed widely in various genres, and in fact represents an entire class of legal formulations. First, a discussion of the semantic and formal aspects of the expression will be offered; this will be followed by a set of examples which will demonstrate its employment in the formulation of laws.

The formulaic and conservative expression *natta āra* was especially suited for the composition of laws due to its deep social and religious connotations. The expression is found in a variety of texts, not necessarily legal, where it defines the standards of proper behavior. It comes to prohibit over twenty different social actions related to sexual norms,³

See below.

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¹ For definitions of the concept of customary law, see Diamond 1971, Berger 1953, Schiller 1938. For Hittite legal terminology, see Hoffner 1997:1-2.

² The meaning of this expression has been understood since the initial days of Hittitology, see Hrozný 1915:28. A seminal study of the term is Laroche 1960; additional details in *HED* A, 116-121; *HW*², 218-219; *CHD* L-N, 412. A comprehensive semantic and comparative study is Cohen forthcoming, where a fuller treatment of the present topic will be presented.

religious and cultic observances,4 and ethical dilemmas.5 Within Hittite context, whatever was termed to be natta āra was deemed unacceptable and inappropriate behavior for the society of gods and humans alike. A glance at the Indo-European cognates of Hittite ara, such as Vedic arí ('righteous', 'loyal') or Avestan arəta ('right', 'truth'), may illuminate the deep meaning of the expression, demonstrating the concept of accepted social conduct among ancient Indo-European communities.6

As far as the texts allow one to judge, the expression drew its authoritative power from those who determine what was ara and what was natta $\bar{a}ra$ - the gods. They are the ones who constitute and bestow $\bar{a}ra$ upon human society. In the treaty with Huqqana, Šuppiluliuma warns the vassal king that were he not to comply with the demands imposed by the treaty and wish to plot with an enemy of the Hittite king, then the Oath Deities will not make it ara for him and his partner. Not receiving ara from the gods will ensure that Huqqana will fail in any step he and his partner wish to partake against the Hittite king. Being in possession of ara, however, will ensure the success of a relationship, as stated explicitly in another treaty. According to the treaty between Hatti and Egypt, both partners, Hattušili III and Ramses II, are to obtain parsu (Akkadian for āra8) from Sun god and the Storm god, clearly the two chief representatives of the Egyptian and Hittite pantheon respectively.9 Having parsu, or āra to use the Hittite term, will ensure that peace, brotherhood, and the absence of hostilities will prevail. Indeed, āra guarantees all the necessary ingredients

⁴ For example, in Kantuzili's Prayer (KUB 30.10 obv. 11"-14" = Güterbock 1974:325), or in the Ritual of the 'Men of Lallupiya' (KUB 25.37 i 41'-45' = StBoT 30:342-344; Güterbock 1995:66).

⁵ Most notably in the Telepinu Proclamation, § 32 (KBo 3.1 ii 59-61 = THeth 11:36-37).

⁶ Benveniste 1962:108-110; HED A:116-121; Gamkrelidze and Ivanov 1995:657-658. ⁷ The Treaty of Šuppiluliuma with Huqqana: nu-us-ma-<sa>-at-<sa>> le-e a-ara i-en-zi "(The Oath Deities) will not make it āra for both of you" (Huqq., § 10, ii 8 = SV 2:114; tr. Beckman 1999:29).

⁸ See del Monte 1986:97.

 $^{^9}$ The Treaty between Hattušili III and Ramses II: $^{24}p\acute{a}r$ -su ša da-a-ri-ti ša $^{\mathrm{D}}$ UTU \grave{u} $^{\mathrm{D}}\mathbf{I}\mathbf{\check{S}}\mathbf{K}\mathbf{U}\mathbf{R}\;i\text{-}pu\text{-}\check{s}u\;^{25}a\text{-}na\;\mathbf{K}\mathbf{U}\mathbf{R}\;Mi\text{-}i[s\text{-}ri\text{-}i\;q]\grave{a}\text{-}du\;\mathbf{K}\mathbf{U}\mathbf{R}\;Ha\text{-}a[t\text{-}ti\;sa\text{-}la\text{-}m]a\;\grave{u}\;\check{\mathbf{S}}\mathbf{E}\check{\mathbf{S}}\text{-}ut\text{-}tu\;a\text{-}na\;la$ a na-da-a-ni LÚKÚR [i]-na be-ri-šu-nu "The parsu for eternity which the Sun god and the Storm god made for peace and brotherhood among Egypt and Hatti, (and) for prohibiting enmity among them..." (A [KBo 1.7+], restored on account of B [KBo $1.25+1 = Edel\ 1997:7$ and 88).

for a successful brotherly relationship between the two kings. 10 It seems that $\bar{a}ra$ originates from a different, higher level than the mundane level of human affairs and therefore, due to its divine origin, it is able to sanction certain actions or laws. Thus, $\bar{a}ra$ is the divine law, just like the Latin fas, the lex divina ordained by the gods, as opposed to the ius, the lex humana consisting of earthly customs and laws. 11

One may briefly note the expression's formulaic structure which infers to its functional aspect in the formulation of laws. ¹² In all of its occurrences, save one, the expression appears in an independent verbless nominal sentence. ¹³ It always occupies the predicate slot, while the subject slot is variable. It may be \emptyset , (just *natta āra*, with the subject implied), ¹⁴ an enclitic pronoun subject (-*at*), ¹⁵ or an infinitive. ¹⁶ Such a flexible, yet basically unchanging formula allowed the facile articulation of different prohibitions to be fitted within the subject slot.

In addition to its semantic features and formulaic structure, one should note the conservative nature of the expression. The most striking example of this conservatism is perhaps its appearance in two very different documents, which are separated in time by at least 300 years. In spite of the wide gap between the Old Hittite tale of Zalpa, and the treaty of Šuppiluliuma with Huqqana, it is the *natta āra* expression which is employed in both to prohibit incest with one's own sisters.¹⁷ Acts of incest which are de-

¹⁰ It is also within the power of the Hittite king to bestow $\bar{a}ra$ on his subordinates, as seen in the Bronze Tablet Treaty: ¹⁸...na-at- $\dot{s}i$ A-BU-YA ^mHa-at-tu- $\dot{s}i$ -li- $\dot{i}\dot{s}$ LUGAL.GAL ¹⁹a-a-ra i-ya-at ^DUTU $\dot{s}i$ -ya-at- $\dot{s}i$ ^mTu-ut- $\dot{h}a$ -li-ya- $a\dot{s}$ LUGAL.GAL a-a-ra i-ya-nu-un ²⁰na-at- $\dot{s}i$ a-a-ra e- $e\dot{s}$ -du "My father Hattušili, Great King, made it (to build a kuwappala) for him (for Kurunta) $\bar{a}ra$, and I, My Majesty, Tudhalia, Great King, (also) made it $\bar{a}ra$ for him, and it shall be $\bar{a}ra$ for him!" (Bo 86/299 ii 18-20 = StBoT Beih.1:16). See also KBo 4.10 obv. 37 = StBoT 38:32-33.

¹¹ See also Benveniste 1969:133-136 and Berger 1953:468, following Isidore of Seville: "fas lex divina est, ius lex humana."

The formulaic nature of legal language is discussed in Watkins 1994.

¹³ The *natta* $\bar{a}ra$ expression is marked for past tense with the copula only in the following case: ku-e \acute{U} -UL a-a-ra e-e \acute{S} -ta "(The things) which were not right." (KUB 14.4 obv. i 13' = de Martino 1998:24). See also Cotticelli-Kurras 1991:55-56.

¹⁴ For e.g., KUB 28.4 rev. iii 15 = Laroche, Mythologie, 77: \acute{v} -UL a-a-ra "(It is) not right."

¹⁵ For e.g., Huqq., § 29 iii 34 = SV 2:134: URU Ha-at-tu-ši-ma-at Ú-UL a-a-ra "But in Hattuša, it (is) not right."

¹⁶ For e.g, KUB 19.20+ rev. 12' = van den Hout 1994:66: *e-e*]*š-ḥar i-ya-u-an-zi Ú-UL a-a-ra* "Shedding (lit. "doing") blood is not right."

¹⁷ The Tale of Zalpa: ¹⁸ap-pé-ez-zi-ya-ša-aš-ša-an ¹⁹[]-uš-za né-e-ku-šum-mu-uš da-

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signated in the Hittite Law Code as *hurkel*, ¹⁸ in these two texts are defined differently - with the use of the *natta āra* expression. Here, as in other texts, the expression's semantic connotations assured a rigid mold for articulating Hittite social customs, thereby turning them into law throughout Hittite history. The custom or law of the land of Hatti, the *šaklaiš*, once codified by the *natta āra* expression, assumes a legal force whose punitive sanctions (execution in the Huggana Treaty) come to surface. ¹⁹

In order to demonstrate how the Hittites legalized and transformed custom into law by means of the expression, the remainder of this article will concentrate on one set of examples – the formulation of laws concerning the fate of fugitives who have escaped to Hatti from neighboring countries.²⁰

In almost all of the surviving Hittite treaties one finds a detailed section which attempts to regulate in legal terminology the movement and extradition of fugitives, naturally favoring the Hittite side.²¹ It is in these sections that the *natta āra* expression is found in a total of four treaties: three with the Arzawa countries and Wiluša of western Anatolia and one treaty with Mittanni. In these treaties, the *natta āra* expression comes to prohibit specifically the extradition of a fugitive who has fled into Hatti from the vassal kingdom, back to his homeland. While Hatti entitles the right to detain and protect the fugitive, the vassal kingdom must hand back to Hatti any fugitive who escaped to its territory. This formulation was first put into use in the treaty of Šuppiluliuma with Šattiwaza of Mittanni. Only the Akkadian passage is extant, employing the term *ul parsu*, the Akkadian

aš-ke-e-u-e-n[i n]u le-e ša-li-ik-tu-ma-ri 20 [] $^{\text{T}}$ a-a-ra nu kat-ti-iš-mi $^{\text{T}}$ š[e- "Only the youngest (objected): 'Should we take our sisters (in marriage)? Do not approach them (sexually). [It is not] right.' But [they?] sl[ept] with them." (KBo 22.2 obv. 18-20 = StBoT 17:6-7). Following here Otten's restoration and translation. For a different interpretation of the story's ending, see Hoffner 1998:82: "[It is surely not] right that [we should] sleep with them." The Treaty of Šuppiluliuma with Huqqana: 29 Seš-aš-za NIN-S \dot{V} MUNUS a-a-an-ni-in-ni-ya-mi-in \dot{V} -UL da-a-i $^{30}\dot{V}$ -UL-at a-a-ra "A brother should not take (sexually) his sister, or niece. This is not right." (Huqq., § 29, 29-30 = SV2:124; Following Otten 1971:163).

¹⁸ See Hoffner 1997:224.

¹⁹ Following Diamond 1971:49-50. See also Laroche 1960:128 and Hoffner 1997:2.

²⁰ Although here the examples are solely from the sphere of 'international law', the legislative use of the expression is encountered also in texts dealing with 'internal law', such as instruction or oath texts (for example, KUB 13.7 obv. i 24 = CTH 258; see von Schuler 1959:458-459).

Korošec 1931:65. Notice the exceptional favorable decree issued to Ugarit (RS 17.238 = PRU 4:107-108; See Singer 1999:682).

equivalent of $natta \bar{a}ra$. There, in the section concerned with fugitives, it is explicitly stated:

 $^{10}\dots$ šum-ma $^{L\dot{U}}$ mu-un-na-bi-it-tù ša KUR URU Mi[-it-ta-an-ni in-na-bit-ma a-na KUR URU Ḥa-at-ti il-la-ak] 11 LUGAL KUR URU Ḥa-at-ti ul i-ṣa-bat-sú ul ú-tá-ar-šu ul pár-ṣú \dots

"If a fugitive of the land of Mi[ttanni flees and goes to Hatti], the King of Hatti will not seize him nor will he return him back. It is not right."²²

This legal formulation had a clear political aim in view. It was to remind Šattiwaza, himself a political fugitive given asylum in Hatti, that any other future fugitives from Mittanni, like himself, may be kept in Hatti. Such fugitives might be harbored by Hatti and promptly be manipulated to serve the Hittite cause, should Sattiwaza dare stray off the right path. What is pertinent to the present discussion is the manner in which Šuppiluliuma formulates this rule for Šattiwaza. He is using the well-known expression (attested only in the Akkadian translation) to formulate a new rule. This expression, loaded with religious and social connotations, as discussed above, bestowed upon the new rule in the treaty an aura of 'religiosity' (or 'natural morality') although, as a matter of fact, it prohibited nothing of that nature. Its sole function was to ensure the movement of people rather than regulate and define social customs, such as kinship ties, religious norms, or ethical procedures. Within the current political situation in which Mittanni was no longer an independent state, the role of the expression in the treaty was to turn custom into law, and thus sanction new unbalanced relations, to which Šattiwaza or Mittanni's former rulers were unaccustomed.23

Proceeding chronologically, the expression's similar employment is next found in treaties with the west Anatolian countries. First, in the Arzawa treaties (altogether three in number out of which two contain the expression) and later in the Wiluša treaty, the same dictate which is found basically in the Šattiwaza treaty, is repeated word for word.²⁴

- a) ³⁸IŠ-[TU KUR] ^{URU}KÙ.BABBAR-ti ^{LÚ}MU-NAB-TUM</sup>
 EGIR-pa pí-ya-an-na Ú-UL a-a-ra
 "Fr[om the land] of Hatti, it is not right to give back a fugitive."²⁵
- b) 40 [...IŠ-TU KUR] URU Ha-at-ti $^{L\dot{U}}$ [MU-NAB-TUM] 41 [EGIR-pa $p\acute{t}$ -ya-an-na \acute{U} -UL] a-a-ra

²² The Treaty of Šuppiluliuma with Šattiwaza, § 9 (KBo 1.1 rev. 10-11) = PD:22-23;

tr. Beckman 1999:45.

²³ See Kestemont 1982:270 and Zaccagnini 1990:72.

For the similarity between the treaties, see Heinhold-Krahmer 1977:130-135.

²⁵ Targ., § 7, (KBo 5.4 obv. 38) = SV 1:58.

["...From the land] of Hatti, [it is not] right [to give back] a fu[gitive]."²⁶

c) 63 ... IŠ-TU KUR URU Ha[-at-ti]

^{64LÚ}MU-UN-[NAB-TUM EGIR-pa pí-ya-an-]na Ú-UL a-a-ra

"From the land of Ha[tt]i, it is not right to gi[ve back] a fugi[tive]."27

Like in Mittanni, in these territories recently coming under Hittite control, ²⁸ new regulations governing the flow of political and other fugitives were to be established. To establish such rules, the *natta āra* expression was brought into use, for the very same reasons it was used in the Šattiwaza treaty. No doubt because of the political situation present in the Arzawa lands, this very expression was employed not only in the treaties, but also in the diplomatic correspondence related to that area, such as in the famous Milawata letter, the next text to be examined. ²⁹

Although the Milawata letter is in poor condition of preservation, one learns from the reverse of the tablet how the Hittite king (most probably Tudhalia 'IV'³⁰) is educating his addressee, a vassal king, on the rules of extradition of fugitives.³¹ The Hittite king chooses to do so with almost the exact sentence found in the treaties examined above, instructing the vassal king that, according to custom, it is not right to send a fugitive from Hatti back to his point of departure. In spite of the fragmentary passage, just enough is preserved of the king's direct speech discourse to permit the conclusion that what follows is a direct quote of a treaty or other written document dealing with the issue of fugitives.

 $^{^{26}}$ Kup., §23, 40-41 (KUB 19.54 obv. 4) = SV 1:140. Among the three Arzawa treaties, only the treaty between Muršili and Manapa-Tarhunta lacks the expression. Indeed, the entire section concerning fugitives (§4; tr. Beckman 1999:83) is styled quite differently.

Alakš., § 18 (KUB 21.1 rev. iii 63-64) = SV 2:75-76.

²⁸ Former Hittite control over these territories was exercised by Tudhalia I/II. See Bryce 1998:133-137 and Klengel 1999:111.

²⁹ The real-politik of the Arwaza lands was dotted with conflicts concerning political fugitives. Along with the texts to be discussed below, see the adventures of the soldier of fortune, Mašhuiluwa (Kup., §§ 2-7; tr. Beckman 1999:74-75) and the fate of the 'huntsman' Niwalla (Madd., §§ 27-29; tr. Beckman 1999:159-160). Compare also Hittite Law § 23 which deals with the issue of run-away slaves. It is concerned specifically with the local of Luwiya, that is Arzawa. See remarks by editor along with lit. in Hoffner 1997:179-180. As mentioned, the expression is absent from the Hittite Laws.

³⁰ Singer 1983:215-217.

Historical circumstances of the letter with lit. in Bryce 1998:339-342.

- 3 [ku]-it inim $^{\text{L}\acute{\text{U}}}$ MU-NAB-TI-ma $^{\text{D}}$ UTU $^{\check{S}I}$ ku-it-ki x[
- 4 LÚMU-NAB-TUM-ma EGIR SUM-u-an-zi³² UL a-a-ra x[
- 5 nu GAM ^D[IŠKUR]-ma ku-it-ki ti-ya-u-en ^{LÚ}MU-NAB-TUM-wa [
- 3 "[beca]use (of) that matter of the fugitive, My Majesty whatever [
- 4 It is not right to send back a fugitive [
- 5 And whatever we established under the Stormgod, (saying): 'A fugitive[...'"33

If the letter was indeed written by Tudhalia 'IV', it is well worth to note the conservative nature of the extradition clauses' formulation. From the days of Šuppiluliuma I, up to the end of the Hittite empire, the formulation of the extradition clause went unchanged and could be found quoted verbatim in a variety of sources. One could argue that the entire extradition section in the treaties owed its authority and power of persuasion to the *natta āra* expression with its own force of conservatism and legitimization. On a comparative level, following a cursory examination of non-Hittite sources, one can notice that although the North-Syrian principalities, and later, the Neo-Assyrian Empire dealt with the issue of fugitives, a comparable prohibitive dictate like the Hittite *natta āra* expression is not found.³⁴ This general, seemingly all-inclusive, normative, and legislative expression was a Hittite 'invention'.

As was seen, in Hittite treaties and international correspondence, the issue of fugitives has led to the definition of their mobility. Definition of their legal status was also of concern. Once extradited to Hatti the fugitives were not to be executed. Again, it is the *natta āra* expression which served to formulate this injunctive. In the Tawagalawa letter, a document related to the politics of western Anatolia, the inciter Piyamaradu is promised to be spared, since it is *natta āra* to kill fugitives in Hatti. The Hittite king explicitly states the following:

- ... e-eš-har I-NA KUR ^{URU [}KÙ.BABBAR a-a-ra] [na-a]t Ú-UL
- "... Is bloodshed in the land of Hatti right? It is not!"³⁵

In this letter, the expression is embedded within a specific geo-political demarcation, namely the land of Hatti, which defines the boundaries of a local norm. A similar use of this demarcation of the expression is found in KBo 1.10. In this letter, Hattušili III, after being accused of bearing the responsibility of the murder of Babylonian merchants apparently traveling

For the inf. form, see CHD P:261.

 $^{^{33}}$ The Milawata Letter, KUB 19.55 rev. 3-5 = AU: 200-201; tr. based on Garstang and Gurney 1959:114-115.

³⁴ The Akkadian equivalent *ul parșu* appears, as far as I have noted, only in Boğazköy Akkadian texts. See AHw:836.

³⁵ Taw., KUB 14.3, obv. ii, 8 = AU: 6-7 and 98.

in an area under his jurisdiction, tries to convince Kadašman-Enlil II that killing is not the norm in Hatti. He does so by mentioning a hypothetical case in which a fugitive escapes from Hatti and is presumably caught, but is not to be killed:³⁶

- ²¹... šum-ma LÚ ša ḫi-ṭa a-na LUGAL i-ḫa-ṭu a-na KUR-ti ša-ni-ti-ma
- ²²[]x ù a-na da-a-ki ú-ul pár-su ...
- "... If a man who commits an offense against the king, [escapes??] to another country, then it is not right to kill (him)."³⁷

As in the Tawagalawa letter, in this letter the *natta āra* expression defines a custom which is normative to a geographical area, the land of Hatti. ³⁸ In both documents, for different political purposes, the expression was harnessed to bestow sanctity on Hittite policies: All fugitives handed into Hatti may rest assured - they, in accordance with the customs of hospitality in the land of Hatti will not be executed. To do so would necessarily be *natta āra*, an act which transgresses the *lex divina*.

In treaties and diplomatic texts, alike, the *natta āra* expression came to legitimate a unilateral action, formerly not exercised by the Hittite state. It was to constitute a new rule and to term anew what was to be considered correct relations between vassal kingdoms and their suzerain. Hence, it bears witness to the formation of a legal idiomatic phrase, or at least to a standard legal procedure. This use of the *natta āra* expression hints at some intention to formulate a general sentence or common rule. Of course, this expression served its aim within the text, therefore it is quite a distance from a universal law or even a timeless proverb. However, it can be regarded as a cognitive articulation of abstract thought processes in the formulation of laws. Presently, such implications are outside the scope of this article.

The *leges non scriptae* of Hittite society are not immediately susceptible to the eye. But as was seen, the formulaic and conservative *natta āra* expression can indicate the elusive tracks of such 'customary laws', existing side by side with the written and codified laws. In spite of the fact that the *natta āra* expression does not appear even once in the Hittite Laws, its operative force as a legislative measure in Hittite society demands to be considered.

³⁶ See Westbrook 1988:51-52, n.57 and THeth 16:298; also Klengel 1980.

³⁷ The Letter of Hattušili III to Kadašman-Enlil II, KBo 1.10, rev. 21-22 = Hagenbuchner 1989:285; tr. based on Beckman 1999:142.

These are not the only cases where the expression is made specific to the land of Hatti. Most notable is the treaty of Šuppiluliuma with Huqqana, § 25, (tr. Beckman 1999:31). See Laroche 1960:128.

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