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CONTENTS

12.00.02 – CONSTITUTIONAL LAW. ADMINISTRATIVE LAW. FINANCE AND CUSTOMS LAW

NORMATOV BEKZOD AKRAM UGLI

Classification and legal nature of tax audits in Uzbekistan4

MUSTANOV ILKHOM ABDIVALIJONOVICH

Some issues of improving organizational-legal bases of banking legislation
in Uzbekistan 20

12.00.10 – INTERNATIONAL LAW

RAKHMONOV JALOLIDDIN

Regulating foreign investment in a diversifying Asia: a comparative analysis 37

SAFAROV JAMSHID ISMOILOVICH

General concepts and principles of consent to be bound by a treaty
in the doctrine of international law 45



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GENERAL CONCEPTS AND PRINCIPLES OF CONSENT TO BE BOUND BY A TREATY IN THE DOCTRINE OF INTERNATIONAL LAW

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Abstract. At the present stage of the evolution of statehood, international treaties form the legal basis of interstate relations and are a means of maintaining universal peace and security and developing international cooperation in accordance with the purposes and principles of the UN Charter. Therefore, treaties occupy a very important place in international law, and along with the concept of a treaty, the doctrine of international law should define general concepts and principles of expressing consent to be bound by a treaty. For example, it is possible to conclude international treaties between states and/or international organizations in various forms, including “ratification,” “act of formal approval,” “acceptance,” “confirmation,” “succession,” and “accession.” However, there is no single international instrument expressing the rules of consent to be bound by a treaty. In particular, the 1969 Vienna Convention on the Law of Treaties does not clarify the concept of “succession” along with “formal ratification.” Moreover, the 1896 Convention has not yet entered into force. Thus, this article assesses possible solutions to unify and express the concepts and norms of expressing consent to be bound by a treaty in the doctrine of international law.

Keywords: contracts, international law, law of international contracts, ratification, acceptance, approval, succession, accession, act of formal approval, signing, full authority.

Introduction

The fundamental principle of treaty law is the proposition that the treaties are binding upon the parties to them and must be performed in good faith [1, p. 89]. The establishment of the mentioned binding obligations is contingent upon the

expression of consent by participants of an international instrument through fully legally valid and duly authorized means.

A treaty becomes binding through the expression by the parties of their consent to be bound. This consent may be expressed by various means, notably signature,

exchange of instruments constituting a treaty, ratification, acceptance, approval, or accession, or by any other means if so agreed [2, p. 628].

Such an expression of consent must comply with established legal procedures and protocols and be executed in a manner that is consistent with applicable laws and regulations. Failure to adhere to these requirements may jeopardize the effectiveness and legitimacy of the instrument in question and may undermine the trust and confidence of its participants. As such, all parties involved in the development and implementation of international instruments must remain vigilant and diligent in ensuring that the requisite legal and procedural safeguards are in place and are being adhered to at all times.

Why does the institution of the expression of consent to be bound by a treaty carry such significance? The answer to this question lies in Article 42 of the VCLT, where the institute of the expression of consent to be bound by a treaty along with the validity of a treaty could be impeached only by applying the provisions of the VCLT. This rule defines that consent to be bound by a treaty plays a significant role in determining the treaty's validity. Subsequently, if the validity of a treaty is questioned, then concerns regarding its invalidity may arise.

Furthermore, there is not any international instrument unifying norms on the expression of consent to be bound by a treaty. In particular, the VCLT does not identify the concept of "succession" or the "act of formal confirmation." Moreover, the Convention from 1896, identifying such institutions as expressing consent to be bound by a treaty as the "act of formal confirmation," is not yet in force. Thus, this thesis evaluates the possible solutions for the unification of the concepts and norms of expressing consent to be bound by a treaty in international law doctrine.

Moreover, there is no international instrument that unifies standards for

expressing consent to be bound by a treaty. In particular, the VCLT does not specifically address the concepts of "succession" or the "act of formal confirmation." Additionally, the Convention from 1896, which introduces the term "act of formal confirmation" as a means of expressing consent to be bound by a treaty, is not currently in effect. As a result, this study examines potential measures for harmonizing the concepts and standards for expressing consent to be bound by a treaty in international law doctrine.

Material and methods

The current research examines the VCLT in conjunction with the Convention from 1896, international law reports, and specialized scientific research. This examination is conducted through methods such as description, conceptual analysis, systematization, and evaluation.

Analyzing the legal characteristics of a treaty evaluates that a "treaty," as aforesaid, is "an international agreement concluded between States and/or international organizations," and secondly, a state's consent to be bound by such a kind of international instrument could be accomplished only in certain ways in forms of "signature," "ratification," "acceptance," "approval," "succession," "accession" and "the act of formal confirmation."

Article 11 of the VCLT defines that the consent of a state to be bound by a treaty may be expressed by signature, exchange of instruments constituting a treaty, ratification, acceptance, approval, or accession, or by any other means if so agreed.

Article 12 of the VCLT elucidates the nature of the consent to be bound by a treaty that is expressed by way of signature. The article, which is of particular significance in the context of international law, delves into the legal implications of a state's act of signing a treaty. Specifically, it sets out the general rule that the signature of a treaty by a state indicates an intention to be bound by the treaty, subject to certain

conditions. The article further elaborates on the circumstances in which a state may reserve its signature or make it subject to ratification, acceptance, or approval. Overall, Article 12 serves as a key reference point for understanding the role of signature in the expression of consent to be bound by a treaty.

Research results

According to this, the consent of a state to be bound by a treaty is expressed by the signature of its representative when: (a) the treaty provides that signature shall have that effect; (b) it is otherwise established that the negotiating states agreed that signature should have that effect; or (c) the intention of the state to give that effect to the signature appears from the full powers of its representative or was expressed during the negotiation.

For the abovementioned purposes of paragraph 1: (a) the initialling of a text constitutes a signature of the treaty when it is established that the negotiating states so agreed; (b) the signature “ad referendum” of a treaty by a representative, if confirmed by his state, constitutes a full signature of the treaty.

The treaty may include a provision specifying that it shall enter into force upon signature. In such cases, the act of signature constitutes an unambiguous expression of the signatory states’ consent to be legally bound by the treaty.

It should be noted that, in certain exceptional circumstances, the affixing of initials to the text of a treaty may also indicate the consent of the relevant states to be bound by the terms of such an international instrument, provided that the negotiating parties have mutually agreed to this arrangement.

“Ad referendum,” meaning “for making a reference,” implies further consideration or ratification. When a state representative executes a legal instrument called “ad referendum,” it is understood that, while the signature may authenticate the text of the instrument, it does not bind the state until

the state has duly ratified the treaty (subject to any provisional obligations) [3, p. 18].

The signature provided by a state’s representative, while wishing to indicate its assent to the treaty in the negotiation in which it participated, considers that it does not have sufficient power to bind its government, even subject to ratification.

In certain instances, it may arise that a state’s representative is unable to receive definite instructions from their respective government before the time of signature. Alternatively, a treaty may be stipulated to enter into force upon signature, but the government concerned may desire the opportunity to examine the agreed-upon text in greater detail before arriving at a final decision.

In such circumstances, the representative may sign the treaty ad referendum, which, if subsequently confirmed, will constitute a valid expression of consent to be bound, effective retroactively as from the date of the signature ad referendum. Alternatively, the formal signature of the treaty may simply be postponed until the states concerned are all in a position to commit themselves [2, p. 629].

Article 13 of the VCLT states that the consent of states to be bound by a treaty constituted by instruments exchanged between them is expressed by that exchange when: (a) the instruments provide that their exchange shall have that effect; or (b) it is otherwise established that those states agreed that the exchange of instruments should have that effect.

Article 14 paragraph 1 of the Convention introduces the consent of a state to be bound by a treaty is expressed by ratification when the treaty provides for such consent to be expressed through ratification; it is otherwise established that the negotiating states agreed that ratification should be required; the representative of the state has signed the treaty subject to ratification; or the intention of the state to sign the treaty subject to

ratification appears from the full powers of its representative or was expressed during the negotiation.

Furthermore, Article 2 paragraph 1 (b) of the VCLT explains “ratification,” “acceptance,” “approval,” and “accession” in each case as the international act so named whereby a state establishes on the international plane its consent to be bound by a treaty.

In other words, “ratification,” “acceptance,” “approval,” and “accession” are a way of expressing a state internationally its consent for the treaty to be bound, most commonly, by issuing a legal act or any other document having legal force.

Simultaneously, international law doctrine differentiates terms such as “ratification,” “acceptance,” “approval,” “and accession,” along with “succession” and “act of formal confirmation” for exploiting the expression of the state or international organization’s consent to be bound by a treaty.

Ratification is the most common way of expressing consent to be bound by a treaty and expresses the ultimate confirmation of the participants of a treaty concluded by their representatives. Even though a treaty is formed once mutual agreement is reached and corresponding documents are provided by duly competent representatives, the treaty’s binding force is as suspended until the parties send to each other or the depositary ratification document, if a different process is not fixed in the treaty itself. Thus, the function of ratification is to make a treaty binding, and if it is refused, the treaty, as a consequence, breaks down. As long as ratification is not given, the treaty is, although concluded, not perfect [4, p. 554].

As Article 2, paragraph 1 (b) of the Convention from 1986, outlines, “ratification” is an international act so

named whereby a state establishes on the international plane its consent to be bound by a treaty. In other words, ratification is a legal act by which a state gives its consent to be bound to a treaty whereas participants are willing to express their consent through such an instrument. In case of ratification, participants of international instruments will have the opportunity within a timeframe to accomplish the all-necessary procedures for the treaty on national level and to implement the required legislative acts to provide domestic effect to that treaty [5].

It should be acknowledged that ratification of international documents of bilateral character is most commonly fulfilled by exchanging the corresponding legal documents (ratification certificate, etc.). In the event of multilateral instruments, the depositary is the competent body for the collection of documents of ratification from all parties of the treaty and constantly updating participants about the changes in the ratification status.

At an international level, the consent of a party to be bound by a treaty can be expressed by a different means than ratification [6, p. 31]. Thus, Article 2, paragraph 1(b bis) of the Convention from 1986 describes the concept of “act of formal confirmation” as an international act corresponding to that of ratification by a state, whereby an international organization establishes on the international plane its consent to be bound by a treaty.

Article 4 of the Law of the Republic of Uzbekistan on “On international treaties of the Republic of Uzbekistan” from February 6, 2019 (further – the Law on international treaties)¹ specifies ratification certificate as “a legal document certifying the consideration of the international treaty by the legislative body and giving the consent to be bound by a treaty for Uzbekistan after the completion of interstate

¹ Adopted by the Legislative Chamber on November 22, 2018, approved by the Senate on December 13, 2018.

procedures for the implementation of the treaty” [7].

Further, based on Article 14, it could be concluded that the “act of formal confirmation” may be interchangeably exploited with the concept of ratification whereas an international organization expresses its consent to be bound by a treaty.

In this context, it should be mentioned that some authors support the idea that an “act of formal confirmation” was introduced for intergovernmental organizations to preserve “ratification” for states, which may be seen as an expression of pride and prejudice or as a symbolic deference to traditional concepts of sovereignty.

However, J.P. Dobbert outlines that its impact is likely to be minimal because (i) the autonomy of intergovernmental organizations concerning the use of terminology according to their own rules and customs is guaranteed by Article 2.2, (ii) the phrase “or by any other means if so agreed” in Article 11.2 opens the way for ratification by intergovernmental organizations to be provided for in a treaty concluded with one or more states or among intergovernmental organizations [8].

Other ways of expressing consent to be bound by a treaty are “acceptance” or “approval” of a treaty, which are symbolized as (A) and (AA) [9] respectively in international law doctrine.

“Acceptance” (A) or “approval” (AA) of a treaty are identical to the institution of ratification in terms of legal effect in the meaning of the expression of the consent of a state to be bound by a treaty. In numerous legal systems, acceptance and approval are exploited interchangeably with the concept of ratification, whereas domestic legislation does not introduce the procedure of the ratification of a treaty by the head of state [10].

In the case of multilateral treaties, acceptance and approval as recently introduced procedures for the expression of the consent to be bound by a treaty could

be considered as an option for participation. Moreover, acceptance and approval are ‘an innovation which is more one of terminology than of method. If a treaty is open to “acceptance” without prior signature, the process is similar to accession. The advantage of an acceptance clause in a treaty is that it may allow the treaty to enter into force sooner than if the treaty provided for “ratification” per se.

Interstate procedures of some states require the assent of the legislature before a treaty can be formally ratified, and it may be possible to accomplish the process of “acceptance” by executive action alone [2, pp. 634–635].

For example, Article 14 paragraph 2 of the VCLT states that the consent of a state to be bound by a treaty is expressed by acceptance or approval under conditions similar to those that apply to ratification.

Another way of giving consent to be bound by a treaty is “accession” (a), which indicates a legal document implying the acceptance by a state of the offer of becoming a participant of a treaty that is agreed upon and signed by other states.

In other words, the procedure of “accession” (a) means the third state becoming an official participant in an international instrument, which already exists and, as a rule, has already entered into force, and consequently obtaining by these states the whole rights and obligations deriving from such a treaty.

Nevertheless, the terms and conditions, including the procedure of “accession” (a) to take place are commonly stipulated in the treaty itself. A treaty may have provisions enabling the accession for not a limited number of participants or specified/limited number of states. Usually, participants of an international instrument openly express the opportunity of accession for a certain state. And the so-called law-making treaties, as the Declaration of Paris or the Geneva Convention, for example, regularly stipulate the option of accession of all such states as have not been originally

contracting parties [4, p. 569]. If provisions of a treaty do not contain such conditions, “accession” (a) takes place only with the prior or subsequent agreement of contracting states [10].

Article 15 of the VCLT states that the consent of a state to be bound by a treaty is expressed by accession when: (a) the treaty provides that such consent may be expressed by that state by means of accession; (b) it is otherwise established that the negotiating states agreed that such consent may be expressed by that state by means of accession; or (c) all the parties have subsequently agreed that such consent may be expressed by that state by means of accession.

“Accession” (a) is identical to ratification, along with other methods of expressing consent to be bound by a treaty, in terms of legal consequences. However, in contrast with ratification, “accession” (a), commonly takes place once the treaty has entered into force. But, as a depositary, it has also accepted accession to some conventions prior to their entry into force.

Article 16 of the VCLT states the norms related to the exchange or deposit of instruments of ratification, acceptance, approval or accession. According to them, unless the treaty otherwise provides, instruments of ratification, acceptance, approval or accession establish the consent of a state to be bound by a treaty upon: (a) their exchange between the contracting states; (b) their deposit with the depositary; or (c) their notification to the contracting states or to the depositary, if so agreed.

“Succession” (d) takes place when a participant of a treaty extinguishes or part of its territory is no longer governable by this participant, and a new or another state appears or takes control of the lost territory. The main question, in this case, is if the obligations taken by the former ceased to exist state are transferable to the lately appeared state. Regime change, such as replacing a monarchy with a democracy,

does not substitute or terminate the previously taken-on obligations.

International law doctrine has various views on this feature of succession, and government practice has also varied. Accordingly, cases of succession are analyzed separately deriving from their merits to identify whether the previously undertaken rights and obligations assumed by a treaty are stipulated in the treaty itself as binding for the successor state [10].

States commit via succession when new states have emerged and the prior state has already ratified the treaty. Though often categorized into the same commitment as ratification. Succession is a unique and rare form of treaty commitment only available to new states that have separated from other states [11].

According to the Vienna Convention on succession of states in respect of treaties, the concept of succession may be defined as a transfer of rights and/or obligations from a predecessor state to its successor state, including participation in treaties in force at the date of succession or international organizations [9].

Analysis of research results

While defining the expression of the state or international organization’s consent to be bound by a treaty, it was determined that the intention of the state to sign the treaty subject to ratification may appear from the full powers of its representative as one of the main factors for the ratification.

There are no fixed rules as to who should sign the treaty to make it legally binding on the states for that will depend on the intention and agreement of the states concerned. The treaties may be entered into between states, governments, heads of state, or governmental departments, whichever is more convenient. In *Cameroon vs Nigeria* [12, p. 38], it has been stated that international law has left the power of treaty-making and such matters to the domestic law of the state. However, the concept of full powers is to be

followed stringently while forming treaties [1, p. 85].

Jan Sandorski specifies that full powers arise from private law and are intended to enable one individual to take actions on behalf of another person, and this kind of action creates legal consequences for the principal [13, p. 77].

“Full powers” is a concept of international law, referring to the authority of a person to sign an international instrument on behalf of a participating state. Authorized representatives of a state, including the head of state, government, and minister of foreign affairs are not required to hold full powers, which is a document certifying the authority to initiate negotiations for concluding a treaty, participate in these negotiations, adopt or authenticate the text of a treaty, sign a treaty, express the consent of the state to be bound by a treaty. Apart from authorized representatives, other representatives are obliged to provide “full powers.” Such a person is called a plenipotentiary [14]. The state should have granted all the required authorities to that individual.

In the means of international law doctrine, Article 2, paragraph 1(c) states the concept of “full powers” as a document emanating from the competent authority of a state designating a person or persons to represent the state for negotiating, adopting or authenticating the text of a treaty, for expressing the consent of the state to be bound by a treaty, or for accomplishing any other act with respect to a treaty.

However, the Convention does not identify the concept of “succession” with the “act of formal confirmation.”

In this regard, and considering that the Convention from 1896 is not yet in force, the norms of the Convention on the concept of the use of terms should be regarded for fulfillment and/or amendments on the strength of the unification of legal norms.

Furthermore, analyzing the national legislation evaluates that the Law on

international treaties, which gives a brief description of the conclusion of an international treaty, does not contain separate concepts on the expression of the state’s consent to be bound by a treaty.

Besides, Article 4 of the abovementioned Law on international treaties replaces the concept of “full powers” with the national terms “powers” and “ratification certificate” from the domestic point of view.

But on the other hand, according to the modern treaty law doctrine, providing full powers is a basic guarantee to representatives of other states that they are conducting with a person who has the necessary authority to a required extent, which is equivalently significant for the treaty depositary due to the difficult responsibilities it has to perform [15, p. 72].

In this connection, it is essential for the Law on international treaties to contain provisions explaining the concept of “full powers” for the Republic of Uzbekistan, including conditions and terms for the document to be counted as fully legal and acceptable. Stipulating the full understanding of the concept of full powers from the point of national legislation will consequently serve as a guard point in the treaty-making capacity of the country.

Conclusion

As a bottom line, the Law on international treaties could be amended by fulfilling perspective norms, defining the concepts of (a) authorized representatives, (b) full powers, and (c) consent of the Republic of Uzbekistan to be bound by a treaty. In this regard, the amendments to the Law on international treaties are suggested as follows:

“Article 4. Basic concepts

The following basic concepts apply to this Law:

consent of the Republic of Uzbekistan to be bound by a treaty – expression of by the Republic of Uzbekistan in either form of “ratification,” “acceptance,”

“approval,” “accession,” “succession,” or in any other “act of formal confirmation” the authorization to the binding force of an international instrument, whereas this procedure is stipulated in the treaty itself or by the national legislation of the Republic of Uzbekistan.

Authorized representatives – President of the Republic of Uzbekistan, Prime Minister of the Republic of Uzbekistan, and Minister of Foreign Affairs of the Republic of Uzbekistan, who are duly and fully authorized regarding international instruments, including initiating negotiations for concluding a treaty, participating in these negotiations, adopting or authenticating the text of a treaty, signing a treaty, and expressing the consent of the Republic of Uzbekistan to be bound by a treaty.

Full powers – a legal document certifying the due authority and competence of the representative of the Republic of Uzbekistan or any other party involved in the negotiations to initiate negotiations for concluding a treaty, participate in these negotiations, adopt or authenticate the text of a treaty, sign a treaty, and express the consent of the state to be bound by a treaty.”

As a result of offering these amendments and fulfilments to the Law on international treaties, norms defining the concept of “authority” should be excluded from the mentioned legislative act.

The proposed above changes to the legislation will serve to further develop the legislative norms of the Republic in the scope of the law of international treaties, as well as strengthen the regulatory framework.

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