Жамият ва инновациялар –
Общество и инновации –
Society and innovations
Journal home page:
https://inscience.uz/index.php/socinov/index

International treaty as an important source of law

Olim KHUSANBAEV[1]

Tashkent State University of Law

ARTICLE INFO

Article history:
Received May 2023
Received in revised form
15 June 2023
Accepted 25 June 2023
Available online
15 July 2023

Keywords:
source of law,
normative agreements,
subjects of international law,
international legal relations,
convention,
agreement,
code,
charter.

ABSTRACT

The article reveals the concept and types of normative treaties as a source of law, as well as the essence of international treaties, the role and significance of international treaties in regulating relations between subjects of international law, and analyzes the views of national and foreign legal scholars on international treaties.

2181-1415/© 2023 in Science LLC.
DOI: https://doi.org/10.47689/2181-1415-vol4-iss5/S-pp52-57
This is an open access article under the Attribution 4.0 International (CC BY 4.0) license (https://creativecommons.org/licenses/by/4.0/deed.ru)

Xalqaro shartnoma – huquqning muhim manbai sifatida

Kalit soʻzlar:
huquq manbasi,
normativ shartnomalar,
xalqaro huquq subyektlari,
xalqaro huquqiy munosabatlar,
konvensiya,
shartnoma,
kodeks,
xartiya.

ANNOTATSIYA

Maqolada huquq manbalari, xususan huquq manbasi sifatida normativ shartnomalar tushunchasi, turlari, shuningdek xalqaro shartnomalarning mohiyati, xalqaro huquq sub’yektlari oʻrtasida boʻladigan oʻzaro munosabatlarni tartibga solishda xalqaro shartnomalarning tutgan oʻrni va ahamiyati masalalari yoritib berilgan hamda milliy va xorijiy huquqshunos olimlarining xalqaro shartnomalar toʻgʻrisidagi fikr-mulohazalari tahlil etilgan.

[1] Professor, Tashkent State University of Law. E-mail: o.xusanbayev@tsul.uz

Международный договор – как важный источник права

АННОТАЦИЯ

В статье раскрываются понятие и виды нормативных договоров как источника права, а также сущность международных договоров, роль и значение международных договоров в регулировании отношений между субъектами международного права, а также проанализированы мнения национальных и зарубежных ученых-правоведов о международных договорах.

Ключевые слова:
источник права,
нормативные договоры,
субъекты международного права,
международные правоотношения,
конвенция,
договор,
кодекс,
хартия.

International treaties have been drawn up since the birth of the first states and have been used throughout history. However, war was more suitable for the heads of state than peaceful cooperation, so the use of treaties increased only a few centuries ago.

An international agreement is an agreement regulated by international law concluded by states or other subjects of international law.

The Vienna Convention "On the Law of International Treaties" states: "An international treaty is an international agreement concluded between states in writing and governed by international law, in one document, in two or more related documents, and regardless of its specific name, the international contract is understood". Also, Article 2 of this Convention contains special terminology (legal thesaurus) used in the field of international agreements: treaty, ratification, acceptance, approval, accession, international act, authority, notification, state participating in negotiations, contracting state, participant, third country, international organization. However, the use of terms in this Convention in paragraph 2 of this Article shall not affect the use of terms or the meanings which may be given to them under the domestic law of any State" [1].

The opinions of legal scholars are also important in the issue of international agreements. According to the views of legal scholars I.I. Lukashuk and A.Kh. Saidov: "In the theory of international law, an international agreement is the establishment of mutual rights and obligations between two or more states or other subjects of international law regarding their political, economic or other relations, is understood as an agreement that provides for its modification or termination" [2].

Legal scientist I. Rustambekov defined the concept of an international agreement as follows: "An international agreement is an equal and voluntary agreement of the Republic of Uzbekistan with one or more countries, international organizations or other subjects of international law on the rights and obligations in the field of international relations" [3].

Thus, an international agreement is a conscious and voluntary union of the agreed wills of at least two subjects of international law aimed at the emergence, change, and termination of legal relations.

In general, the above definitions of an international treaty include provisions that an international treaty is an agreement or agreed will of states and other subjects of international law.

The contract is formed by the agreed will of the parties. In addition, they have a connection that does not allow unilateral changes in the future. They will be implemented by agreement as the contract continues to develop, filled with new content under the influence of changing external factors. However, such changes are also mutually agreed upon by the parties.

It should be noted that any agreement between states is not an international agreement. The nature of the contracting parties does not make their interstate agreements an object of international law.

Thus, international law distinguishes between so-called international treaties and non-legal treaties. Professor I.I. Lukashuk cites as an example the documents of the Organization for Security and Cooperation in Europe, which is the main tool for restructuring the system of international relations in Europe. He also argues that the provisions of such agreements are morally and politically binding, not legal. According to the Code of Conduct on Military-Political Aspects of Security, which entered into force on January 1, 1995, its provisions are considered political obligations. According to Article 102 of the United Nations Charter, it cannot be registered. In other words, the Code is not an international treaty [4]. The provisions on the need for no registration were reinforced in the Helsinki Final Act of August 1, 1975, and the Paris Charter for a New Europe of November 21, 1990.

Regarding such actions, the US State Department expressed the following opinion: “Political commitments are not governed by international law, and there are no provisions regarding their compliance, modification or waiver. When a party does not renounce its “political” obligation, which it can perform with impunity, it is deemed to have promised to honor that obligation, and the other parties have every reason to believe that they have an interest in fulfilling such obligations” [5].

Based on the above, it can be concluded that the agreements under consideration are not included in the scope of the law of international agreements. Nevertheless, this does not exclude the possibility for them to refer to some international legal norms, including the regulation of their actions in a similar way.

Moving directly to international agreements, it should be noted that there are many grounds for their classification.

History shows that, while increasing the role of the treaty as a method of regulating relations between countries, it was not always a guarantee of peaceful and friendly cooperation of states during the last decades. This can be seen in the example of the First and Second World Wars, Afghanistan, Chechnya, Vietnam, etc. The country's rulers, seeking to protect and satisfy their interests, often violated the rights and freedoms of human beings and citizens recognized by the world community. In such cases, the treaty is only a formality, but in practice, the relations between the states were resolved by force and arms. Nevertheless, today the international treaty remains one of the important sources of international law. Its norms are “the indisputable basis for the development of peaceful international cooperation” [6].

International agreements are one of the ways to maintain international peace, protect human rights and freedoms, and develop and support peaceful and friendly relations between countries. All these are among the priorities of the UN according to the first article of the UN Charter. Practice shows that today none of the current sources of international law have an important place in the implementation of the goals of the UN as international agreements.

According to A.Y. Kapustin, the role of the contract in modern international law is determined by several factors. First of all, it is determined by the amount. Since the second half of the twentieth century, many international agreements have been concluded by states, nations, and various international organizations, and their number is growing. Secondly, international agreements are concluded in writing, which greatly simplifies the work for all parties to the agreement.

There are various formulas and definitions of the concept of "international contract" in the legal literature. They can be given in both narrow and broad sense. However, when defining an international agreement, it is customary to refer to the provision of the second article of the 1969 Vienna Convention on the Law of Treaties: "A treaty is an international agreement concluded between states in writing and governed by international law, such an agreement in one document, in two or more documents, as well as regardless of its name".

Some jurists interpret the concept of "international agreement" a little differently. M. Mashuanova in her book "Problems of Implementation of International Agreements in the Republic of Belarus" defined an international agreement as follows: "An international agreement is a conscious and voluntary union of the will of at least two subjects of international law; aimed at the emergence, change, and termination of legal relations" [7].

Based on all the above definitions, an international agreement can be understood as an agreement between two or more international legal entities that have the right to conclude international agreements in order to resolve certain issues of an international nature and regulate relations between the entities.

The definition of a contract given in the Vienna Convention is not very correct, because as mentioned above, not only states but also all subjects of international relations who have such a right can conclude international contracts.

Since the object of the contract is a mandatory element of international contractual relations, special attention should be paid to it. As sources of international law, there are several types of international treaties, all of which are classified for one or more reasons.

Contracts are divided depending on the sphere of social life that they regulate. At the same time, it is worth considering other classifications of types of agreements: regulation (general and special), scope (universal, regional, bilateral), validity period (temporary and indefinite), by the possibility of accession (open and closed).

If we consider the main part of international agreements, they can be described as relations between the subjects of international law regarding material or immaterial interests or actions taken against the parties to the international agreement. As for the goals of international agreements, they are determined at the beginning of the agreement, but, as a rule, the purpose of the agreement is to regulate the relations between the parties, to achieve their goals peacefully, and to define mutual international rights and obligations.

In addition to the above contracts, there is a separate, special type – mixed. The parties to such an agreement can be both states and various state structures, as well as persons who are not subjects of international law, for example, various national or religious organizations appointed by a specific state and under its jurisdiction.

Thus, international law is a separate, unique legal system that has features that are not characteristic of any legal system. Its principles are aimed at stabilizing international relations, contributing to the development of these relations and the development of the entire world community in the economic, political, social, and cultural spheres.

International treaties are sources of international law. Examples of international agreements:

– UN Charter of 1945;

– 1982 UN Convention on the Law of the Sea;

– European Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 and others.

Consideration of agreements between states as international agreements in accordance with the decision of the Oliy Majlis of the Republic of Uzbekistan dated February 24, 1995 “On Accession to the Vienna Convention on the Law of International Treaties” No. 29-I It derives from the norms of the Vienna Convention on the Law of International Treaties. This Convention defines a “treaty” as an international agreement concluded between States in writing and governed by international law, whether such an agreement is embodied in a single instrument, in two or more related instruments, and regardless of its precise name [8].

The Law of the Republic of Uzbekistan “On International Agreements of the Republic of Uzbekistan” an international agreement of the Republic of Uzbekistan is a foreign state, international organization, or international agreement regulated by international law concluded with another subject, regardless of whether it is in one document, two or more relevant documents, as well as its exact name and method of conclusion (agreement, agreement, convention, act, pact, protocol, exchange of letters or notes, and methods of conclusion of an international agreement) international agreement concluded in written form [9].

The right to conclude international agreements of the Republic of Uzbekistan belongs to the state. That is, the state has the sovereign right to conclude international agreements with the Republic of Uzbekistan.

The Law of the Republic of Uzbekistan of February 6, 2019 “On International Agreements of the Republic of Uzbekistan” No. ORQ-518 specifies that international agreements of the Republic of Uzbekistan are concluded on behalf of:

– the Republic of Uzbekistan – interstate agreements;

– the Government of the Republic of Uzbekistan – intergovernmental agreements;

– state bodies within the framework of their powers – interdepartmental agreements [10].

The Law of the Republic of Uzbekistan “On International Agreements of the Republic of Uzbekistan” allows the Cabinet of Ministers of the Republic of Uzbekistan to make a decision on the initiation of expert work by state bodies at the suggestion of the Ministry of Foreign Affairs of the Republic of Uzbekistan in certain cases. or may submit an initiative proposal to the President of the Republic of Uzbekistan. Taking into account the specific features of the text of the international agreement on strategic partnership, the initial proposal should be sent to the President of the Republic of Uzbekistan. According to the Law of the Republic of Uzbekistan “On International Agreements of the Republic of Uzbekistan”, expert review of issues regulated by international agreements is authorized jointly with the relevant state bodies, as well as the Ministry of Foreign Affairs of the Republic of Uzbekistan. determines that it will be implemented by a state body [11].

The Ministry of Justice of the Republic of Uzbekistan conducts a legal examination of a multilateral international agreement or draft text regarding compliance with the legislation of the Republic of Uzbekistan. If necessary, during the expert investigation, an interdepartmental working group consisting of representatives of interested state bodies, specialists, and independent experts can be formed to draft and review the draft international agreement on strategic partnership.

The President of the Republic of Uzbekistan as the head of state represents the Republic of Uzbekistan in international relations and conducts negotiations in accordance with international law and the Constitution of the Republic of Uzbekistan, signs international agreements of the Republic of Uzbekistan without the need to present powers.

A necessary condition for the application of the international agreement is the consent of the Republic of Uzbekistan to the obligation of the international agreement. This consent can be expressed by concluding an international agreement, ratifying, approving, accepting an international agreement, acceding to it, or signing an international agreement by exchanging notes, letters, or other documents by other means agreed upon by the parties to the agreement.

In conclusion, it should be noted that international agreements are of special importance in the legal regulation of international relations and occupy an important place among the sources of law.

REFERENCES:

1. Венская конвенция «О праве международных договоров» // https://lex.uz/ru/docs/-2646376?otherlang=1
2. Лукашук И.И., Саидов А.Х.Ҳозирги замон халқаро ҳуқуқи назарияси асослари. – Т.: Адолат, 2006. – Б. 180.
3. I.Rustambekov, Xalqaro shartnomalar xalqaro xususiy huquqning manbai sifatida // Jamiyat va huquq. №1/2014. –B.23
4. Лукашук. И.И. Современное право международных договоров. Т 1. Заключение международных договоров. М.: Волтерс Клувер, 2004. С. 40.
5. International Acts Not Constituting Agreements // AJIL. 2004. N 1. P. 518.
6. Международное право: учебник для бакалавров / под ред. А. Я. Капустина – Москва, Юрайт, 2014 – С. 294
7. Машуанова М. Проблемы выполнения международных договоров в Республике Беларусь/ М. Машуанова // Вести Академии Наук Республики Беларусь. сер. гум. наук. – 2016. – №3. – С. 36
8. Венская конвенция о праве международных договоров, к которой Республика Узбекистан присоединилась в соответствии с постановлением Олий Мажлиса Республики Узбекистан от 24 февраля 1995 года № 29-I «О присоединении к Венской конвенции о праве международных договоров» // Источник: www.lex.uz
9. O‘zbekiston Respublikasining “O‘zbekiston Respublikasining xalqaro shartnomalari to‘g‘risida”gi Qonuni. https://lex.uz/docs/-4193761
10. O‘sha manba.
11. O‘zbekiston Respublikasining “O‘zbekiston Respublikasining xalqaro shartnomalari to‘g‘risida”gi Qonuni. https://lex.uz/docs/-4193761.