

An Overview of the Vienna Convention on the Law of Treaties and Its Principles

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Abstract

Treaties nowadays are the foundations for the creation of all relations between subjects of international law and their role in international law has increased progressively recently. In its first meeting in 1946, the General Assembly of UN established a Committee for Progressive Development of International Law. The 1966 Vienna Convention entered into force on 27 January 1980 and has 114 member states. It has created an elastic system, which has found the equilibrium among domestic interests and a common international regulation. This Convention ensures sufficient freedom for states to adhere to treaties, but at the same time guarantees respect for the common standards in treaty-drafting. The reciprocity principle is central to every legal relation, but its importance is more noticeable when it comes to treaties, because it is a guiding principle for each treaty. The Vienna Convention does not contain the reciprocity principle explicitly; however, it derives from the principle of equality of parties. The latter means that parties have equal rights and obligations in a treaty, which is a direct outcome of the principle of equality of sovereignty.

Keywords: Treaty, General Assembly of UN, International Law, Vienna Convention, principle, International Court of Justice.

1. Treaty as a Subject of International Law

Treaties nowadays are the foundations for the creation of all relations between subjects of international law and their role in international law has increased progressively recently. After the creation of United Nations, more than 54000 treaties are registered in this organization, seventy percent of which have entered into force.¹

In its first meeting in 1946, the General Assembly of UN established a Committee for Progressive Development of International Law.² This Committee drafted the Statute of the Commission for International Law, which would be an auxiliary organ to the General Assembly in effect of codification of international law, as one of the obligations set out in article 13 of the UN Charter.³ In the first session of this Commission, treaty law was regarded as one of the fields in need of codification, thus work began towards the aim of codification, which resulted in the Vienna Convention. Special Rapporteur Sir Humphrey Waldock built the foundations of the Vienna Convention. He drafted six reports on its provisions, which were ratified from 1961 to 1966 in the meetings of the sixth Committee of the General Assembly, to later be presented to the Vienna Conference on the Law of Treaties.⁴

2. Vienna Convention's System, Characteristics and Principles

The 1966 Vienna Convention entered into force on 27 January 1980 and has 114 member states.⁵ It has created an elastic system, which has found the equilibrium among domestic interests and a common international regulation. This Convention ensures sufficient freedom for states to adhere to treaties, but at the same time guarantees respect for the common standards in treaty-drafting. This characteristic has been considered as the strongest point of the Convention.⁶

¹ Anthony Aust, *Modern treaty law and practice*, p. 1, Cambridge University Press, 2ed, 2011.

² The Committee was composed on 17 members representing the member states of the UN.

³ Shabtai Rosenne, *Codification of international law*, p. 41, *Encyclopedia of Public International law*, 7/1985, Max Planck Institute, Elsevier Science Publishers, Netherlands

⁴ Mark Villiger, *Commentary of Vienna Convention on the law of treaties 1969*, p. 35, Martinus Nijhoff Publisher

⁵ https://treaties.un.org/Pages/ViewDetailsIII.aspx?src=TREATY&mtdsq_no=XXIII1&chapter=23&Temp=mtdsq3&lang=en

⁶ *Supra* note 1.

The Convention regulates treaties concluded among states. However, another very important subject of international public law is international organizations. They are central to the development of norms and international relations. Therefore, considering their ever-growing importance, during the Vienna Conference, a resolution was also adopted,⁷ which suggested to the General Assembly to request from the Committee on International Law to start research for the drafting of a convention regarding treaties among states and international organizations, as well as among international organizations themselves. The body of this convention has been conceived as a parallel text to that of the Vienna Convention and contains *mutatis mutandis* its provisions by making the necessary adjustments according to the features of international organizations and their organs. This Convention was adopted in 1986, but has not yet entered into force as 35 instruments of ratification have not yet been submitted. As of this moment, treaties which international organizations are a party of are regulated by the 1969 Vienna Convention, as norms of international customary law.

Nevertheless, the Convention itself entails that the fact that it regulates only relations between states shall not prejudice the legal effect that it has on agreements that states conclude with other subjects of international law.⁸ Additionally, it is not obligatory for member states of the Convention to apply its norms, in case that they conclude treaties with states that are not party to the convention, because the latter cannot be obliged to undertake obligations which they have not consented to.⁹

As mentioned above, treaties used to exist well before the Vienna Convention. Therefore, its drafting heavily relied on international customary law. The latter consists of two essential elements, namely, the consolidated practice of states, and *opinio juris*. Both treaties and customary law are important sources of international law, but they are not entirely detached from each other as long as they influence and are interconnected to one another. If a treaty disciplines a new field and if it is applied by states, which are not signatory to it, the norms of the treaty shall be regarded as customary law for those states.¹⁰ The fact that the Vienna Convention reflects previous customary law has been confirmed by the International Court of Justice several times. ICJ has established that the convention shall be applicable to agreements that have entered into force before the convention has, because the latter reflects customary law. Such an opinion is found at the *Kasikili/Sedudu Island* case¹¹ and *Gabčikovo-Nagymaros Project* case,¹² in which ICJ decided to apply the norms of the Convention, although the agreements in question had entered into force before it had.

The Vienna Convention defines treaties as '*international agreement[s] concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation*'.¹³ It contains the fundamental principles guiding every treaty. Principles of special importance include the principles of *pacta sunt servanda*, good faith, free will, equality, reciprocity, and lack of retroactivity.¹⁴

Pacta sunt servanda is regarded as the most important principle of treaty law and entails that a treaty is obligatory to the parties which must act accordingly.¹⁵ It is applicable from the moment that an agreement enters into force.¹⁶ It exclusively applies to agreements regulated by international law. We must note that this principle is flexible, as it is applicable to both treaties concluded among states and those among entities not included in the Convention. It also applies to agreements, which are not in written form.¹⁷ *Pacta sunt servanda* means that treaties must be respected and applied regardless of domestic laws or developments in member states,¹⁸ while also indicating that states should not enter into new treaties that contradict the treaties that they are already part of and that they cannot arbitrarily cease the legal effects of the treaty without respecting the provisions of the Convention in this regard.¹⁹

⁷ Official Records of the Vienna Conference on the Law of Treaties, (First Session), at 11-14, U.N. Sales No. E.70V.5.

⁸ Article 3 of the Vienna Convention on the Law of Treaties.

⁹ Also according to principles of sovereignty and equality, such conduct is not allowed.

¹⁰ *Supra* note 1.

¹¹ *Kasikili/Sedudu Island, Botswana v Namibia, Judgment, Merits*, [1999] ICJ Rep 1045, ICGJ 57 (ICJ 1999), 13th December 1999, International Court of Justice [ICJ].

¹² *Gabčikovo-Nagymaros Project, Hungary v Slovakia, Judgment, Merits*, ICJ GL No 92, [1997] ICJ Rep 7, [1997] ICJ Rep 88, (1998) 37 ILM 162, ICGJ 66 (ICJ 1997), 25th September 1997, International Court of Justice [ICJ].

¹³ Article 2(a) of the Vienna Convention on the Law of Treaties, adopted in Vienna on 23 May 1969 and entered into force on 27 January 1980.

¹⁴ The first four principles are reflected in the Preamble of the 1969 Vienna Convention on the Law of Treaties.

¹⁵ Article 26 of the Vienna Convention on the Law of Treaties.

¹⁶ See for example decision nr. 15, dated 15.04.2010 of the Albanian Constitutional Court.

¹⁷ Manfred Lachs, *Pacta sunt servanda*, Encyclopedia of Public International Law, 7/1985, Max Planck Institut, Elsevier Science Publishers, Netherlands, p. 367.

¹⁸ See Article 46 of the Vienna Convention on the Law of Treaties.

¹⁹ Zejnullah Gruda, *E drejta ndërkombëtare publike*, p. 323, Shtëpia Botuese Furkan-ISM – Skopje.

The principle of free will of parties to enter a treaty means that the process of creation of the free will of the state/entity must be free and uninfluenced from other actors or external factors. This principle is observed throughout all the Convention, but especially in the first section of its Second Part, which envisions the procedure of entering into a treaty.

The principle of good faith requires parties to act fairly and honestly with each other, to express their real intentions and not to gain unjust benefits that might come from wrong interpretations of their agreement.²⁰ This principle finds applicability in two institutes: that of signature and interpretation. As to the former, the signature is not the final mean of expressing the will of the parties, because when it comes to agreements of special importance, ratification by competent state organs is also required. Therefore, during the time from signature to ratification, parties must act in good faith with one another and not undertake any actions, which might be against the object or purpose of the treaty.²¹

The principle of good faith is even more closely linked to interpretation, because the genesis of its creation comes from the narrow literal interpretation of agreements, which often resulted in their wrong application, or abuse from one of the parties. For this reason, it was deemed important that parties included in their agreements the obligation to interpret and apply the agreement in good faith. The Vienna Convention provides that treaties must be interpreted in good faith from the parties, by keeping in mind the usual meaning of terms, as well as the context in which the object and purpose of the treaty have been determined.²² This means that parties, instead of limiting themselves to the meaning of a term, should rather try to put it into context and consider factors that have influenced the drafting of the treaty.²³

The reciprocity principle is central to every legal relation, but its importance is more noticeable when it comes to treaties, because it is a guiding principle for each treaty.²⁴ Reciprocity means that parties are linked in a corresponding relationship, with mutual rights and obligations towards each other. Reciprocity is not a matter of formality; its applicability should be substantial and should be reflected in the equilibrium among the reciprocal benefits of parties from the implementation of the treaty.²⁵ The Vienna Convention does not contain the reciprocity principle explicitly; however, it derives from the principle of equality of parties. The latter means that parties have equal rights and obligations in a treaty, which is a direct outcome of the principle of equality of sovereignty.²⁶

Lack of retroactivity of treaties means that they shall regulate only relations from the moment they enter into force and on, and that they cannot apply to relations that have started prior to that moment, unless parties agree otherwise or the treaty is considered as part of international customary law.²⁷

3. Conclusions

In conclusion, the 1969 Vienna Convention on the Law of Treaties is the most comprehensive set of rules governing treaties, which constitute the most important source of international law. Its inherent principles represent the first codification of principles governing treaties, which previously relied on rules of international customary law.

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²⁰ Anthony D'Amato, *Good Faith*, Encyclopedia of Public International law, 7/1985, Max Planck Institute, Elsevier Science Publishers, Netherlands, p. 107

²¹ Article 18 of the Vienna Convention on the Law of Treaties.

²² Article 31/1 of the Vienna Convention on the Law of Treaties

²³ Ian McTaggart Sinclair, *The Vienna Convention on the law of treaties*, 2nd ed., 1984, p. 115, Manchester University Press

²⁴ Bruno Simma, *Reciprocity*, p. 400, Encyclopedia of Public International law, 7/1985, Max Planck Institut, Elsevier Science Publishers, Netherlands.

²⁵ *Supra* note 21.

²⁶ Werner Morvay, *Unequal treaties*, p. 514, Encyclopedia of Public International law, 7/1985, Max Planck Institute, Elsevier Science Publishers, Netherlands.

²⁷ See for example *supra* notes 10 and 11.

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