



The role of the heads of states in modern international contract law

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Abstract

The article deals with the place and the role of heads of state in modern international treaty law, the signing and ratification of international instruments, an analysis of the legislation of the Republic of Uzbekistan in this area.

Keywords: international agreement, the head of the state, ratification

Introduction

In accordance with international law, the legal capacity to enter into international agreements is an inalienable right of subjects of international law and an essential element of the international legal^[1].

States from ancient times determined the rights and obligations through the conclusion of international agreements. Moreover, as international practice shows that up to the beginning of the XX century, when the monarchy has maintained its influence in many countries of the world, international treaties concluded not on behalf of the state, and on behalf of the head of state - the monarch. In this regard, it is appropriate to mention the words of Louis XIV: «The state - that's me!». And indeed, if you look in the international treaties of the time, some of them it is clear that subjects of international law then identified with the heads of states^[2].

As a result of the long history of the treaty as a regulator of international relations developed certain international legal norms establishing the procedure for concluding, action, validity, interpretation and termination of international treaties. Until recently, these rules were generally legal nature. A positive form they have acquired in the years 1968-1969 in Vienna, where the conference was held, convened for the purpose of codification and progressive development of the law of treaties. In 1986 in Vienna at the International Conference adopted the Convention on the Law of Treaties between States and International Organizations or between International Organizations.

Thus, under an international treaty, as it follows from Article. 2 1969 Vienna Convention and the 1986 Vienna Convention, it is understood governed by international law an agreement concluded by States and other subjects of international law in writing, regardless of whether such an agreement is contained in one, two or more related instruments and whatever the specific name.

The concept of an international treaty is also in the legislation of the Republic of Uzbekistan. The law "On international treaties of the Republic of Uzbekistan" states that an international treaty of the Republic of Uzbekistan - is an equal and voluntary agreement of the republic with one or more States, international organizations or other subjects of international law concerning the rights and obligations in the field of international relations^[3].

Contracts can have a variety of names, or be without a title. Name of agreement (convention, agreement, treaty itself, charter, charter, covenant, declaration, protocol, etc.) does not have any legal significance, since the notion of "contract" is a generic^[4].

Legislation states and the rules of international organizations determine which authorities may on their behalf to enter into contracts.

In some countries the head of state gives guidance on the preparation and conduct of negotiations, personally involved in the most important of them and sign international treaties or other international legal instruments. His obligation to inform about the negotiations and signing of acts that do not require ratification.

By their very nature, international treaties may be different, and this leads to different attitudes towards them by the head of state.

For example, in France, a number of contracts are subject to mandatory ratification by the President. This, as a rule, treaties affecting the fundamental, important issues for France. French diplomats to participate in the preparation of such contracts negotiations, as a rule, receive from the president special powers^[5].

International treaties and agreements relating to less important individual questions, the President of France is not ratified. He only informed of their preparation. Oni accepted under the simplified procedure^[6].

In addition, as in many other countries, there are international treaties that, the President may ratify and approve only with the consent of Parliament. According to Article 53 of the Constitution of France, this category includes peace treaties; trade agreements; treaties or agreements relating to international organizations; agreements binding on the public finances; agreements modifying the provisions of the legislation; contracts of assignment, exchange or territory of accession. Ratification of these agreements is carried out in the form of a decision by Parliament, by statute^[7].

The ratification process in France heralded with great solemnity. The text of the international agreement shall be printed on special forms. Signature President of the Republic shall be subject to countersign the Prime Minister and Minister of Foreign Affairs. Contracting Parties shall exchange the texts of signed agreements.

Ratified and published in France the contract takes precedence over French law^[8].

In the UK, under the constitutional arrangements implementing the foreign policy activities related to the Government led by the Prime Minister. Although the exercise of this delegated royal prerogative occurs without the prior approval of Parliament for the ratification of certain types of international agreements require the consent of Parliament.

Practice UK parliamentary approval of international agreements did not exist before the 20-ies of XX century. Since 1924, when the Labour government began to apply the practice, according to which the Royal Decree Parliament passed an international treaty or agreement, and if within 21 days no objections are received from him, then the contract is ratified.

English researcher P. Richards in his "Parliament and Foreign Policy» («Parliament and Foreign Affairs») distinguishes four types of international treaties that require parliamentary consent to ratification:

- Treaties amending in domestic law or affect the status of British taxpayers;
- Agreements by virtue of which the right to increase the Crown;
- Contracts, which requires approval by parliament;
- Agreements on the territory of change^[9].

However, the subject of discussion in parliament is not the contract itself, and the law on its ratification. As a general rule, Parliament is powerless to change the terms of the contract and can approve or reject it.

In the United States, the President holds his signature instrument of ratification, but the most important international treaties ratified by the decision of Parliament (or one of the chambers). The US decision to ratify takes only the upper house of Congress (Senate) a qualified majority of two-thirds. It turns out that within the meaning of the provisions laid down in Section 2 of Article II of the US Constitution, prisoners are not signed by the president of a contract, since the signing is only the completion of the preparatory stage, and the text, officially approved by the Senate as the upper house of the US Congress. It is noteworthy that the initial draft of the US Constitution provides for full delegation of authority to conclude international treaties to the Senate. "Sparked heated debate on the role of the president, and a number of delegates suggested consider the chief executive of the Senate only as an agent to negotiate"^[10].

The practice of international treaties the US shows that the Senate is reluctant to approve the contract. In addition, the senators may have when discussing the contract signed by the head of state to make major changes to it. And this, in turn, puts the president in a dilemma: either does not sign the instrument of ratification and thus bury the result of difficult and protracted diplomatic negotiations, or in a hurry to persuade its partner to accept foreign retroactively amended and supplemented by the senators of the upper chamber. And in the first and in the second case, there is the unpredictability and instability of the element, which among other things can damage the image of the US President in the eyes of his counterpart^[11].

The powers of the monarch in the Arab world more broadly. Monarch has the right not only to conduct international negotiations at the highest level and to sign international treaties and agreements, and to issue special decrees ratifying

them signed the international treaties that require ratification of such^[12].

However, not all Arab countries, the head of state to sign and ratify international treaties are implemented so unconditionally. For example, in Egypt, President of the Republic concludes international treaties and transmits them to the National Assembly with the necessary explanations. These treaties have the force of law after the conclusion, ratification and publication in accordance with the established procedure. Treaties of peace, alliance, commerce and navigation and agreements relating to the change in the territory of the state, its sovereign rights or entailing use of funds of the state treasury, not provided by the current budget, subject to approval by the National Assembly.

The constitutional powers of the President to enter into international treaties, of course, do not mean that he should do it in person. However, this right remains with the Heads of State and, usually, they are using it at the conclusion of particularly important contracts worth personal participation of Heads of State.

International agreements entered into by the heads of state personally, must have the appropriate form. For the affected States such contracts unconditionally become legally binding. Preparation of the draft of such contracts is usually involved in the government or the Ministry of Foreign Affairs.

The norms of national legislation with the development of historical events in Uzbekistan found their consolidation, taking into account the primacy of international law. Art. 17 of the Constitution provide the legal adoption of universally recognized principles and norms of international law. Formation of the law of treaties in Uzbekistan is determined using both international law^[13], and the national law of the Republic of Uzbekistan "On international treaties of the Republic of Uzbekistan" dated December 22, 1995. For comparison, the special laws on international treaties are not in the UK, Belgium, Germany, Sweden, Japan and other countries.

According to the Law of the Republic of Uzbekistan "On international treaties of the Republic of Uzbekistan" dated December 22, 1995, public bodies representing the Republic at the conclusion of international agreements, are as follows: President of the Republic of Uzbekistan^[14], Oliy Majlis of the Republic of Uzbekistan^[15], The Cabinet of Ministers of the Republic of Uzbekistan^[16], The Ministry of Foreign Affairs of the Republic of Uzbekistan.

In the legal practice of the Republic of Uzbekistan used several types of powers: the powers of the President of the Republic of Uzbekistan, the authority of the Government of the Republic of Uzbekistan, the authority of the Ministry of Foreign Affairs of the Republic of Uzbekistan. In each case, depending on the type of international agreement, the authority issued by the authorities of the Republic of Uzbekistan, on behalf of which the contract is concluded.

In accordance with Article 28 of the Law "On International Treaties of the Republic of Uzbekistan" of 22 December 1995, the President of the Republic of Uzbekistan in accordance with the Constitution of the Republic of Uzbekistan ensures compliance with agreements concluded by the Republic, agreements and liabilities assumed.

President of the Republic of Uzbekistan as the head of state does not need special powers under according to 13 Law of the Republic of Uzbekistan " International treaties of the Republic

of Uzbekistan" 1995 year. He represents the Republic of Uzbekistan in international relations and in accordance with international law, and the Constitution of the Republic of Uzbekistan. According to article 93 of Constitution President of Uzbekistan conduct negotiations and sign international treaties of the Republic of Uzbekistan without special powers. According to the Law of the Republic of Uzbekistan « International treaties of the Republic of Uzbekistan » 22 December 1995 year. art. 7 - Intergovernmental agreements are concluded at the highest level on behalf of the Republic of Uzbekistan.

It is a logical continuation of Art. 8 of the Law "On International Treaties of the Republic of Uzbekistan" dated 22 December 1995. According to which the proposal for the conclusion of international intergovernmental agreements on behalf of the Republic of Uzbekistan shall be made to the President of the Republic of Uzbekistan Ministry of Foreign Affairs of the Republic of Uzbekistan. Other ministries and departments are the President of Uzbekistan proposals on conclusion of international agreements on behalf of the Republic of Uzbekistan on matters within their competence, in cooperation with the Ministry of Foreign Affairs of the Republic of Uzbekistan or in agreement with them.

An important part of the process of ratification of international agreements is the signing of the instrument of ratification. According to article 18 of the Law "On International Treaties of the Republic of Uzbekistan", 1995 instrument of ratification signed by the President of the Republic of Uzbekistan on the basis of the Oliy Majlis of the Resolution on the ratification of an international treaty, which is sealed with his seal and signature of the Minister of Foreign Affairs of the Republic of Uzbekistan.

The ratification of an international treaty is a process in which the rule of international law is approved by the supreme state power and acts as a necessary step in solving the most important foreign policy issues, without any outside interference^[17].

The Constitution of Uzbekistan establishes the range of subjects with the right to propose the conclusion of international treaties. The President represents the Republic of Uzbekistan within the country and in international relations, and is entitled to contractual initiatives in the process of international law-making. It was he who negotiates and signs treaties and agreements of the Republic of Uzbekistan, ensure the observance by the Republic treaties, agreements and liabilities assumed.

Of particular importance is the enforcement of the obligations assumed by the Republic of Uzbekistan under international treaties, and this is within the competence of the President of the Republic of Uzbekistan. The President, in accordance with the Basic Law, the exercise and take the necessary measures to ensure that the international cooperation of Uzbekistan with other subjects found more effective application on the basis of the primacy of international law and the subsequent implementation of those rules and principles in national legislation. The president is the guarantor of compliance with the rules of the international treaty on the basis of and pursuant to the provisions of the Constitution of the Republic of Uzbekistan.

In general, the introduction into national law of the world legal experience becomes a leading trend of legal development. The specific content of the presidency by the Constitution.

According to the Constitution, the President of the Republic of Uzbekistan fulfils basic function in ensuring international cooperation between the states on the international arena. Of particular importance is the enforcement of the obligations assumed by the Republic of Uzbekistan under international treaties is included in the competence of the President of the Republic.

President of Uzbekistan, on the basis of the Basic Law, which gives him the breadth of international authority, shall take the necessary measures to ensure that the international cooperation of the state with other subjects found more effective application on the basis of the primacy of international law and the subsequent implementation of those rules and principles of national law.

All said above leads to the conclusion that the President of Uzbekistan determines the long-term political and legal basis for the implementation of contractual and legal obligations, the nature of the country's interaction with the actors. Activated part of the legal system of Uzbekistan in the process of globalization of the domestic law of states and internationalization, domestication of international law. The result is a higher level of civilization of the legal regulation in the country and increase the efficiency of international law^[18].

Thus, the state representation in international relations is a traditional prerogative of the head of state in most countries in the world. Traditional affiliation executive powers of the sole head of state are due to the characteristic features of international relations, which are based, in particular, and on the confidence of the parties to each other. In the process of establishing and then maintaining the relationship between the contracting parties is very important role played by a senior official, legally representing the State in international relations^[19].

References

1. International law: / N. T. Blatova. – M. legal literature. 1987, 544, 117.
2. Baskin YY, Feldman D. History of International Law. M., 1990, 15.
3. Law of the Republic of Uzbekistan 22.12.1995 y. N 172-I «On international treaties of the Republic of Uzbekistan», article 3 // Bulletin of Oliy Majlis of Uzbekistan, 1995, N 12, art. 262.
4. International law. Textbook YM, Kolosov ES, Krivchikova M. International Relations, 2001, 181.
5. Kayynbaev MB. International legal status of heads of state. The thesis for the degree of Candidate of Legal Sciences. Moscow. 2005. Source: www.dissercat.ru.
6. Art. 52. The Constitution of the French Republic on 4 October 1958 (as amended by the Constitutional Law № 60-525 dated 4 June 1960 the Law № 62-1292 dated November 6, 1962 the Constitutional Law № 63-1327 of December 30, 1963 g, № 74-904 of October 29, 1974, № 76-527 from June 18, 1976, № 92-554 from June 25, 1992, № 93-952 of July 27, 1993, № 93- 1256 of November 25, 1993, № 95-880 dated 4 August 1995) Source - The Constitution of the Republic of France // Constitution of the European Union countries / edited by L.A. Okounkov. - M. Publishing Group INFRA-M - NORMA, 1997, 665-682.
7. Art. 52. The Constitution of the French Republic on 4 October 1958 (as amended by the Constitutional Law №

- 60-525 dated 4 June 1960 the Law № 62-1292 dated November 6, 1962 the Constitutional Law № 63-1327 of December 30, 1963 g, № 74-904 of October 29, 1974, № 76-527 from June 18, 1976, № 92-554 from June 25, 1992, № 93-952 of July 27, 1993, № 93- 1256 of November 25, 1993, № 95-880 dated 4 August 1995) Source - The Constitution of the Republic of France // Constitution of the European Union countries / edited by L.A. Okounkov. - M. Publishing Group INFRA-M - NORMA, 1997, 665-682.
8. Ibid. 674.
 9. Richards P. Parliament and Foreign Affairs. London, 1967, 42.
 10. Muskie Ed, Rush K. Thompson K. The President, the Congress and Foreign Policy. N.Y., 1986, 41.
 11. Kaynbaev MB. International legal status of heads of state. The thesis for the degree of Candidate of Legal Sciences. Moscow. 2005. Source: www.dissercat.ru.
 12. Sapronova MA. Arab East: the power and the constitution. M. Moscow State Institute of International Relations (University), 2001, 62.
 13. These are the basic rules of the United Nations Charter of 1945., Vienna Convention on the Law of Treaties of 23 May 1969., The Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations of 21 May 1986, the registration and publication of treaties and international agreements, rules for the conduct of the action in Article 102 of the Charter of the United Nations (UN General Assembly Resolution). 1946.
 14. See. Also Art. 93 to claim 1, 2, 3, 4, 5, 6, 7 of the Constitution of the Republic of Uzbekistan adopted on 8 December 1992 at the eleventh session of the Supreme Council of the Republic of Uzbekistan (as amended April 16, 2014.). - T. IPTD Uzbekistan, 2014, 76.
 15. See. Also Art. 93 to claim 1, 2, 3, 4, 5, 6, 7 of the Constitution of the Republic of Uzbekistan adopted on 8 December 1992 at the eleventh session of the Supreme Council of the Republic of Uzbekistan (as amended April 16, 2014.). - T. IPTD Uzbekistan, 2014, 76.
 16. See. Also Art. 98. The Constitution of the Republic of Uzbekistan adopted on 8 December 1992 at the eleventh session of the Supreme Council of the Republic of Uzbekistan (as amended April 16, 2014.). - T. IPTD Uzbekistan, 2014, 76.
 17. Limitation Convention on the International Sale of Goods Sale of Goods (New York). 1974.
 18. Umarahunov IM. international treaty - the legal practice of the Republic of Uzbekistan. Second Edition, Revised. In two volumes. Tashkent, 2005; 1:231.
 19. Pavlov EY Constitutional and legal framework of the foreign policy of Russia // Constitutional and legal framework of foreign policy. - M: ROSSPEN, 2004, 17.