

International treaties and the termination of treaties with special reference to The Indus Water Treaty

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Abstract

Treaties are one of the key concepts of international law. As far as international law is concerned, the treaties play the role of a legislation. According to article 38 of the ICJ statute, international conventions and treaties are one of the important sources of international law. The term treaty is defined under the Vienna Convention on the law of the treaties. According to Vienna Convention on law of treaties, treaties are the international agreements concluded between the states in written form. The convention speaks about the formation, conclusion, application, interpretation and termination of treaties. This article aims to explore the concept of treaty formation and termination of treaties under international law. As far as treaties are playing the role of legislations, the effects of termination will have more importance. The recent withdrawal of India from the Indus Water Treaty and the effects of such withdrawal from a bilateral treaty as per international law is examined.

Key words : Treaty, Vienna convention on law of treaties, termination of treaties, The Indus Water Treaty

Introduction

The concept treaty is a fundamental principle as far as public international law is concerned. The law of treaties is mainly governed by the Vienna Convention on the law of treaties, 1969. In the plain meaning treaty means an agreement. As far as international law is concerned, treaties are considered to be an important source of international law. According to the ICJ statute the international conventions or treaties, international customs, general principles of law recognized by civilized states and judicial decisions and the teachings of highly qualified jurists are considered as the most important source of international law¹. Among these sources, the international conventions or treaties are the most important source. If any dispute is placed before the international court, the first thing the court will be looking into is whether there is any treaty in force relating to the matter of dispute. If there is any treaty in existence, they will be taken into consideration for deciding the case. Under international law treaties play the role of legislature in international sphere. The agreements entered by the parties either bilateral or multilateral, it helps to bring clarity in matters and by this the conflicts can be avoided. If the terminations of treaties are not regulated properly there will be chances of misuse and it may create disputes between parties. To avoid these types of disputes only the Vienna Convention on Treaties is introduced.

Treaty

In general, treaties are agreements entered between sovereign states, international organizations etc.. Almost all the treaties are governed by the international law and all treaties should be in written form only. Oral treaties don't have a footing under international law. According to Vienna Convention on law of treaties,

¹ The Vienna Convention on Law of Treaties, 1969, Art.2(a)(1)

treaties are the written agreements entered between sovereign states and organizations. The Vienna Convention on the law of the treaties covers almost all the matters relating to treaties, such as formation of treaty, conclusion of treaty. Amendments, modifications, suspension, dispute resolution etc. treaties can be entered on any matter. It may be peace making treaties, trade treaties, political treaties, human rights treaties, environmental treaties etc. The provisions of the treaties are binding only on the parties to the treaties. The observance of treaties is governed on the basis of *Pacta Sunt Servanda* principle. The principle of *Pacta Sunt Servanda* means that the parties to the treaty have to follow the provisions of the treaties in good faith. This concept is included in the Vienna Convention on law of treaties also.

When we classify treaties, treaties can be bilateral or multi-lateral. Bilateral treaty means the treaties entered by two state parties. Multilateral treaties mean the treaties entered by more than two countries. Treaties are again classified into law making treaties and treaty contracts. Law making treaty means that the majority of the countries in the world are parties to the treaties and the provisions of the treaties are to be followed by the parties to the treaty and the nonparties to the treaties. For example, The UN charter, Vienna Convention on Law of Treaties are examples of law-making treaties. The Vienna Convention on law of treaties includes all matters relating to formation, conclusion, application, interpretation and termination of treaties. If a treaty itself is not containing any provisions relating to amendments, termination etc. the Vienna Convention will be applicable to it.

Formation of treaties

All sovereign states are competent to make any number of treaties with other states. The 1st step of formation of a treaty is the accrediting of agents. The states authorize agents to represent the state in the treaty making process. The accredited agents will negotiate with the other parties in fixing the provisions of the treaty. After the negotiation the accredited agent will sign the treaty on behalf of the state. Next step in the formation of treaty is the ratification by the head of the state. Once the head of the state is confirming the signature of the accredited agent in accordance³ to the provisions of the Constitution, the treaty is ratified. Once the treaty is concluded it has to be registered and published with UN according to the Article 102 of the UN Charter. After ratification, publication and registration, the treaty will come into force according to the provisions of the treaty.

Termination of Treaties

The formally concluded treaties or agreements between the countries can be terminated on certain condition. The Vienna Convention on law of treaties also speaks about the grounds under which the parties can terminate the treaties. Once the binding legally enforceable treaties are concluded between the parties and published in UN, then it will come into force. International law casts a duty on each state parties to follow the provisions of treaty in good faith. According to Vienna Convention the treaties can be terminated. Part V of the Convention deals with the invalidity termination and the suspension of operation of treaties. The treaties entered between parties can be suspended or revoked on the basis of the provisions of the treaty or according to the provisions of the Vienna Convention². The contracting parties may invalidate a treaty on the ground of fraud³, corruption⁴, coercion⁵, or if the treaties are conflicting with the preemptory norms⁶. Section 3 of the Vienna Convention deals with the termination and suspension of operation of treaties. According to the convention the treaties can be terminated on the basis of the provisions of the treaty the parties entered or according to the Vienna convention. According to the Vienna convention a multilateral treaty will not be invalidated on the fact that the number of parties falls below the number necessary for entry into force⁷.

The treaties can be terminated according to the consent of the parties⁸. If the parties to the treaty are not ready to continue the treaty, then the treaty can be terminated by the will or consent of the parties to the treaty. Termination also happens on the basis of a new treaty on the same matter⁹. If two or more countries have ratified

² Art.42(2) ibid

³ Art 49 ibid

⁴ Art.50 ibid

⁵ Art. 51 ibid

⁶ Art. 53 ibid

⁷ Art. 55 ibid

⁸ Art.57 ibid

⁹ Art. 59 ibid

a treaty on a particular subject matter and again a new treaty is formulated on the same subject matter, then the old treaty will be automatically terminated. A treaty can be terminated as a consequence of breach of the provisions of treaty by either party¹⁰. All parties to the treaty are obliged to follow the provisions of the treaty. If any of the parties to the treaty are violating any provisions of the treaty, then the other party can terminate the treaty. Impossibility of performance of the treaty¹¹ is a valid ground for the termination of a treaty. If the provisions of the treaty are unable to be performed, then the treaty can be terminated. If there is any fundamental change of circumstances happened¹²(*Rebus Sic Standibus*), the parties can terminate the treaty. If a treaty is formulated with an intention to continue the obligation for a fixed period of term, then after that time the treaty will be automatically terminated. A treaty can be also terminated if a new peremptory norm is (*Ges cogens*) is emerged. If the treaty is violative of the new peremptory norm, then treaty can be terminated.

When a treaty is terminated between the parties upon any of the grounds mentioned above, the treaty obligations will come to an end. Once the treaty is terminated the parties to the treaty are not bound to follow any provisions of the treaty. Recently India has terminated the Indus Water Treaty with Pakistan as a result of the Pahalgam terror attack.

The Indus Water Treaty

The Indus Water Treaty was entered between India and Pakistan in 1960 on the utilization of Indus water system. The treaty was brokered by World Bank. The main aim behind this treaty was the regulation of the use of water of Indus River system. This treaty says about the utilization waters of Eastern rivers¹³ and Western rivers¹⁴, financial provisions¹⁵, the constitution of permanent Indus Commission¹⁶, the exchange of data provisions¹⁷ and the provisions for future cooperation¹⁸. In the year 2023, India requested for a bilateral modification of the treaty. But the Pakistan rejected India's claim. And In 2024 India Calls off all the meetings of the Indus Commission, which is constituted through the treaty. Even after that India continued to follow the provisions of the treaty. But the recent terror attack in Pahalgam which resulted in the death of the 26 tourists in India made the central government to keep the Indus Water Treaty in abeyance.

When we analyze the treaty provisions, the final provisions says that the '*provisions of the treaty shall continue in force until terminated by a duly ratified treaty concluded for that purpose between the two governments*¹⁹. Even if such a clause is there under the Indus Water Treaty, India is justified in the termination of the treaty. Under Venna convention there is no mention of war as a ground of termination of treaty. But if there are any fundamental changes happens in the situation, the parties are justified in terminating the treaty. When we analyze the act of Indian government from withdrawal of Indus Water Treaty, it is completely justifiable under international law. As we all know that there is always a tension in the borders of India and Pakistan. And if either party is creating more troubles, the treaties entered between the state in peace time cannot be followed at the fullest. The concept of sovereignty is given more importance under international law. No one can control a state from an act of protecting the state sovereignty. The Indian Government specifically stated that the treaty will be kept in abeyance till Pakistan stops terror export.

Conclusion

As far as international law is concerned, treaties play a major role. The treaties are formulated according to the general norms of international law. On the blink of an eye treaties are not created. It takes a long negotiations and discussions to conclude a treaty. Once a treaty is concluded and ratified by the member states, it becomes a legally binding instrument. All the disputes relating to the subject matter of the treaty will be governed only on the basis of that treaties. Actually, treaties play the role of legislations in international law.

¹⁰ Art.60 ibid

¹¹ Art.61 ibid

¹² Art. 62 ibid

¹³ The Indus Water Treaty 1960, Art.2

¹⁴ Art. 3 ibid

¹⁵ Art. 5 ibid

¹⁶ Art.8 ibid

¹⁷ Art.6 ibid

¹⁸ Art. 7 ibid

¹⁹ Art. 12(4) ibid

The ratified treaties can be terminated according to the provisions of Vienna Convention or on the provisions of the treaties. As far as Indus Water Treaty is concerned, the India kept the treaty in abeyance because of the support rendered by Pakistan to the terror attacks held in Pahalgam of Jammu and Kashmir. Always there exists a tension in the borders of India and Pakistan in Jammu area and the recent attack of terrorist in Pahalgam made a fundamental change in the circumstances. So, the act of India from the withdrawal of treaty is justifiable in India.

References

1. Vienna Convention on Law of Treaties 1969
2. The Indus Water Treaty 1960
3. Dr. S K Kapoor 'International Law and Human Rights'
4. <https://academic.oup.com/oxford-law-pro/book/57893/chapter-abstract/472077488?redirectedFrom=fulltext>
5. <https://www.mea.gov.in/bilateral-documents.htm?dtl/6439/Indus>
6. <https://vajiramandravi.com/upsc-exam/indus-water-treaty/>

