

Sherzod Mirmakhmudov,

A legal advisor at the JV "EzguNiyat multispecialty medical center" LLC

shmirmahmudov01@gmail.com

Methods and procedures aimed at guaranteeing the implementation of international treaties

Abstract: *In this article, the methods and means of ensuring the execution and implementation of international treaties are put forward on the basis of an analysis of the practice of international actors in the field of inter-state relations by the author.*

Key words: *legal mechanism, legal influence, reservation, contractual obligation, sovereign equality of states, implementation, bilateral or multilateral agreements, legal guarantee, international control, domestic measures.*

Шерзод Мирмахмудов,

Юрисконсульт в СП ООО "Многопрофильный медицинский центр ЭзгуНият"

shmirmahmudov01@gmail.com

Методы и процедуры направленные на гарантирование выполнения международных соглашений

Аннотация: *В данной статье методы и средства обеспечения исполнения и имплементации международных договоров выдвигаются на основе анализа практики международных субъектов в области межгосударственных отношений от автора.*

Ключевые слова: *: правовой механизм, юридическое влияние, договорная позиция, оговорка, договорное обязательство, суверенное равенство государств, имплементация, двусторонние или многосторонние соглашения, правовая гарантия, международный контроль, внутренние меры.*

Sherzod Mirmaxmudov,

"EzguNiyat ko'p tarmoqli tibbiyot markazi" MCHJ QK yuriskonsulti

shmirmahmudov01@gmail.com

Xalqaro shartnomalarning bajarilishini kafolatshga qaratilgan usul va protseduralar

Annotatsiya: Ushbu maqolada xalqaro shartnomalarning amalga oshirilishini ta'minlash usullari va vositalari davlatlararo munosabatlar sohasidagi xalqaro subyektlarning amaliyotini tahlil qilish asosida muallif tomonida ilgari surilgan.

Kalit so'zlar: huquqiy mexanizm, huquqiy ta'sir, qo'shimcha shart, shartnoma majburiyati, davlatlarning suveren tengligi, implementatsiya, ikki tomonlama yoki ko'p tomonlama shartnomalar, huquqiy kafolat, xalqaro nazorat, ichki choralalar.

In the scientific literature, as a rule, an open list of means (measures) to ensure or facilitate the implementation of international treaties. A number of authors single out a system of "international and domestic, national, measures to promote the implementation of international legal norms fixed in international treaties"¹, "guarantees for the implementation of the pacta sunt servanda principle"², as well as all types of "guarantees for the fulfillment of international obligations"³.

That is, with regard to measures to ensure compliance under contracts, it can be argued that they are not a means of enforcing contractual obligations, but a means of facilitating their implementation.

It is noted that the first means of mechanism for ensuring the execution of international treaties – are international guarantees. By looking at the scientific literature, one can attest that international guarantees are understood as a document that defines that the State or States undertake to do everything they depend on to encourage parties to implement a treaty between them or an international document that provided that the State or group of States guarantees or to be guaranteed a participant or participants take all necessary actions to encourage the implementation of the concluded contract. In other

¹ Эффективность норм международного права / Л.Х. Мингазов. – Казань: Изд-во Казанского ун-та, 1990. – с. 70 // https://rusneb.ru/catalog/000199_000009_000261962/

² Советское право и международный договор / В.Г. Буткевич. – Киев: Вища школа, 1977. – с. 97

³ Курс международного право: в 6 т. – М.: Наука, 1968. – Т. IV: Основные институты и отрасли современного международного права. – с. 222

words, an international guarantee is an international legal act that includes taking all necessary measures to encourage a party or parties to implement an agreed agreement, implying a guarantee or guarantee of the State or group of States. That is, it is an international document, the subjects of which are individual parties to the treaty, and its object is the adoption of all necessary measures provided to encourage the State party to implement the agreed treaty. In accordance with the theory of international law and established international practice, the following types of guarantees are distinguished in practice: simple (individual, the guarantor state); complex (a number of guarantor States). In particular, as an example of the latter, the Locarno Treaty on Mutual Guarantees concluded in 1925 between Germany, Belgium, France, Great Britain, and Italy can be cited. Its participants assumed individual and collective guarantees of the inviolability of the border territories between Germany and Belgium, between Germany and France, and the preservation of the status of the territorial status quo.

Regarding the situation of practical manifestation of international guarantees, it can be seen that international guarantees are issued in the following forms: 1) a separate article of the relevant agreement; 2) an additional protocol to the agreement; 3) a special agreement guaranteeing the fulfillment of another agreement. An analysis of the contractual practice of States allows us to witness the predominant use of mutual guarantees, issued as a separate article in an international treaty on a wide range of issues. However, it should be noted that the aforementioned Locarno Treaty was issued in the third form.

Commissions and consultations are in second place as a means of ensuring the implementation of international treaties. At the same time, the creation of special bodies (commissions) and consultations as a means of ensuring the implementation of international treaties, as rules, are provided for by the treaties themselves, and this procedure is applied in various areas of international cooperation. Article 13 of the Agreement on Cooperation of the Member States of the Commonwealth of Independent States in the Fight against Crime states that the parties or representatives of their authorized bodies, if necessary, hold working meetings and consultations on the basis of this Agreement to consider issues of strengthening and improving the effectiveness of cooperation. In accordance with Article

16 of the Treaty of Friendship and Cooperation between the Republic of Belarus and Turkmenistan, the Contracting Parties, if necessary, hold consultations in order to exchange views on bilateral relations and mutually beneficial multilateral issues⁴. Also, by mutual agreement of the parties, the structure of the commission designed to consider certain issues of bilateral cooperation has been determined. It should be noted that commissions and consultations make it possible to directly influence the parties to the contract, coordinate their positions on the application of certain provisions of the contract, and develop and clarify procedures for their implementation.

International conferences stand out as the next tool on the topic that is on the agenda. International conferences of the States parties to the treaty are organized to review the operation of the treaty, and its implementation of the objectives of the treaty. In turn, the convening of a conference of States parties to an international treaty is provided for by the provisions of the text of the treaty. It may clarify the purpose of convening the conference, as well as the question of time. Accordingly, the agreements may set the date of the preliminary meeting of the conference, the duration of its convocation, as well as the possibility of its organization, if necessary. In particular, paragraph 1 of Article 21 of the Treaty on Traditional Armed Forces in Europe states that conferences shall meet after 46 months from the date of entry into force of the treaty and every five years thereafter⁵.

Based on the general principles of international practice, it can be concluded that the purpose of convening the conference is diverse. Consequently, general goals or specialized goals are being clarified. The above-mentioned agreement is enshrined in Article 21 as a legal norm that this agreement is convened for the purpose of considering its execution. In other words, the text of the treaty explicitly states the status of an instrument for the enforcement of international treaties, for which an international conference is convened. At the same time, the following functions of conferences are considered in the scientific literature: 1) reviewing the actions of specific articles; 2) facilitating the expansion of

⁴ Договор между Республикой Беларусь и Туркменистаном о Дружбе и Сотрудничестве от 17 мая 2002 года

⁵ Treaty on Conventional Armed Forces in Europe - <https://www.nti.org/wp-content/uploads/2021/09/cfe.pdf>

participants; 3) developing recommendations; 4) facilitating the conclusion of new agreements; 5) developing ways and measures for their more successful implementation.

The next main institutional instrument for ensuring the execution of international treaties is international control. Its content is expressed in the coordinated activities of States or international organizations to verify the fulfillment of contractual obligations assumed by States in order to ensure their clear and strict implementation. That is, this is the activity of international organizations, the object of control of which is the state of execution of the contract, which does not go beyond its limits. This enforcement tool is used in those areas of cooperation where other measures are insufficient or impossible and is considered one of the main means of ensuring the execution of contracts.

In practice, the application of international control can be traced in the following areas: protection of human rights; disarmament and arms limitation; peaceful use of atomic energy; labor conventions; agreements on other special issues. Based on this, that is, taking into account the specifics of the object of control, the form and method of control differ in each contract.

It is concluded that its forms consist of:

- ❖ an organization of control bodies within the framework of international organizations;
- ❖ formation of special regulatory bodies by states;
- ❖ monitoring with national authorities and instruments;
- ❖ combination of funds from international and national authorities.

Its methods include information exchange, reporting, monitoring, visiting controlled facilities, establishing checkpoints, consulting, handling complaints, and much more. In particular, control over the fulfillment of obligations for the implementation of the Treaty on the Establishment of the Eurasian Economic Community and other treaties and decisions within the Community is entrusted to the community bodies⁶.

⁶Договор об Учреждении Евразийского Экономического Сообщества –
<http://www.kremlin.ru/supplement/3402>

The analysis of contractual practice shows that international control is mainly carried out either by special committees or commissions, the organization of which is provided for by an international treaty, or by international organizations and their bodies performing the relevant functions in a specific treaty. In particular, it is obvious that the IAEA, as an international organization with the authority to monitor the fulfillment of the obligations of this Treaty by conducting inspections in accordance with the Treaty on the Non-Proliferation of Nuclear Weapons⁷. Furthermore, the practice of forming special organizations can be attested in the Convention on the Prohibition and Elimination of the Invention, Production, Accumulation, and Use of Chemical Weapons. In accordance with it, the formation of an organization for the implementation of international control over the compliance of the parties with contractual norms was agreed⁸.

Domestic measures are recognized as the last means on the agenda. In addition to international legal methods, treaties provide, in most cases, domestic measures to promote their implementation, which States are obliged to take at the national level. In particular, the Vienna Convention on the Protection of the Ozone Layer stipulates that States-Parties will take appropriate legislative or administrative measures to ensure compliance with the norms of the treaty.

In other words, the complex of State bodies in the implementation of the norms of international law and the measures they take to ensure compliance with international obligations forms an internal organizational and legal mechanism for implementation. Based on this, the mechanism of measures to ensure compliance with the provisions of international treaties should be divided into: 1) organizational measures; and 2) adoption by the state of relevant legislative and other regulatory legal acts. At the same time, the issues of implementing the obligations assumed under international treaties are comprehensively regulated at the legislative level (legislation on international treaties). That is, those that are

⁷ Treaty on the Non-Proliferation of Nuclear Weapons, adopted on 1 July 1968 - <file:///C:/Users/acer/Downloads/1968-Treaty-On-The-Non-Proliferation-Of-Nuclear-Weapons.pdf>

⁸ Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, Paris 13 January 1993 - https://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.42_Conv%20Chemical%20weapons.pdf

developed with a deeper look at the issues and are specified in legislative and other regulatory legal acts.

Even though the subject is not its individual organs but rather the whole State, in the process of implementing the norms of an international treaty within the State, the relevant bodies assume certain obligations. From this, it can be seen that at the legislative level, responsibility is assigned to state bodies. In particular, in accordance with the legislation of Belarus, the President of Belarus, the National Assembly (i.e., Parliament), the Council of Ministers, and Heads of State Bodies are responsible for measures to ensure the implementation of international treaties. And according to Kazakh law – the President of Kazakhstan and the Government are appointed responsible. In particular, according to the accepted theory and practice of law, the Government of the State is entrusted with the task of general supervision, coordination, and control over the implementation of international treaties in States.

When considering agreements between countries on an international platform, it can be concluded that international treaties provide for the following international measures that States are obliged to comply with:

- ✓ adoption of laws aimed at ensuring compliance with the provisions of relevant international treaties;
- ✓ amendments to the legislation;
- ✓ adoption of administrative and organizational documents and other necessary internal measures;
- ✓ take all necessary internal measures (both legislative and administrative);
- ✓ repeal of law or administrative and organizational acts that go beyond contractual norms;
- ✓ application of sanctions for violations of laws;
- ✓ formation of special internal organs or services to ensure the execution of the contract;
- ✓ provision of information on legislative and administrative-organizational documents issued for the implementation of contractual obligations.

Directly in the text of the agreement, the measures listed above can be expressed either in the form of one of them or in the form of several. An example is the Agreement between the Governments of Belarus, Kazakhstan, and Russian on Common Principles of Regulation and Protection of Intellectual Property Rights. It establishes legislative measures to curb the turnover of counterfeit goods in the single customs territory of the Customs Union, the establishment of uniform measures to combat violations of intellectual property rights in the Internet world, informing about the general application of relevant laws and other regulatory legal acts, final court decisions, and administrative and organizational decisions. In this regard, there is also a practice in domestic legislation of establishing measures implemented in relation to international treaties in a general way. In particular, Belarusian law establishes that the state takes measures to bring legislation into line with the contract, as well as other measures necessary for the implementation of contractual norms⁹. On the other hand, Kazakh law implies the adoption or introduction of amendments and additions to the law or other regulatory legal acts, or the termination of their legal force.

From the analysis carried out above, it can be concluded that an international legal act, if considered from the point of view of legal force, should not be called a covenant, a general act, a convention, a charter, a status, a declaration, or a treaty, will have the same legal status. In turn, the issue of enforcement of international treaties as a complex mechanism of law represents structural elements that exercise legal influence and movement with them. Consequently, the mechanism as a phenomenon of law acquires a certain form, that is, elements, methods, and means. Elements include *pacta sunt servanda*, *bona fide*, and reservations, which manifest themselves in a free and compulsory manifestation in relation to the form. The first one provides for the conscientious fulfillment of obligations undertaken in accordance with an international treaty, which is considered to be directly related to the *pacta sunt servanda* institute. The origins of the latter lie in the norms of the treaty on various measures aimed at facilitating its implementation. It is in this aspect that their compulsive character is formed. During the study, it was determined that these include

⁹ Г.О. Васильевна. Международно-правовые и внутри государственные меры содействия исполнению международных договоров. № 4 (24) 2011 г. Вестник Института законодательства Республики Казахстан. – ст. 209

international guarantees, commissions and consultations, international conferences, international control, and measures of the internal state. Nevertheless, the practice of signing special agreements is also used by States to fulfill obligations under international treaties. Looking at the established practice of interstate cooperation and international treaties, it is worth saying that it is not considered the right approach to give preference to mandatory and free forms and their means separately from each other. After all, each of them has special features that apply to an international treaty and require application.

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