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PERIODIZATION OF IGOR LUKASHUK'S RESEARCH ON THE LAW OF TREATIES

Vitalii YAREMCHUK[1]

Abstract

The article is devoted to the periodization of Ukrainian scientist Igor Lukashuk's research on the law of treaties. Nowadays, there is a need to systematize and implement the periodization of his legal thoughts. It is conditionally possible to form the next periodization of Igor Lukashuk's research on the law of treaties: the first stage is before the adoption of the Vienna Convention on the Law of Treaties (1969), and the second one is the implementation stage of the Vienna Convention. This can be explained by the fact that many Igor Lukashuk's legal ideas and proposals were researched long before the adoption of the Convention itself and subsequently found its own reflection in the text of the final edition document. In the second stage, after the adoption of the Vienna Convention on the Law of Treaties, Dr. Lukashuk researched the problems of using this fundamental document in practice. The scientist researched each of its parts, and particularly carefully analyzed the process itself of the adoption of the treaty.

Keywords:

Law of treaties; Igor Ivanovich Lukashuk; legal thoughts; periodization; Vienna Convention on the Law of Treaties.

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The development of public relations and between states dramatically increases the number of agreements and maximizes their value as the main legal tool regulating such relations, as well as the way of securing and guaranteeing the implementation of the reached consensus. Nowadays, it is impossible to imagine modern international law without the use of the methodology inherent in a treaty, which covers all new spheres of society's life. As Igor Lukashuk pointed out, it was impossible to find such an unsystematic and controversial sphere, as the law of treaties, because there was no clear wording on numerous important issues [0: 52].

At the beginning of the 20th century, unsuccessful attempts were made to codify the law of treaties over several decades. At the official level, for the first time in 1924, within the League of the Nation, a Committee on the progressive codification of international law was created. At the VI International Conference of American States in 1928 the Havana Convention was signed. However, this document was of regional importance, which led to the fact that it is actually observed only as an international custom. The Havana Convention has been ratified only by authorized representatives of the eight states, and today it represents a bit more than historical interest for scholars that manifests itself in the scientific world to the current developments in this area [0: 1167]. The doctrinal codification of the law of treaties was also carried out by relevant scientific institutions, among which the most well-known work was carried out in 1935 on the basis of Harvard University. The draft contained procedural rules for the conclusion of a treaty. According to Dr. Lukashuk, in the works of Harvard University scientists, special attention should be paid to the inadmissibility of references to domestic law in order to justify the non-fulfilment of a treaty without any exceptions [0: 48].

In our opinion, it is conditionally possible to form the next periodization of Igor Lukashuk's research on the law of treaties: the first stage is before the adoption of the Vienna Convention on the Law of the Treaties (1969), and the second one is the stage of implementation of the Vienna Convention on the Law of the Treaties (1969). First of all, this can be explained by the fact that many legal ideas and proposals of Dr. Lukashuk were researched long before the adoption of the draft Convention itself and subsequently found its own reflection in the text of the final document's edition.

In the second stage, after the adoption of the Vienna Convention on the Law of Treaties, Dr. Lukashuk had been researching the problems of practice with document use. The scientist gave research attention to each of its parts, and particularly carefully analyzed the process of the treaty-making

process. For example, after approximately 40 years after the adoption of the Vienna Convention, Igor Lukashuk once again noted its part VIII, namely, the Final Provisions. The scholar shared the view expressed by the representative of Greece at the Vienna Conference on the importance and significance of the section for all delegations, since it concerned the time and scope of the Convention itself. At the same time, Dr. Lukashuk in his manner criticized the scientific positions about some authors, who completely ignored the final provisions in their works, in particular the position of the Chairman of the Committee of the Whole at the Vienna Conference on the Law of Treaties (1968–1969) T. O. Eliase [0: 17].

Obviously, one more stage of Dr. Lukashuk's research on the law of treaties could be identified, which is related directly to the adoption of the Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations (1986). The Conventions plays an important role, but in the text we did not find fundamentally new approaches that at that time actually have been existing in the law of treaties, which, in turn, was noted by Igor Lukashuk [0]. A vivid testimony to the above is the large number of published literature on the law of treaties after the adoption of the Vienna Convention (1969), and much less than the number that was issued after the Vienna Convention (1986). Dr. Lukashuk noted that any action to conclude an agreement without the appropriate capacity occur rarely. For example, the International Cheese Treaty (1951) was signed by the representative of Norway on behalf of Sweden, which was not empowered to. Subsequently, Sweden has ratified the treaty [0: 87].

Conclusion of an agreement between organization and its member state is a special case, when the latter is already familiar with a statute provisions. Member states are involved in the decision-making processes of the organization concluding specific treaties and bear part of responsibility [0: 91]. The problem of reviewing treaties becomes especially important in the case of fundamental changes in the international system. Igor Lukashuk determined an indicative revision of a wide range of treaties after the Second World War, when it was about the formation of a new international legal system [0: 481].

Dr. Lukashuk was convinced that in a case of making amendment and concluding an agreement, a special place is taken by necessary participants, without who an achievement of agreement's objectives will be impossible or extremely difficult. Throughout history, the most powerful states gave themselves the right to revise political treaties that had a general public interest without other participants, but now they are only able to block undesirable revision of documents [0: 484]. Dr. Lukashuk noted that

agreements are concluded taking into account that conditions in which they are signed will change and therefore increasingly contain statements for review in accordance with the new conditions. The right of participants to make changes follows from the right to conclude contracts [0: 484]. Igor Lukashuk noted that new conventions do not always abolish previously adopted conventions on the same issue for a state that did not agree with the new provisions. Such an approach scientist considered important for the progressive development of international law [0: 486].

In the paper 'Entry Into Force and Publication of International Treaties" Dr. Lukashuk noted that the consent of a certain number of states to be bound by a treaty is one of the feature of multilateral conventions. Also, a certain time after the consent to be bound can be set. For example, the Vienna Convention on the Law of Treaties (1969) provided entry into force on the thirtieth day following the date of deposit of the thirty-fifth instrument of ratification, f formal confirmation or accession [0: 333].

The Vienna Convention on the Law of Treaties provides that a treaty enters into force in such manner and upon such date as it may provide or as the negotiating states may agree [0]. Dr. Lukashuk critically described the another part of this norm, which raised doubts about the reality of its implementation. Article 24, namely, Part 2 of the Convention contains a provision Failing any such provision or agreement, a treaty enters into force as soon as consent to be bound by the treaty has been established for all the negotiating states [0]. According to Igor Lukashuk, it is impossible to expect that multilateral conventions will be accepted by all negotiating states. Evidence of this is the practice of applying the aforementioned article [0: 334].

In the article 'About Invalidity of International Treaties' Dr. Lukashuk stated that the concept of agreement invalidation was slowly forming in international law. The scientist also noted that because of the indecision of lawyers on this issue in practice, immoral agreements that contradicted international law were widespread in practice [0: 42]. The right to conclude treaties is an important feature of international legal personality, but its recognition does not yet mean the contractual competence of an international organization to do it, because for its recognition an analysis of the practice of implementing these provisions is necessary [0: 152]. The scientist in his article 'International Organization as a Party in International Treaties" noted that an international organization cannot be a party to treaties that are devoted to issues that are not included in the competence and in acts that do not contribute to the fulfillment of its functions. To this list Igor Lukashuk also included documents that contradict goals and principles of organization [0: 153].

An international organization that has the right to conclude international treaties possesses a wide range of international legal instruments for resolving disputes that may be applied to it in a case of a breach of agreement by the other party. Many of them are used by the state, for example, protest, diplomatic negotiations, mixed commissions and others [0: 154]. At the same time, there are rare cases when the applications become valid and are implemented faster than an agreement. For example, Annex I to the Statute of the International Atomic Energy Agency, which provided for the establishment of a preparatory committee. Dr. Lukashuk believed that the reason was the creation of the necessary conditions for the beginning of the basic act implementation. The scientist said that such an approach was unnecessary, since the same result could be achieved through a special protocol signed by the meeting participants and the formation of the Preparatory Committee.

In the article 'Annexes to International Treaties' Igor Lukashuk noted that the validity of the annex is not influenced by the presence or absence of signatures, if there is no doubt about its authenticity, but from the point of view of the law their availability is desirable. According to the scientist, applications can also be signed by secretaries of delegations. It is also not accepted to certify their seals [0: 136]. The reservation may be made in any form of the consent to be bound by a treaty, namely: upon signature and ratification. Igor Lukashuk considered special significance of the reservation is necessary for the transformation of the provisions of the agreement into the generally accepted principles and norms of international law [0: 3].

Dr. Lukashuk wrote that reservations could apply only to multilateral agreements, since in this case an additional agreement with its author is generated. Unlike bilateral acts, where any reservation is detrimental to arrangements, mutual rights and obligations, as a consequence violates the very idea of the document. There will be an additional amendment to the agreed text [0: 4]. Igor Lukashuk noted that the crucial importance for the reservation is its compliance with the object and purposes of the agreement, since it should not contradict their achievement [0: 7].

Analyzing the Vienna Convention on the Law of Treaties, in particular Article 21 'When a State objecting to a reservation has not opposed the entry into force of the treaty between itself and the reserving State...", I. Lukashuk focused on the part 'has not opposed'. The scientist considered the meaning of these words from different parties, namely the need for a direct statement of objections or lack of a statement about it. According to the practice, states usually claim that the objection to the reservation makes the agreement void with its author [0: 8].

Dr. Lukashuk was convinced that the institution of reservations and other unilateral statements is still not resolved in sufficient detail, as evidenced by the continuation of the work of the International Law Commission on this topic. Among the problems that need to be addressed, the scientist noted the participation of entities that are not recognized by another party to the treaty. In this case, if it is only a matter of non-recognition, then the parties recognize each other within the limits of the act necessary for implementation. If the participant additionally declares that the agreement does not apply to unrecognized entities, this prevents the entry into force between the parties concerned [0: 10]. In addition to the state's reservations, it is often the case that they announce general political statements that determine the relation of the subject to the nature of the agreement. They can cause objections from other participants, but, according to I. Lukashuk, this will not affect the content of the treaty, since it was not intended to appeal.

Human rights treaties provide common values and norms, therefore, they do not apply the principle of reciprocity in their implementation. Violation by the state of human rights does not give grounds for derogation from the treaty provisions. There are acts that do not allow any reservations. For example, the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (1956), which contains a norm that prohibits any reservation [0: 10].

The value of the depository institution rises due to the increase in the number of multilateral treaties. For example, the UN Secretary-General is the depositary of more than 560 agreement. Usually it is a depository of multilateral treaties, but, according to I. Lukashuk the role of depository should not be restricted, since the parties to the bilateral agreement for some reason may also choose a state or an international organization for the storage of authentic text and other documents [0: 66].

The Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations (1986) provides that the 'depositary of a treaty' could be designated by the negotiating states and negotiating organizations in the treaty itself or in some other manner. Dr. Lukashuk noted the incorrect translation from the English into Ukrainian 'designate' as 'intended', since in this case it will be a unilateral act that does not require the consent of the designer. At the same time, the other party may not agree with such an appointment, therefore, in any case, a certain type of consent is necessary [0: 67-68].

For the strengthening the international rule of law after the First World War, registration of treaties was enacted, envisaging the transfer of documents entered into force by the Secretary-General of the United

Nations, which puts it in the register and publishes in a special edition. The UN Charter obliges Member States to register contracts that have entered into force in the Secretariat of the Organization, otherwise the parties will be denied the opportunity to refer to documents in the UN bodies. Dr. Lukashuk noted that this provision does not deprive the unregistered treaty of legal force [0: 73].

The Vienna Convention on the Law of Treaties (1969) provides the procedure of successive treaties relating to the same subject-matter (Article 30) on the basis of the recognition of application's priority, and not the invalidity of documents, the content of which may differ. According to I. Lukashuk, among the article's weaknesses is not easy to define the previous agreement. At the Vienna Conference, the representative of Ceylon expressed the opinion that the crucial date is the time when the text was finally adopted. Harmonization of the provisions of various treaties should be carried out by the state in the process of their application. In case of disagreement, consultations with the other contracting states is necessary [0: 107].

Dr. Lukashuk in his work 'Law of a State and an Observance of an International Treaty' noted the influence of globalization on the legal systems, which are in two interrelated processes, namely the internationalization of domestic law and the transfer of international law. The scientist also considered that 'legal spaces' are created between certain states [0: 2].

A particular problem is the ratio of a treaty and a constitution of a state. Dr. Lukashuk singled out two main groups that use different approaches to such a comparison. The first one includes the states (Austria, Hungary, Denmark and others), which embraced the principle of the United States of America, namely the equality of a treaty and internal law. This approach raises a lot of problems, since courts usually interpret them restrictively. The second group of states recognizes the primacy of treaties on domestic laws (Bulgaria, Greece, Cyprus and others). At the same time, consent is required for parliamentary approval. Igor Lukashuk was convinced that the constitutional attachment of the priority of a treaty over internal laws is important for the effectiveness of international law and eliminates the problem of differences between them [0: 5].

It is worth noting the contribution of the Ukrainian scientist Igor Ivanovich Lukashuk to the draft Vienna Convention on the Law of Treaties during the first session of the United Nations Conference on the Law of Treaties (1968). A detailed analysis of the proposals and statements of Dr. Lukashuk concerning the content of the draft Convention was researched in

the article 'Displaying Legal Ideas of I. I. Lukashuk in Vienna Convention on the Law of Treaties' [0].

Consequently, Igor Lukashuk's scientific research has played an important role not only for the Ukrainian doctrine of international law but also for international law in general. Many legal thoughts on the law of treaties and approaches have been enshrined in the Vienna Conventions. In view of the fact of a large number of Dr. Lukashuk's scientific papers in the law of treaty is necessary to continue the research of his contribution and ideas.

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