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Implementation and Incorporation of International Treaties into Domestic Law of Pakistan: A Case Study of International Space Law Treaties

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Abstract: *Countries routinely sign bilateral and multilateral treaties that oblige them to abide by their terms. Ratification of the international treaty requires that common law countries should incorporate the treaty into domestic law. English common law serves as the foundation for Pakistan's legislation governing the reception of international treaties. The rationale of the common law system typically does not directly incorporate international treaties but requires separate enabling legislation so that there should be no conflicting legal provisions between national law and the provisions of the relevant treaty. The rationale behind incorporation varies as per constitutional requirements and the interest of the state. This paper provides the general explanations in the context of the common law legal system specific to Pakistan; as a case study, international space law treaties have been discussed to provide the answer to why incorporation and implementation is an important steps.*

Key Words: Implementation of Treaty, Treaty Ratification, Reservations, Multilateral Treaties, Common Law System, Civil Law System, Monistic, Dualist Approach

Introduction

A number of bilateral and international treaties have been signed by Pakistan with a variety of international entities, the majority of which are governed by the United Nations and its agencies. Multilateral treaties and conventions require compliance, progress monitoring, and periodic reporting. Various countries support and sometimes do not support Pakistan's diplomatic and economic cooperation based on its compliance. There are legal, social, and economic penalties for non-compliance, some of which may be severe and detrimental to the vital interests of the state in breach. For example, compliance with human rights treaties is a major agreement against which developing countries like Pakistan are measured and criticized. All such agreements are signed and ratified in Pakistan by the government. In many countries with civil law systems, such agreements must be approved by the legislature. This is not the case in Pakistan, which adheres to the common law heritage in this regard.

There are various reasons for Pakistan to initiate the national legislative process for many ratified treaties. Each state regulates national activities for its own specific national interest. The most important reason and one common basis is a state's international responsibility for national activities. The incorporation of international treaties into Pakistani domestic law is examined in this article. Pakistan, a common law country, adheres to the "dualist approach," according to which international treaty provisions cannot be cited in domestic courts in the absence of national law. The Cabinet is given authority under the Constitution of Pakistan 1973 to sign and ratify international treaties on behalf of the state. These treaties are incorporated and implemented after the approval of the Parliament. In this connection, following the ratification of the four Geneva Conventions, Pakistan has incorporated and implemented these treaties into its domestic legislation, thereby adhering to them. Under the current Constitution, when it comes to the

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implementation of international accords, Parliament remains relevant and crucial.

A rationale for incorporating international treaties into domestic law has been analyzed in this article. This study outlines Pakistan's constitutional law's authority to make treaties and its ratification process, as well as the connection between international and domestic law, the rationale of the incorporation model, the issue of direct applicability, and the status of some treaties in Pakistan's domestic legal system.

Under the current parliamentary system, the role of Parliament has become vital to approving a treaty. However, the parliamentary process has been criticized in this regard because of the delay in drafting the necessary legislation. For example, On April 17, 2008, Pakistan ratified the International Covenant on Civil and Political Rights (ICCPR) and the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT). The Torture and Custodial Death Bill, which was adopted on July 12, 2021, took 11 years to complete the process of incorporating international treaties into domestic law ([Amnesty International, 2008](#)). On the basis of the same kind of delays and pending national legislations of international commitments, the argument is being made that Pakistan should adopt a system in which treaties are directly ratified by the legislatures. This article is limited to providing a theoretical response to the topic of why it is important to incorporate a treaty in common law countries and why domestic law prevails until a treaty is implemented. However, the failure or delay in enacting legislation and incorporating treaties reflects bad governance, lack of leadership and a lack of priority. Changing the legal system will not fix the problem. Institutional effectiveness must be enhanced for improved performance.

Treaty Ratification Process: Cabinet as the Ratifying Body

Pakistan's three branches of government, the Executive, the Legislative, and the Judicial, classify the powers and duties. The President promulgates laws and passes bills, but the people-elected Prime Minister (PM) runs the federal government, and the PM and Cabinet are answerable to the Parliament. Parliament holds the Prime Minister and Cabinet ministers accountable. All ministers and cabinet members are responsible for government policy failures or lapses.

The Pakistani National Assembly is divided into two houses, the Lower House and the Upper House,

respectively. The National Assembly members are elected for five years, while senators are indirectly elected for six-year periods. Despite the fact that the Parliament holds supremacy, a constitutional clause grants the Prime Minister the authority to choose his Cabinet. Each member of the Cabinet must be a senator and a Member National Assembly (MNA) delegate in order to serve as a Cabinet member.

Prior to the Ratification Treaties Act 2013, there was no specific provision in Pakistan's 1973 Constitution that provided guidance regarding the ratification of international treaties. As a result, in practice, the decision to ratify an international treaty was made by the Cabinet, though it was required to bring the debate before Parliament and receive approval as well. Ratification authority thus traditionally rested with the Cabinet rather than the Parliament. It is also important to note that in such ratification, the Cabinet is, at least in theory, reflected the will of the Parliament, given that such ratification is preceded by a discussion in Parliament, or at least in the Foreign Affairs Committees of both the National Assembly ([Khan, 2005](#)).

Prior to the Ratification Act 2013, the Cabinet was the primary body for ratifying treaties. It used to be said that as our democracy grows, it is possible that all international agreements will be subject to review and inspection not only by the Cabinet but also by the Parliament, and the permission of the Parliament will be required to ratify such treaties ([Ratification of International Treaties Act, 2013](#)).

Since the implementation of the Act, the role of Parliament has grown significantly.

The Ratification Treaties Act 2013

According to the Ratification Treaties Act 2013, a review and approval for ratification form must be submitted through the Ministry of Foreign Affairs, which must consult with the Law, Justice, and Human Rights Division to prepare and present a memorandum outlining the goals of the specific treaty. According to the Ratification Treaties Act 2013, a review and approval for ratification form must be submitted through the Ministry of Foreign Affairs, which must consult with the Law, Justice, and Human Rights Division to prepare and present a memorandum outlining the goals of the specific treaty. The memorandum is prepared to point out the conflicting laws and issues of national security and interest that may arise by making an international commitment. The memorandum needs to provide answers to the following questions. How does

Pakistan's interest, both in the short and long terms, advance or be threatened by entering the treaty? Is there any implication regarding the ideals and goals of the constitution? Should ratification of a treaty include a reservation? Are there implications for the economy, society, culture, and security if the treaty is incorporated into national laws? The Cabinet approves the memorandum. The federal minister for international affairs must present a bill to the Parliament for approval.

A Bill to ratify a treaty may be approved by the Parliament with or without reservations on particular treaty provisions. If a treaty's provisions are in conflict with the fundamental rights guaranteed by the Constitution of Pakistan, Parliament cannot accept the ratification of the treaty or any of its provisions of it. The government must not ratify a treaty if the Bill referred to in Section 4 is rejected ([Ratification of International Treaties Act, 2013](#)).

Role of Judiciary in Treaty-making: The judiciary plays no special role in the ratification of international agreements. However, the judiciary becomes involved if there is a doubt that the negotiated treaty violates any Constitutional provisions. It should go without saying that the Parliament cannot enter into any treaty or take any steps toward its implementation that violate any of the constitution. The Ministry of Foreign Affairs must report to the National Assembly once a year on all ratified treaties. For public awareness, the approved treaty must be published in at least two national newspapers.

Practice and Legal Theory in the Context of Pakistan

The question of the legal status of an international treaty in Pakistan comes under the broader discussion of the relationship between international law and domestic law. Many international legal and political issues are connected with the theoretical debate on the relationship between national and international law.

Most lawyers in Pakistan believe that international law is important, but they also distinguish between domestic law and international law. This is because, they believe, the former has different goals and intentions and therefore does not overlap with the latter. Despite the various aspects of international and domestic law, most lawyers around the world agree that it is still very common to see both systems in practice ([Shelton, 2011](#)).

There are two main questions that arise when it comes to the relationship between domestic and international law. One of these is whether or not both

should be part of a single legal order. Hans Kelsen argued that international law should be regarded as the main legal force in the world, while domestic law should be independent ([Kelsen & Javier, 2017](#)).

The concept of monistic law states that national and international law come together to create a single legal system. In dualism, the concept of international and domestic law states that both are independent legal orders. In the monist model, the international treaty is a part of the domestic legal order, while in dualism, it is applied at the national level (Walter, 2007).

A dualistic model of the relationship between domestic and international law states that a treaty can be implemented internationally after it has been signed by the head of state. However, in order for it to have a significant effect on domestic legal matters, the text of the treaty must be approved by a law of Parliament ([Shelton, 2011](#)).

In terms of enforcement of international legal rules, the judicial system of Pakistan maintains a "dualist" position. Pakistan's judicial system appears to relate to the fact that this body of law is not made through the national legislative process but rather appears to be executive-made law or order. The Legislative branch of the government has, through the elected legislators, transformed law-making provisions of the treaty into domestic laws. This leads to a logical conclusion that international space law conventions have no legal force unless these have been incorporated into domestic law ([Shelton, 2011](#)).

A treaty must be incorporated into domestic law, just like in the United Kingdom and other common law nations. In a case involving the Geneva Convention and Protocol on Arbitration Clauses, the Supreme Court of Pakistan stated that international treaties and arrangements are only recognized and enforced by the courts in Pakistan if they are incorporated into the country's laws. The Supreme Court of Pakistan's ruling upheld the same legal reasoning "in the case of Société Générale de Surveillance Pakistan, through Secretary, Ministry of Finance", mentioned "a Treaty unless [it] was incorporated into the laws of the Country by a Statute, the Courts would have no power to enforce treaty rights and obligations arising therefrom at the behest of an individual or State" (*Société Générale de Surveillance SA v. Pakistan*)", ([1 Au, 2003](#)).

Moreover, according to the constitution of Pakistan, Article 175 (2), "No court shall have any jurisdiction save as is or may be conferred on it by the Constitution or by or under any law" ([Government of Pakistan, 2022, 94](#)).

Before looking into the theoretical aspects, it is important to mention that bilateral agreements become binding as a result of signatures affixed at the completion of the negotiations. This paper focuses on multilateral treaties whose ratification or enactment requires an additional step after the text has been signed.

As in most jurisdictions, the application of international law in Pakistan is determined by the country's domestic legal system. This ensures that the principles of international law are applicable to all Pakistanis. The international legal system is also a part of the country's legal system that determines the extent to which the principles of international law are applicable to individual citizens and the government.

Pakistan's approach to international law is similar to that of other countries. It follows an abortionist and transformationist approach when it comes to international treaties. The legal system of Pakistan is based on the British Public Law Tradition. Therefore, international treaties are enacted into national law by the National Assembly (Parliament) and Senate of Pakistan. The process of the legislature is required to implement an international treaty for private rights.

Given Pakistan's adoption of a dualist approach and federalist framework, provinces must adapt treaties to implement their legislative principles. The federal government is exclusively an international personality in the sense that it can bind all provinces of Pakistan to an international agreement.

As the international treaty is not a domestic product made by democratically elected legislatures, therefore, this leads to a logical conclusion that international has no legal force unless it is incorporated into domestic law. Domestic law is usually considered the supreme law of the country.

Treaty Implementation

The process of implementing a treaty, referred to as implementation, involves giving effect to the provisions of the treaty within the domestic legal system of a country. This can be done through the use of the force of law. In addition to giving effect to the treaty's provisions, implementation can also involve giving the treaty's words the force of law before the domestic law (direct application or direct effect, i.e. EU). In monist jurisdiction, constitutions give treaties a status of equivalence (equivalent) to ordinary statutes. In a dualist country like the case of Pakistan, the matter becomes complex and sometimes confused ([Jackson, 1992](#)).

In Pakistan, the word implementation can mean various things. It can refer to the provision of the treaty that will be used by the courts to invoke the law. It can also mean the transposing of the treaty into domestic law. Arguably it should also cover the situation where "pre-existing legal authority to perform the obligations of the treaty exists under the constitution, a statute", authority to make a regulation, or private law, and thus no formal change in the law is required.

In Pakistan, the most important law-making treaties need legislative implementation. This requirement is the result of the power's separation. The executive can conclude or ratify a treaty, but it cannot make new laws without the approval of the legislature. This means that a treaty binding Pakistan as a country cannot be implemented until the legislation has been passed and the provisions are in place. This means that international law cannot be affected by the provisions of the treaty unless the legislation has been enacted and the implementation of the provisions is carried out through domestic law ([Spence, 2014](#)).

The implementation of international treaties in Pakistan is carried out according to the doctrine of transformation. Due to the complexity of the treaty process, it is not always easy to understand the various types of treaties. For instance, there are multiple types of treaties that are designed to establish legal boundaries and exchange notes. Some treaties raise novel regulatory issues, such as the Kyoto Protocol, while others, such as maritime navigation treaties, exist in areas already covered by complex pre-existing regulatory schemes. Arguably some treaties need no legislative action at all to be implemented ([Shelton, 2011](#)). It is often said that defence pacts and peace treaties are of this character because they do not affect internal law but bind the government in the manner in which it conducts Pakistan's external relations. Some other treaty provisions require only administrative enforcement by Cabinet, government officials, or administrative tribunals; this may be done without changes to the Constitution of Pakistan. However, these treaties still have to be transformed by executive acts of the government to have any internal effect, and such administrative acts require the authority of statute or prerogative power.

An Assessment on the basis of International Space Law Treaties

Each state has its own space laws that it regulates for different reasons in accordance with its national interest. Pakistan has ratified all five International space treaties. Pakistan is amongst the very few countries

that have ratified the Moon Treaty 1979. The regulatory aspect of these space treaties is already being followed. The ratification of international treaties also requires transforming law-making provisions of these treaties into domestic laws through the federal legislative process. For instance, in Pakistan, there are multiple reasons to establish regulations for space activities. One of the most common reasons why a country has international obligations regarding its activities in outer space is due to its international responsibility.

In international space law, private entities have been encouraged to get "involved in outer space" activities to a great extent. At the national level, while formulating the particularities and policies of "commercialization and privatization of space activities", each space-faring nation is entitled to protect its public interest. The involvement of private enterprises requires space-dedicated legislation.

The establishment of comprehensive space legislation in Pakistan is needed to provide the country with the most effective and transparent framework for addressing its international legal obligations related to space. There are various treaties that are applicable to international space activities. These include the Registration Convention 1975 and the Outer Space Treaty 1967. The obligation to provide for the supervision and authorization of private space activities is a fundamental component of the Treaty of Outer Space. This obligation can be delegated to the state that is responsible for implementing a licensing regime for space activities (Dunk, 2005).

The liability conventions and the Outer Space Treaty provide incentives for the states to arrange domestic liability arrangements for their activities in space. These include the establishment of a compensation fund for the damages caused by private space activities. The international treaty on the establishment of a national registry for space objects provides that States are required to establish procedures and regulations to ensure that they have the necessary control and jurisdiction over these objects. The compensation fund should be able to provide the states with a mechanism to ensure that they are reimbursed at the desired level. This provision directs an effective mechanism for the national licensing system. In this regard, insurance for relevant licensed companies can also be ensured through national space legislation.

States should adopt laws that regulate and monitor the activities of entities in space as the requirements of their national agenda. These laws should also be used to address the effects of these

activities on the national environment. For instance, the international treaties on space activities only deal with the effects of these activities outside of the national jurisdiction of a country. The liability treaty only covers cases where the damage caused by the actions of a launching state to another state or entity can be considered international. This means that a country can be held liable for damages caused by space objects. Although the liability convention does not cover the effects of space activities on the states, national laws can address these types of issues. For instance, if a space object hits the launch site of a country, its impact can affect its citizens and entities (Dunk, 2005).

For public-private partnership and to develop the interest of the private sector, States may offer incentives in areas of scientific research and development, financing, taxation and advantageous liability and insurance. Domestic legislation thus presents a possibility for States to encourage private enterprises to participate in space activities. The comprehensive system of licensing at the domestic level is considered the core of any country's space law (Dunk, 2005). International space law obliges States to require their private companies to seek authorization and remain subject to supervision by the state. This obligation may entail the establishment of appropriate legal regulation and control over private entities under their national jurisdiction. A well-formulated space policy will help to determine the national requirement for legislation and the degree of regulation of its private sector for the fulfilment of the state's international responsibility.

Conclusion

Pakistan, unlike many other nations, is not referred to as being "monist" since its legal system does not view domestic and international law as being a single, comprehensive body of law. It adheres to the 'dualist' logic of reception, which means that treaty commitments cannot be enforced by a domestic court until they have been incorporated by the legislative branch.

The legislative implementation of treaties, whether new legislation needs to be established or existing laws need to be changed, represents Parliament's primary role in the treaty-making process. Parliament must adopt or amend the legislation in accordance with parliamentary practices.

In terms of enforcement of international legal rules, the judicial system of Pakistan (profoundly) maintains a "dualist" position. On multiple occasions, Pakistan's Supreme Court and provincial courts have

backed and utilized the dualist method, arguing that ratification or accession to a treaty is insufficient to execute the law.

International treaties are ratified directly by legislatures in many nations, primarily those with civil law systems. This is not the case in Pakistan, where a number of attempts have been made to place subject international treaties directly to the legislative body. In Pakistan, treaties are signed and ratified by the executive. The legislative body grants approval at the stage of implementation and incorporation of the treaty into domestic law. Currently, international treaties require the legislative process to be carried out. This is because of the separation of powers between the executive and legislative bodies. Although the executive branch can ratify a treaty, it is not authorized to make changes or implement new laws without

approval from the legislative body. As a result, the provisions of the treaty are not binding on Pakistan until they are enacted through legislation.

The requirement to ratify treaties is a separation of powers. Although the executive can approve a treaty, it cannot make changes or make new laws without the approval of the legislative body. The legislative body is responsible for ratifying international treaties. As a result, a treaty that has been ratified by the federal government of Pakistan will bind the country as a nation, but its provisions cannot affect International law until they are implemented domestically the legislation. The delay in getting the necessary legislation passed and the approval of the treaty signed by the National Assembly has tarnished Pakistan's image as a responsible nation.

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