

The Impact of the Legal Principle Pacta Sunt Servanda on the Implementation of the Agreement of Principles Governing the Normalization of Relations

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Abstract

This study investigates the influence of the legal principle of pacta sunt servanda, cornerstone in the respect of international agreements and on the execution of the First Agreement of Principles Governing the Normalization of Relations. The First Agreement holds significant importance in fostering reconciliation among the involved parties and has been notably shaped by this principle, which underscores the complete and precise fulfillment of agreements. Through a thorough examination, this study provides an outline of the historical evolution and legal significance of this principle, its application within the framework of the First Agreement, and delves into the political ramifications and obstacles encountered during its execution within a dynamic international landscape. The research methodology involves the scrutiny of legal documents, pertinent case law, and academic literature. The findings contribute to our comprehension of the interaction between legal principles and political considerations in international accords. By elucidating the impact of this principle on the execution of the First Agreement, this research furnishes valuable insights for policymakers, legal practitioners, and scholars in the realm of international law and diplomacy.

Keywords: Pacta Sun Servanda, Execution, First Agreement, Legal aspects, Political Aspects

INTRODUCTION

After the unilateral declaration of Kosovo's independence, a complex legal and political scenario unfolded. While Kosovo's constitution acknowledged it as an independent state, Serbia perceived it as an autonomous province.

UN International Mission (UNMIK) in Kosovo, oversaw Kosovo under the authority of Resolution 1244 (1999). This situation led to clashes and divisions, particularly in the Mitrovica area of North Kosovo. The disparities in population, culture, and living standards exacerbated the situation. The river Iber became a dividing line. After these created circumstances, in Brussels, on April 19, 2013, this agreement was signed.

This Agreement, signed on April 19 of 2013, which was later included in the agreement of Ohrid, in March 2023, represents a significant milestone in the ongoing efforts to stabilize and normalize relations between the two countries. This agreement, intended to address the complex political and ethnic dynamics within Kosovo, holds great importance for the region's future stability and reconciliation. Within the framework of this agreement, the legal doctrine of this principle, which means "agreements must be kept," where according to Hans Wehberg, "few rules for the regulation of society have such a deep moral and religious influence" as this principle plays in ensuring the effective implementation and enforcement of its provisions.

The legal doctrine of this principle is crucial in international law, emphasizing the binding nature of agreements and the obligation for parties to fulfill their commitments in good faith. In this Agreement, adherence to this principle is particularly important for successful implementation and enforcement. This study explores the impact of this principle on the implementation of the agreement, shedding light on its significance, practical challenges, and implications. The findings contribute to understanding the interplay between legal principles and political realities in a complex post-conflict setting, informing policymakers and stakeholders involved in the agreement's implementation and long-term sustainability.

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Pacta Sunt Servanda, the Legal Principle

The legal doctrine of this principle, which translates to "agreements must be kept," is a fundamental cornerstone on the law of nations. It, in itself, contains the obligation that the agreements must be respected and fulfilled. This principle has deep historical roots and is fundamental in ensuring stability, predictability, and the functioning of international relations.

This principle is based on the consent of parties to voluntarily assume rights and obligations. Parties signify their intent to be bound by an agreement's terms and undertake the responsibility to implement and abide by them in good faith. This principle promotes the stability, predictability and enforceable application of international law. It allows parties to rely on the commitments made by others, fosters trust and cooperation, and reduces disputes and conflicts.

Furthermore, the principle strengthens the concept of good faith in international relations. Parties are anticipated to act with honesty and integrity, honoring their willingly undertaken commitments. This principle discourages opportunistic behavior, enhances trust among states, and encourages a cooperative approach to resolving disputes and addressing common challenges.

The historical development of this principle can be traced to ancient civilizations, where the concept of honoring agreements and treaties was prevalent. However, it gained significant recognition and consolidation in modern international law during the 17th and 18th centuries. The principle was further solidified through the contributions of legal scholars and the practice of states, leading to its widespread acceptance as a cornerstone of international legal relations.

The obligatory character of agreements in international law - is based on Vienna Convention of 1969, respectively, article 26, "Every treaty in force is binding upon the parties to it and must be performed by them in good faith," voluntary agreements concluded by parties, whether they are states, international organizations or other entities with international legal personality. Once the parties have voluntarily agreed to an agreement, whether in the form of treaties, conventions or other legal instruments, they are legally bound by its provisions.

The binding nature of agreements is rooted in the principle of consent. Parties voluntarily assume rights and obligations, establishing legal duties that must be respected and fulfilled. By entering into an agreement, parties express their intention to be bound by its terms and undertake the responsibility to implement and uphold those terms in good faith.

The pacta sunt servanda principles serves several important purposes in international relations. Firstly, it promotes stability and predictability by ensuring that parties can rely on the commitments made by others. This fosters a consistent legal framework that builds trust, facilitates cooperation, and reduces the likelihood of disputes and conflicts.

Secondly, the principle contributes to maintaining the legal framework in international affairs. It upholds the integrity of agreements as legal instruments, safeguarding their legitimacy and effectiveness. Respecting and enforcing agreements demonstrates the international community's commitment to principles such as fairness, equity, and justice, which are vital for a well-functioning global order.

Moreover, this principle strengthens the concept of honesty, loyalty and reasonableness in international relations. While the element of good faith permeates various aspects of international law, it is particularly significant for the stability of treaty relations. Parties are expected to act honestly and with integrity, honoring the commitments they have willingly undertaken. This principle discourages opportunistic behavior, enhances trust among states, and encourages a cooperative approach to resolving disputes and addressing common challenges.

Overview Of the Agreement for The Establishment of The Association of Municipalities in Which the Serbs Are the Majority

The First Agreement is a landmark agreement signed on April 19 of 2013. It represents a crucial step in the ongoing efforts to stabilize and establish normalized relations between two countries. The ASM agreement

aims to address the concerns and aspirations of the Serbian minority living in Kosovo by granting them a notable level of self-rule and governance within Kosovo's legal framework.

The agreement emerged from a series of high-level negotiations facilitated by the European Union between Kosovo and Serbia. These negotiations aimed to find a comprehensive solution to the longstanding political and ethnic tensions in the region and promote reconciliation. The ASM agreement is one of the key outcomes of these negotiations and is seen as a vital instrument for improving the relationship between the Albanian majority and the Serbian minority in Kosovo.

The Brussels Agreement outlines the main focused provisions and principles on fostering the normalization of relations between Albanian majority and the Serbian minority in Kosovo.

The agreement aims to establish an Association that will include the municipalities in which the Serbs are the majority in Kosovo, with the possibility of other municipalities joining upon mutual agreement. The creation and dissolution of the Association will be governed by statute and with the agreement of the founding municipalities, respectively. Legal guarantees, incorporating the 2/3 majority rule, will be ensured by relevant and constitutional legislation.

The establishment of this Association will be modeled according to the current statute of the Association of Municipalities of Kosovo. The municipalities included in this association will be given the opportunity to exercise powers in the field of economy, education, health, urban and rural planning, as provided by the European Charter of Local Self-Government and the legislation of Kosovo.

Furthermore, additional powers will be delegated to the Association/Community by the central authorities. It will serve as a representative body to the central governing bodies, with a seat in the consultative council of the communities. A monitoring function is envisioned to ensure the fulfillment of this role.

Regarding security matters, there will be a unified police force in Kosovo known as the Kosovo Police, which will include the amalgamation of all police forces in northern Kosovo within its framework. Salaries for police officers in the region will be provided solely by the Kosovo Police. Personnel from other Serbian security entities will be provided opportunities within corresponding Kosovo institutions.

In the municipalities where Serbs are the majority, such as North Mitrovica, Zubin Potok Zvecan, and Leposavic, a regional police supervisor will be appointed. This regional commander will be selected by the Ministry of the Interior, according to a list compiled by the mayors of these municipalities and will cooperate with other regional commanders. The composition of the police, in this Association, will be in accordance with the demographics of the population of Kosovo in the north.

The judicial system, which will function within this association, will function according to the laws of Kosovo. Cases related to the Serbian population in these municipalities will be appealed by the panel of the Court of Appeal, composed of the majority of judges of Kosovo Serbian origin.

In these northern municipalities, elections will be organized in 2013, assisted by the OSCE, according to Kosovo legislation and international standards. Further, the talks related to Energy and Telecom would be developed with an increased intensity and would have to be completed by June 15.

Both sides consent not to impede or incite others to impede each other's advancement in their individual paths towards European Union membership. To facilitate the execution of the agreement, an implementation committee will be formed jointly by the two parties, with the support of the European Union.

In conclusion, the Brussels Agreement outlines a comprehensive framework for the creation of an Association of municipalities in which Serbs were the majority. It addresses various aspects, including governance structures, competencies, security arrangements, judicial integration, elections, and cooperation on energy and telecommunications. The agreement seeks to promote reconciliation, stability, and the European aspirations of both Kosovo and the Serb majority municipalities.

The Legal System of Kosovo, The Possibility of Incorporating International Law

The incorporation of international law into the legal system of Kosovo, is essential for fulfilling international obligations, safeguarding human rights, and fostering global cooperation. In the legislation of Kosovo, namely, in the Constitution, the possibility of incorporating international law is foreseen, directly in the constitutional provisions. In Article 19, it is explained how, after ratification, international agreements should be implemented and the priority that binding international legal norms have over the legal system of Kosovo. This article gives the priority of international law over domestic laws is reiterated, ensuring adherence to international obligations. The constitutional provision reinforces the principle of this principle, emphasizing the commitment to honor international agreements. To support the application of this principle, Kosovo has established a legal framework that includes the Law on International Agreements and actively participates in international treaties. Kosovo's courts, including the Constitutional Court, play a vital role in interpreting and applying international law. By integrating international law, Kosovo upholds its commitments and strengthens the rule of law, contributing to stability and adherence to international standards.

The Assembly of Kosovo has approved Law no. 04/L-199, ratifying the Brussels Agreement. With this law, the principles and provisions that guide the normalization process are described and it is emphasized that the Republic of Kosovo will take responsibility for the enforcement of the law, with the support of EU, NATO, KFOR, and OSCE.

With the ratification of Law No. 04/L-199, Kosovo demonstrates its commitment to respecting the agreed principles and fulfilling its obligations according to the international agreement. This approval creates the ground for discussions, negotiations and further actions that will contribute to the improvement of relations between the two countries.

The Legal Aspect of The Pacta Sunt Servanda Principle in The Implementation of The Brussels Agreement

This principle is a fundamental concept of law of nations, emphasizing the binding nature of agreements and the obligation of parties to fulfill their commitments.

In the context of the Agreement of Principles, this principle establishes the foundation for the mutual obligations and responsibilities of the Republic of Kosovo and the Republic of Serbia. Both parties have voluntarily entered into this agreement and are expected to uphold its provisions in good faith.

The legal principle *pacta sunt servanda*, which means "agreements must be kept", has a significant impact on the fulfillment of obligations arising from the Brussels Agreement. This principle creates a legal duty for both parties to fulfill their obligations, including implementing agreed-upon measures and refraining from actions that undermine the agreement's purpose. It also provides a framework for resolving disputes, allowing recourse if one party fails to meet its obligations.

Also, the Montevideo Convention, in Article 1point d states that "one of the qualities of the state as a person of international law should possess the following qualification.... ... "capacity to enter into relations with the other states".

Political Aspects of The Pacta Sunt Servanda Principle in The Implementation of The Brussels Agreement

This principle plays a very important role in guaranteeing the success and effectiveness of the agreement in fostering positive political developments between the parties involved. The impact of this principle on the implementation of the Agreement of Principles is twofold. Firstly, it establishes a foundation of trust and confidence between Kosovo and Serbia. By entering into the agreement, both parties have demonstrated their commitment to honoring their obligations and working towards the normalization of relations. This commitment helps build a sense of mutual respect and credibility, which is essential for effective political cooperation.

Secondly, this principle provides a framework for resolving political disputes and conflicts that may arise during the implementation process. The principle creates a legal obligation for the parties to fulfill their commitments, which acts as a deterrent against unilateral actions that could undermine the agreement. It encourages the parties to engage in constructive dialogue, compromise, and negotiation to address any challenges that may arise.

This principle also enhances the political legitimacy of the agreement. By adhering to this principle, the parties demonstrate their willingness to support the observance of the law in the international arena. This commitment strengthens the agreement's standing both domestically and internationally, as it demonstrates a genuine intent to resolve political issues through peaceful means and in accordance with established legal norms.

Furthermore, the implementation of the Agreement of Principles requires political will and cooperation from both sides. This principle serves as a reminder of the parties' shared responsibility to work towards the normalization of relations and to prioritize the interests of their respective constituencies. It encourages political leaders to overcome political obstacles, engage in constructive dialogue, and take necessary steps to fulfill the commitments outlined in the agreement.

In summary, this legal principle has a significant political implication for the implementation of this agreement. It establishes trust, provides a framework for conflict resolution, enhances political legitimacy, and fosters the necessary political will and cooperation. By adhering to this principle, the parties demonstrate their commitment to resolving political issues through peaceful means, thereby facilitating the successful implementation of the agreement.

The ASM Agreement and the Challenges of its Implementation

The fulfillment of the ASM Agreement, in Kosovo has encountered significant challenges due to the opposing behavior of the Kosovo government. This resistance has hindered progress in establishing the Association and has had implications for the normalization of relations between two countries, moreover, in the international relations of Kosovo with its allies.

The Kosovo government's reluctance to establish the Association has caused delays and disagreements regarding its powers, leadership selection, and integration into Kosovo's legal framework. This resistance has strained negotiations and complicated the resolution of outstanding issues. It has also raised concerns among international actors and affected Kosovo's reputation and credibility.

The non-implementation of the ASM agreement has resulted in a context of distrust and uncertainty between the parties, slowing down the overall progress in resolving the dispute. It has created uncertainties, limited achievements, and diminished Kosovo's leverage in negotiations. Overcoming these challenges and fully implementing the agreement is crucial for achieving lasting peace and stability within the region.

In conclusion, the opposing behavior of the Kosovo government in implementing the ASM agreement poses significant challenges to its success. These challenges influence the normalization of relations between Kosovo and Serbia, as well as Kosovo's international standing. Resolving these issues and ensuring complete implementation of the agreement is crucial for a durable and inclusive resolution to the dispute.

The establishment of ASM Agreement with a Kosovo Serb majority, as described in the Brussels Agreement, raises important questions regarding legislative powers, executions and budget creation. These considerations have implications for the unity of the Republic of Kosovo and its regionalization.

The First Agreement does not explicitly mention the granting of legislative powers to the Community with a Serbian majority. However, he says that the Community will wield its authority in accordance with the norms for Local Government provided for in the European Charter for Self-Government and legislation of Kosovo. This suggests that the Association/Community may have a degree of decision-making authority within the scope of the prescribed powers. The extent of these legislative powers and their potential impact on the unity of Kosovo would depend on the specific powers granted and the level of autonomy granted to the Association/Community.

The First Agreement does not provide detailed information on the execution of decisions within the Association with a Serbian majority. It mentions that legal assurances will be ensured through relevant legislation and constitutional provision, including the requirement of a 2/3 majority for dissolution. The execution of the decisions is likely to be guided by the statutes and regulations established for the Association, which should be consistent with the applicable legislation in Kosovo. It is important to note that the entire process of execution will be subject to transparency, there will be accountability and respect for the law to ensure the unity and integrity of Kosovo's governance system.

The First Agreement does not explicitly address the establishment of the budget for the Association with a Serbian majority. However, it is mentioned that the Association will possess comprehensive oversight over sectors like economic development. The budgeting process is a fundamental aspect of governance and the distribution of financial resources can have significant implications for the operation and development of any entity, including the Association/Community. The specifics of creating, managing and overseeing the budget should be determined in alignment with Kosovo's fiscal regulations to guarantee transparency, accountability and equitable distribution of resources.

The establishment of the Association with a majority of Serbian, if implemented within the framework of the First Agreement and in accordance with the Constitution of Kosovo, does not necessarily endanger the unity of the Republic of Kosovo. The agreement is intended to promote the normalization of relations and ensure the representation and participation of all communities within Kosovo. It is essential that any agreement made for the Association/Community respects the general constitutional framework of Kosovo, protects the rights of all citizens and preserves sovereignty of the country and the territorial integrity.

Regionalization, in the context of the Serbian-majority Association/Community, should be understood as a decentralized governance structure that enables effective administration and provision of services for specific regions with particular demographic characteristics. However, regionalization should not harm the unity and the integrity and functionality of the state of Kosovo. It is essential to strike a balance between granting autonomy and self-government to individual regions, while maintaining a strong central government that upholds the principles of national unity and equal rights for all citizens.

In conclusion, the establishment of ASM with a Serbian majority in Kosovo, with potential legislative powers, enforcement mechanisms and involvement in the creation of the budget, should be treated with careful regard for the unity of the Republic of Kosovo. It is essential to guarantee that implementation complies with the current legal structure, respects the rights of all citizens and preserves the overall territorial integrity and state sovereignty.

The execution of the Brussels Agreement does not appear to be contrary to the Constitution of Kosovo. On the contrary, it outlines a framework for creation of ASM through a statute, which indicates the intention to create a legal framework that operates within the existing constitutional structure of Kosovo.

The agreement recognizes the importance of adhering to the constitutional framework of Kosovo and does not propose any provisions or measures that would infringe upon the constitutional order. Instead, it seeks to establish the Association/Community within the framework of existing laws and constitutional principles.

By outlining the creation of the Association through a statute, the agreement demonstrates a clear intention to work within the existing legislative and constitutional procedures of Kosovo. This approach ensures that the creation of the Association is conducted in accordance with legal provisions founded by the Constitution.

Furthermore, the agreement emphasizes that the disbandment of the Association can only be done with the consent and decision of the founding municipalities. This provision aligns with the constitutional principles of local self-governance and the autonomy of municipalities, as enshrined in the Constitution of Kosovo.

The agreement also acknowledges the need for legal guarantees, which will be ensured for by applicable law and constitutional provisions. This recognition underscores the commitment to operate within the existing legal framework and ensures that the establishment and functioning of the Association/Community will adhere to the Constitution and other relevant legislation.

Additionally, the agreement refers to the constituent structures of the Association as a basis for the establishment of the Association's structures. This approach implies a continuity and alignment with the existing legal framework and administrative practices in Kosovo.

It is worth noting that the Brussels Agreement is a political agreement that defines a framework for the establishment of this Association. For the execution of the agreement, the creation of adequate legislation and the adoption of relevant legal measures are required, which will be subject to review and revision for compliance with the Constitution.

Overall, based on the information provided in the agreement, it can be concluded that the intention is to create a legal framework for the Association/Community that operates within the existing constitutional structure of Kosovo. The agreement does not explicitly contradict the Constitution, but rather seeks to establish the Association/Community in a manner consistent with the constitution and legislation of Kosovo.

CONCLUSION

The legal principle of this principle plays an important role in bringing the Brussels Agreement to life. The principle, emphasizes the binding nature of agreements and the obligation to fulfill commitments, is crucial for ensuring the effective enforcement of the provisions outlined in the agreement. The principle promotes stability, predictability, and the rule of law in international relations by allowing parties to rely on the commitments made by others.

Within the context the Agreement of Principles, *pacta sunt servanda* establishes mutual obligations and responsibilities of Kosovo and Serbia. Both parties voluntarily entered into this agreement, and they are expected to honor its provisions in good faith. The principle creates a legal duty for the parties to fulfill their obligations, including implementing agreed-upon measures and refraining from actions that undermine the purpose of the agreement. It also provides a framework for resolving disputes that may arise during the implementation process.

However, the implementation of the agreement is not solely a legal matter but also involves political considerations. The political aspects of the implementation process can pose challenges and impact the overall effectiveness of this principle. Political tensions, divergent interests, and external pressures can influence the parties' commitment to fulfilling their responsibilities under the agreement. The dynamic nature of the international environment and changing political circumstances may create obstacles and complicate the implementation process.

To navigate these challenges, it is essential for policymakers, legal practitioners, and scholars dealing with the implementation of this agreement to understand the interplay between legal principles and political realities. They should work towards creating an environment that fosters trust, cooperation, and a genuine commitment to the fulfillment of obligations. Dialogue, negotiation, and constructive engagement are key to overcoming obstacles and guaranteeing the long-term viability of the agreement.

Incorporating international law, including this principle, into Legislation of Kosovo is also crucial for upholding commitments and strengthening the legal order. Kosovo has recognized the supremacy of law of nations over local laws, as provided for in its constitution, reinforces its commitment to respect international agreements and adhere to international obligations.

In conclusion, the impact of the legal principle this principle on the implementation of the Brussels Agreement is significant. While the principle establishes the binding nature of agreements and promotes stability and predictability, its effectiveness can be influenced by political considerations and challenges. By understanding and addressing both the legal and political aspects, stakeholders can enhance the implementation process, foster reconciliation, and contribute to long-term stability between the two countries and the stability of region.

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