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RESEARCH ARTICLE

THE SUPREME COURT OF JUSTICE OF THE NATION OF MEXICO AND THE CONVENTIONS OF VIENNA

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Abstract

This paper discusses various interpretations of the Supreme Court of Mexico in connection with the Vienna Conventions. The article notes that the Vienna Conventions can agree on its content in some of its sections but others are different because they involved only in the States and other States and international organizations or between international organizations. The article points out the contradictions presented by Mexican law and the Vienna Convention. Many of Mexico's commitments are not met given the different interpretations that Mexican law makes.

INTRODUCTION

The various Vienna Conventions (Vienna Convention on the Law of Treaties) Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations) have been a source of confusion on the part of the Supreme Court of Justice of Mexico (SCJN) in issuing various arguments to develop its interpretative role of standards. These misunderstandings are evident and therefore it is necessary to point them out, given that the importance of these international conventions lies in their inclusion by the constitutional reform of June 10, 2011, which states that the Mexican State recognizes the human rights of the behalf of all people, according to international treaties to which it is party. This reform to the Mexican Constitution reached the powers and duties of the holder of the Federal Executive Power among others, under Article 89 in its Fraction X.

International human rights treaties take on a special and distinct character compared to other conventions. Like other treaties, subscription involves a sovereign act of States that voluntarily assume obligations. By approving human rights treaties, and by exercising sovereignty, participating States obey an order on which they not only assume obligations in relation to other States, but also take on obligations towards individuals subject to its jurisdiction. Violation of these obligations generates international responsibility.

The validity of a normative provision in a treaty arises when the treaty itself enters into force internationally, and not by the fact that one of the contracting countries or States publish it among their internal rules to consider its effect in its domestic law. This normative validity enters into force even more if the provision on which the Supreme Court bases its argument is valid or did not exist at the date of publication in the Mexican Offical Gazette of the Federation.

In Mexico, the Senate approves international treaties and diplomatic conventions on the basis of Fraction I of Article 76 of the Political Constitution of the United States of Mexico (CPEUM, or the Constitution), which is then signed by the President of the Republic, holder of foreign powers, exercising the power held under paragraph X of Article 89 of the Constitution, from the abovementioned constitutional reform, as a duty of the federal executive power, among others, to uphold the respect, protection, and promotion of human rights.

The criteria of the highest court to give validity, especially in the "Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations" without it being enforced, are considered an error by virtue of not having this international validity, and by not having the minimum required signatures stipulated in the same order. Based on the stipulations of Article 4 of the "Act on the Conclusion of Treaties" of January 2, 1992, which is an internal law and has no international effects, giving validity is to give a retroactive effect to the clause in quote, as this writing will demonstrate.

I. HISTORICAL PREFACE

The 1919 Treaty of Versailles that ended the First World War gave rise to one of the first international organizations such as the "League of Nations," now known as the United Nations (UN). This organization is constituted by the "United Nations Charter" that Mexico designates on the date of June 26, 1945, and was adopted by the Senate on October 5, 1945. Its designation was published in the official journal on October 17 and ratified on November 7 of the same year.

The UN General Assembly on November 21, 1947 established the "ILC" derived from a recommendation of the "Committee on the progressive development of international law and its codification" of the Assembly, derived from one of their sessions between May 12 and June 17 of that year.

The “Commission of International Rights” (ILC) of the United Nations has prepared various treaties, such as the "Vienna Convention on the Law of Treaties” adopted in 1969, and the "Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations" adopted by a Conference meeting in Vienna in 1986. The latter at the time of preparation of this writing has still not met the minimum 35 signatures required by the Member States to allow it to come into force.

On January 2, 1992, the Official Gazette published the “Act of the Conclusion of Treaties”, taking effect from the day following its publication. This law contains a series of principles and internal rules governing the conclusion, implementation, and enforcement of international treaties. Many of the law’s provisions reflect those already established in the "Vienna Convention on the Law of Treaties", incorporating other complementary rules; and where in the content of the second paragraph of Article 4 stands out as support of this work that dates from 1992, while the publication of the "Vienna Convention on the Law of Treaties between States and International Organizations or between organizations international "is from January 11 and April 28, 1988.

II. THE VIENNA CONVENTION ON THE LAW OF TREATIES.

The "Vienna Convention on the Law of Treaties" (the Convention) codifies the rules on contractual relations between member states, including the regulatory provisions relating to the conclusion of treaties and their *vacatio legis*, enforcement, application, interpretation, and the modifications and standards relating to invalidity, termination and suspension of treaties. These rules are commonly known as the "Vienna Convention" and certainly that is where confusion arises in the Mexican Supreme Court of Justice when deciding cases. Cesar Garcia Novoa defined the Vienna Convention as a "Treaty on Treaties".

It is a multilateral international treaty (that is to say, signed by several countries), in which the signatory or member countries have established rules. Among them are the rules that define the process relative to the anullment, interpretation, and implementation of treaties or international agreements entered into between two or more member countries.

The Convention contains principles of International Law, being itself an International Convention. According to the doctrine of International Law, the Convention also applies to Agreements that have been celebrated before its ratification.

With this legal framework, the Convention promotes the purposes of the United Nations under the Charter, including the maintenance of international peace and security, development of friendly relations among member states, and the implementation of cooperation among nations. The Convention applies only to treaties between States.

Although the Conference approved the Convention of May 23, 1969, this treaty did not enter into force until more than ten years later when it was adopted on January 27, 1980. Mexico signed the Convention on May 23, 1969, after receiving Senate approval on December 29, 1972; and publishing it on March 28 1973. Thus Mexico linked itself to ratification from the date of September 25, 1974, with international and national entrance into force starting January 27, 1980, being officially published on February 14, 1975. The Convention establishes a series of interpretive principles that apply in Mexico, especially since Mexico is a signatory of the Convention that had been approved by the Senate and fulfilled all the formalities for it to enter into force.

III. VIENNA CONVENTION ON THE LAW OF TREATIES BETWEEN STATES AND INTERNATIONAL ORGANIZATIONS OR BETWEEN INTERNATIONAL ORGANIZATIONS.

With the birth of the Convention in 1969, international organizations had become actors on the international scene as subjects of Public International Law, which at various times, had entered into treaties with other States as well as with other international organizations, contemplating in Article 3 that the full force of treaties celebrated with international organizations would be guaranteed. The above resolution and the Convention content was considered to be incomplete, thus the Conference of the Convention adopted a resolution, with which it set out the grounds for recommending that the Commission study the feasibility of integrating these international organizations. However, through studies and discussion of the projects, it was not until 17 years later that the "Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations" came into being on March 21, 1986. The Assembly that convened in Vienna from February 18 to March 21, 1986 prepared the guidelines for the Convention, resulting in a legally independent product from the first Convention, without reference to the first Convention.

From that date until now (2015), the Convention has remained open for future membership in the UN offices. More than 29 years have passed since its adoption and it has yet to enter in force, since to date, only 32 states and 16 international organizations have adhered to it out of the 35 ratifications or adhesions requiered for its entry in force.

Mexico subscribed to the Convention on March 21, 1986 and it was approved by the Senate on December 11, 1987; afterwards, it was published in the Official Journal of the Federation on January 11, 1988, with a link for its ratification of January 14, 1988, deposited with the General Secretariat of the UN on March 10, 1988, and was published in the Official Gazette on April 28, 1988.

IV. INTERPRETATION OF THE SUPREME COURT OF JUSTICE OF THE NATION

By issuing its rulings on these matters the SCJN has enforced the content of the Convention O1 without its being valid; while at other times has confused the Convention with the Convention OI; and at other times, has wrongly used the Convention. This situation is very worrisome because the highest court in Mexico cannot have this kind of misunderstanding. The evidences are visible in various examples as follows:

a) The Second Chamber of the Supreme Court, by resolving case 348/2001, applied and recognized the validity of the Convention O1 by the mere fact that Mexico is part of the Convention; interpreting the Convention and basing its decision on bilateral agreement on the same date on which the resolution was dictated without international validity. In order for the provisions for the Convention O1 to be applied internally in Mexico, the treaty must have been validated internationally, and that had not yet happened. The mere fact that Mexico signed the treaty does not give validity to the Convention O1, since it lacked the minimum number of accessions required for entry into force on an international basis. It cannot be part of Mexican legislature until treaty values are valid internationally. Although domestic dispositions can be realized, internal rules based on treaty provisions should be suspended until the treaty is in force. Similarly, if the provisions of an international treaty cease to be in force, the internal norms of each State might suffer the same effects because they cannot be applied in isolation if the international order that sustains them lacks validity. Without prejudice to the above, in the Law on celebrating Treaties, paragraph number four establishes that “in order for treaties to be mandatory in any country, specifically in Mexico, they must have been published in the country’s Official Gazette. The Supreme Court cannot conclude that merely by publishing in the Mexican informative organ that the Convention O1 of April 28, 1988 is indeed valid in Mexico if it has not been celebrated internationally.

b. The SCJN has repeatedly confused the Convention with the Convention O1:

1. In resolving the amparo 120/2002 review, issued by the Plenary of the Supreme Court, the provisions refer to the Convention O1 in #214, when the correct regulatory provisions of the Convention should have been noted on the controversial issues (legal provisions of the North American Free Trade Agreement). This treaty is an agreement among States, although in different sections of the resolution, references are made to the international convention.

2. In resolving the amparo 361/2004 review (Thesis 1.11^0.C.175 C), the Eleventh Civil Collegiate Court of the First Circuit of the Judicial Power of the Federation isolated the thesis referring to the Convention O1 in different sections, although the indicated reference should have been made to the Convention by nature of the subject matter in question.
3. In resolving the amparo under review 120/2002, the Plenary of the SCJN issued the thesis P. IX 2007 in isolation mentioning the Convention O1, when in fact, they should have referred to the Convention. The criterion refers to elucidate aspects of the North American Free Trade Agreement, an international agreement signed between States. The provisions of the Convention O1 and the Convention itself do not apply to these provisions. In addition, on the date on which the decision is issued, the Convention O1 was not yet in force; this last confusion is also applicable to the two preceding paragraphs.
4. In resolving the amparo 379/2010, under review in subsection m) of the fifth recital of the execution that is issued and from which emanates the thesis in isolation on constitutional and second administrative matters. Subsection LXII / 2010[1] referred to the Convention, but reported the Convention as being published in the Official Gazette of the Federation on April 28, 1988, a date that corresponds to the original publishing date of the Convention O1. However, in paragraph 10 of the sixth recital, it is mentioned that the publishing date of the Convention is now related to the date of February 14, 1975.
5. By solving the direct second amparo 30/2012, another thesis was isolated. In LXXV / 2012[2] by the Second Chamber of the Supreme Court, two errors are evident. The first error refers to Article 46 of the Convention 01, being that the lawsuit focuses on the issue of huma rights, and on a provision of law whose entry has not yet entered in force internationally, even though in Mexico it was published officially. The second is related to a clause which corresponds to treaties between States and International Organizations or between each other that can be applied to the provisions of the Convention and to the Convention O1.
6. The Second Chamber of the SCJN, upon issuing the isolated thesis of the second LXXIV / 2012[3] to solve the direct amparo 30/2012 on determining the impossibility of applying a control of conventionality to a constitutional rule, utilized the provisions of the Convention 01 as a argument or support. This was inappropriate since international agreements that are subject to control of compliance are those that deal with human rights, which by their nature are those treaties that are unsigned between States, according to the Convention, and not the Convention O1. This failure occurred in this sentence.

c) Within the amparo 379 / 2010 review[4], the Court erroneously referred to the Convention in subsection m) of the fifth recital of the execution upon stating the record as "the Vienna Convention on the conclusion of treaties" to what was originally named the VIENNA CONVENTION ON THE LAW OF TREATIES.

V. CONCLUSIONS

1. The Conventions of Vienna are two and they are distinct.
2. The Conventions of Vienna can agree on their content in some of their sections, but in other sections they are different because they are celebrated only between States and other States and not international organizations.
3. The Vienna Conventions were prepared by the Commission, considering that the 1969 Convention would become a complement to the 1986 Convention 01.
4. Of the two Vienna Conventions, only one is in force (the Convention) while the other (the Convention O1) has not yet entered into force internationally as of July 30, 2015, despite being published in Mexico's SCJN Official Gazette on January 11 and April 28, 1988.
5. It cannot be said that the publication of the Convention 01 was in compliance with the contents of the second paragraph of Article 4 of the Law of the Conclusion of Treaties of January 2, 1992, because the legislation that is being cited had not yet existed on the date of said publication.
6. The Convention regulates treaties between States, while the Convention O1regulates treaties between

[1] INTERNATIONAL Economic Treaties. Its approval by the Senate of the Republic is governed by the law on the conclusion of treaties. Visible in the Judicial Weekly of the Federation and its Gazette, Ninth period, volume XXXII, August 2010, p. 472.
[2] Constitutional supremacy. The reform of Article 1. POLICY OF THE UNITED MEXICAN STATES CONSTITUTION OF 10 JUNE 2011, respects this principle. Visible in the Judicial Weekly of the Federation and its Gazette, Tenth Time, Book XIII, October 2012, Volume 3, p. 2038.
[3] CONCEPTS DIRECT IN VIOLATION UNDER inoperative. They ARE RAISED THE CONSTITUTIONAL unconventionality of a provision. Visible in the Judicial Weekly of the Federation and its Gazette, Tenth Time, Book XIII, October 2012, Take 3, pag 2034.
[4] *Op. cit.*, note 26.

States and International Organizations.

7. Only the Convention contains human rights recognized today by Mexico, upon which a conventionality control can take place.
8. Mexico is part of both Conventions of Vienna.

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