BLOGS

Doctrine of Pacta Sunt Servanda under Public International Law

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Can a State sign an international treaty and later refuse to follow it because its domestic law has changed? The doctrine of pacta sunt servanda gives the starting answer i.e. agreements must be kept. This article discusses the doctrine of pacta sunt servanda under Public International Law.

The principle is central to treaty law. This builds confidence in the states to continue to negotiate and ratify. Students should consider three main ideas, they are- Treaty must be in force, it must be executed in good faith, domestic law usually not an excuse of nonexecution.The rule is strong, but the **Vienna Convention on the Law of Treaties, 1969** (**VCLT**) recognises limited exceptions.

Meaning of Pacta Sunt Servanda

The Latin phrase ***pacta sunt servanda*** means “agreements must be kept”. In public international law, it means that a treaty in force creates legal obligations for its parties. Therefore a State that has freely consented to a treaty must carry out its promises honestly and in good faith.

The rule is legal, not merely moral. It applies to bilateral and multilateral treaties and reflects the consensual nature of international law i.e. States become bound through consent expressed by ratification, accession or another accepted method.

Article 26 of the Vienna Convention

Article 26 of the VCLT states: *“Every treaty in force is binding upon the parties to it and must be performed by them in good faith.”*

The provision has three parts-

1. the treaty must be in force,
2. it must bind the parties that consented to it, and

3. performance must be genuine rather than a technical attempt to defeat the treaty's purpose.

A disagreement about interpretation is not automatically a breach, states must still approach interpretation and dispute settlement honestly.

Relation with Article 2(2) of the UN Charter

Article 2(2) of the UN Charter also requires members to fulfil their Charter obligations in good faith. Article 26 VCLT deals directly with treaties in force, while Article 2(2) concerns obligations assumed under the Charter. Both reflect the importance of good faith in international cooperation.

For treaty-law revision, see CLATalogue's Sources of International Law and Public International Law: Nature, Scope and Sources.

Scope of the Doctrine

Domestic law is normally not an excuse

Article 27 VCLT provides that a party may not invoke its internal law to justify failure to perform a treaty. A government cannot normally avoid an international promise because a ministry, legislature or court has taken a different domestic position. Article 27 is subject to the narrow rule in **Article 46** concerning a fundamental violation of internal law about competence to conclude the treaty.

The object and purpose must not be defeated

Article 18 requires a State that has signed a treaty subject to ratification, acceptance or approval to refrain from acts that would defeat its object and purpose while deciding whether to become a party. This is not the same as the full duty of performance under **Article 26**.

Good-faith interpretation

Pacta sunt servanda requires performance, but it does not itself decide the meaning of every treaty provision. **Articles 31** and **32** VCLT guide interpretation. **Article 31** requires good-faith interpretation according to ordinary meaning, context and the treaty's object and purpose.

Is the doctrine absolute?

No. Treaty stability is the normal rule, but the VCLT recognises limited grounds relating to consent, invalidity, breach and changed circumstances.

Invalid consent: Article 46

A State may rely on its internal law regarding competence to conclude a treaty only when the violation is fundamental and objectively apparent to other States acting normally. Ordinary domestic procedural defects are not enough.

Coercion and threat of force: Articles 51 and 52

A treaty is void if a State representative was coerced, or if the treaty was procured by the threat or use of force contrary to the UN Charter. *Pacta sunt servanda* is applicable only to free undertakings and not to obligations imposed by the illegal use of force.

Collision with a peremptory norm (jus cogens) (Artciles 53 & 64)

A treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law, known as jus cogens. If any treaty that conflicts with a new jus cogens norm is void and terminates.

Article 60: Material breach.

Material breaches may entitle others to suspend or terminate a treaty whether bilaterally or multilaterally. A material breach will probably be a repudiation or violation of a provision essential to the achievement of the object or purpose of the treaty. It does not allow withdrawal for any dispute.

Article 62: Material change

In very rare and exceptional cases, a fundamental change of circumstances due to the change of the fundamentals of a State can be invoked by the *rebus sic stantibus*. ***Rebus sic stantibus*** is a doctrine under an international law which acts as an exception to *pacta sunt sarvanda*. It allows withdrawal from or terminating the treaty if there has been a fundamental and unforeseen change

in the circumstances of the original agreement.

The change should be fundamental and unforeseen, constituting an essential basis of consent, radically changing the obligation in question. The rule does not apply in the case of boundary treaties or if the change is a result of the breach of the invited State.

Unilateral Promises and Pacta Sunt Servanda

In the Nuclear Tests cases like Australia v. France & New Zealand v. France (1974), France gave a public undertaking that it would not continue atmospheric tests of nuclear weapons. The International Court of Justice has held that clear unilateral declarations may have the effect of creating legal obligations and that interested States could rely on them.

The case shows that good faith may exist without a formal treaty. A State can be bound by a public promise if the terms and circumstances demonstrate an intention to be bound.

Pacta Sunt Servanda and Domestic Courts

International obligation and domestic enforceability are separate questions. Some constitutional systems apply treaties directly after ratification, while others require implementing legislation. Therefore, a State may be internationally bound even when an individual cannot directly enforce the treaty before a national court without domestic legislation.

For CLAT PG, do not confuse **Article 27**'s international rule with the constitutional method used by a country's domestic courts.

Exam-Oriented Comparison

- **Pacta sunt servanda**: a treaty in force must be performed in good faith.
- **Article 18 VCLT**: Before a signatory agrees on whether it wants to be bound to the treaty, it cannot defeat the object and purpose of the treaty.
- **VCLT Article 27**: being defaulted on domestic law is not a justification.
- **Peremptory norm of general international law**: a relevant norm that no treaty can violate.
- **Rebus sic stantibus**: Very narrow exception for fundamental changes of circumstances.

- **Breach of material obligation**: if material, may permit suspension or termination under article 60.

Why the Doctrine Matters

International law has no single world government that automatically enforces every promise. Treaties work because States accept rules, expect reciprocal compliance and rely on one another. *Pacta sunt servanda* supplies that stability, while consent, good faith, protection against coercion, jus cogens and controlled grounds for termination prevent the rule from becoming absolute.

Conclusion

The doctrine of *pacta sunt servanda* means that agreements must be kept. In public international law, it requires states to honour treaties in force and perform them in good faith. **Article 26 of the VCLT** is the central provision. Article 18 prevents a signatory from defeating a treaty's object and purpose, while **Article 27** generally prevents domestic law from excusing non-performance. The doctrine gives treaties stability.

However, pacta sunt servanda is not an absolute rule. The Vienna Convention on the Law of Treaties (VCLT), provides safeguards where consent was affected by a fundamental domestic violation, coercion or force, or where the treaty conflicts with jus cogens. Material breach and a fundamental change of circumstances may also have consequences, but these grounds are narrowly applied. Therefore, treaty stability must be studied together with genuine consent, equality, coercion and the limits imposed by peremptory norms.