

International Law and Domestic Law Project –Country Report

Islamic Republic of Iran

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Note on Context:

Iran is historically one of the world's oldest nations¹ and was previously called Persia. In 1935, the name "Iran" was officially adopted, and after the Islamic revolution of 1979, the official name was changed once again to the "Islamic Republic of Iran." The first Constitution of Iran was adopted on 30 December 1906, by which it became a Constitutional Monarchy in 1907. The Constitution underwent a few changes on 7 October of 1907 and was substantially changed after the Islamic Revolution. The post-revolutionary Constitution was adopted on 3 December of 1979 and was amended on 28 July of 1989.

The State structure of Iran is comprised of the Executive, Judicial, and Legislative branches. The Legislative branch itself consists of the Majles (Parliament) and the Guardian Council, an oversight body charged with various functions, including the review of laws passed by the Majles to ensure they comply with the Constitution and the official State Religion.² In case there is a stalemate between the Majles and the Guardian Council, the State Expediency Assembly³ resolves the issue. In addition to these, the Leadership is the highest-ranking position in the State structure and is occupied by the Leader who is appointed by an Assembly of Experts (elected by the people). The Leader has final say on State issues and defines the policies of the nation. His various functions are spelled out in the Constitution, specifically in Article 110.

Iran's Constitution supersedes all other laws and prohibits certain agreements with foreign powers, such as the establishment of military bases on Iranian territory,⁴ and provides restrictions or

¹ Although the Achaemenian was founded circa 553-550 BC and is considered to be the time that the Persian Empire was established, the Elamite kingdom came into existence ca. 3200 BC, GLENN E. CURTIS & ERIC HOOGLUND (eds.), *IRAN: A COUNTRY STUDY*, 5th ed., 2008

² Article 4 of Iran's Constitution provides: "All laws and regulations pertaining to civil, penal, financial, economic, administrative, cultural, military, political and other spheres must be based on Islamic criteria. This article governs absolutely and generally all articles of the Constitution, as well as all other laws and regulations, and the duty to ascertain this matter devolves on the jurists of the Guardian Council." See: *The Constitution of the Islamic Republic of Iran*, <http://en.parliran.ir/index.aspx?siteid=84&pageid=320>

³ AKA: State Expediency Council

⁴ Article 146.

qualifications on other issues such as the settlement of international disputes or referral of such disputes to arbitration.⁵

The answers provided below reflect the state of the law as it stands on March of 2014 and incorporates Constitutional provisions and other regulations, including pertinent bylaws adopted by regulatory authorities in Iran to provide uniform practice on international affairs. Historical reference, where provided, does not extend beyond the Constitution of 1906 as access to relevant historical documents has not been possible.

I. Treaties

A. Adoption

1. Who has the power to initiate treaties, i.e., to negotiate and sign them?

The Executive. The Constitution is silent on the initiation and negotiation of treaties. Article 125 of the Constitution provides: “The President or his legal representative has the authority to sign treaties, protocols, contracts, and agreements concluded by the Iranian government with other governments, as well as agreements pertaining to international organizations, after the approval of the Islamic Parliament of Iran.” However, this provision concerns the signature of treaties after their adoption into law by Parliament.

Article 2 of the Bylaw on Method of Drafting and Conclusion of International Agreements of 30 May 1992 (BMDCIA) specifies that negotiation, initialing, and signature subject to ratification of formal treaties⁶ is to be conducted by prior coordination with the Ministry of Foreign Affairs and the agreement of the Cabinet on the general outline of the treaty. This article further specifies that the treaty is to be signed subject to ratification by an official who is designated by the Cabinet.

Furthermore, informal agreements that do not fall under the Constitutional requirement of Parliamentary ratification may be signed by persons authorized by the relevant Ministers or highest executive official of the relevant government entity, this signature being subject to approval.⁷ The approval or final signature of such informal agreements is to be carried out by the Ministers or highest executive officials of the relevant government entity or officials authorized by them.⁸

⁵ Article 139.

⁶ Formal treaties are defined in the Bylaw as treaties that require the ratification of Parliament under the Constitution and are further specified in article 7 of the Bylaw; see *infra*, response to question 3.

⁷ A governmental entity or organization is defined in article one of the Bylaw as a Ministry, establishment, or corporation that according to the laws and regulations, carries out *acta imperii* or *acta gestionis* of the government of the Islamic Republic of Iran.

⁸ Article 2 BMDCIA

History: The Constitution of 1906 was also silent on the initiation of treaties and did not define who had the power to negotiate or sign international agreements. But article 32 of the internal rules of procedure of the Parliament adopted on 8 Jan 1910 specified that the government would send the treaties to the Parliament for ratification. Thus, under the former Constitution and relevant regulations, the Executive had the power to negotiate and sign treaties.

2. Who has the power to ratify treaties, i.e., to formally express the state's consent to be bound by the treaty?

The President or his legal representative. Article 125 of the Constitution provides: "The President or his legal representative has the authority to sign treaties, protocols, contracts, and agreements concluded by the Iranian government with other governments, as well as agreements pertaining to international organizations, after the approval of the Islamic Parliament of Iran." This concerns formal treaties and has been further defined in article 11 of the BMDCIA (1992) states that upon ratification of formal treaties by the Parliament, the President or his legal representative may then sign the treaty, thereby internationally binding the State by the treaty.⁹ This representative may be appointed *ad hoc* or otherwise according to subject matter.

3. Is ratification of treaties subject to a legislative vote, and if so, by which chamber of the legislature?

Yes, by the Parliament itself. Article 77 of the Constitution provides: "All international treaties, protocols, contracts, and agreements must be approved by the Islamic Parliament of Iran." This concerns formal treaties as specified in Article 7 of the BMDCIA (1992) as being subjects pertaining to the following:

- a) Delimitation of boundaries, means of settling border disputes, peace and conflicts with other States;
- b) To create amity in relation to economic, social, trade, cultural, scientific, and technical co-operations and exchanges;
- c) Multilateral international agreements that are concluded within, or under the auspices of international organizations, Associations, and Unions;
- d) For proclaiming rules, conditions of implementation, extension, amendment, interpretation or other correction of formal treaties, if the authorization by the government entity therefor has not been foreseen in the formal treaty;
- e) Bilateral or multilateral regional or global political- military or defense issues creating obligations;

⁹ Interpretive Opinion of the Guardian Council, No. 2961 of 27 February 1985, available at: <http://www.shora-gc.ir/Portal/Home/ShowPage.aspx?Object=News&ID=6f656905-f33d-4c6a-a0df-a757b3f82759&LayoutID=41ac3004-064d-4591-9605-3bb75173947b&CategoryID=e2beada8-28bd-4ff4-a9f8-84d4ee0a2973>

- f) Establishment of and membership in international Unions, Associations, and Organizations;
- g) Decisions of the Conference of the International Labor Organization, subject of article 19(1) of the ILO Constitution.

Treaties that don't fall under these categories are considered informal treaties and are not subject to legislative vote (BMDCIA, art. 1).

History: Article 24 of the 1906 Constitution provided that treaties had to be ratified by the Parliament but the only exception it declared were treaties that could be concealed due to expediency. These were not defined in the Constitution, nor were they clarified in the Amendment of 1907. Article 52 of the said Amendment simply provided that once the need for concealment had become moot, the King would inform the Parliament and Senate of the treaty with such explanations as may be necessary. The Parliament's Internal Rules of Order¹⁰ of 18 October 1906 did not clarify this either and it was not specified which treaties could be concealed and if there was to be a process for such concealment or any other aspect of it for that matter.

However, the ratification of treaties was to follow the general process of deliberation and voting requirements for legislation as defined in the Constitution and the Parliament's Internal Rules of Order. Article 4 of the Constitution of 1906 established a Parliament composed of 162 members that could be increased to 200 if necessary (*Majles-e Shoraye Melli* or National Consultative Assembly) and a Senate that was composed of 60 Senators and was to be part of the Legislature of Iran, functioning in tandem with the Parliament (article 43). The 1907 Constitutional Amendment maintained this structure, but elections for the Senate were not held until 1949 and in practice the Senate was not established until February of 1950. However, this was not an impediment to legislation since article 47 of the 1906 Constitution provided that until such time that the Senate was established, Acts of Parliament would come into effect with the signature of the King. Article 27 of the Amendment of 1907 also provided that the Legislature was composed of the King, the Senate, and the Parliament and that each of these had the power to enact legislation, but such legislation would come into effect upon ratification by both Houses and the King's signature.

The process was flexible, such that by virtue of article 46 of the 1906 Constitution, the Senate may have first approved laws (including treaties) then sent them to Parliament or vice versa.¹¹ For instance, the Treaty of Amity, Economic Relations and Consular Rights between Iran and the US was concluded on the 15th of August 1955 in Tehran. This treaty was first ratified by the Senate on the 10th of November 1956 and then approved by the Parliament on the 19th of March 1957, coming into force on 16th of June 1957. Conversely, the Treaty of Friendship between Iran and

¹⁰ *Nezamnameye Dakhelie Majles*. This would later be amended several times and renamed the "Parliament's Internal Rules of Procedure" (*Aiinnameye Dakhelie Majles*)

¹¹ This process had particularities that aren't relevant to this report.

Malaysia (concluded on 15 January 1968) was first ratified by the Parliament on 6 October 1970 and then approved by the Senate on 9th November of 1970.

4. If the answer to (3) is yes, is this vote binding on the executive?

Yes. Article 9 of Iran's Civil Code provides that treaty stipulations that have been concluded between Iran and other States in accordance with the Constitution shall have the force of law. The President is also obliged by article one of the said Code to sign legislation within 5 days of their adoption and provide notice for their implementation. If he fails to do so, the Official Gazette shall publish them within 72 hours on the order of the Speaker of the Parliament. Unless otherwise determined, laws passed by Parliament come into force 15 days after their adoption. Furthermore, article 15 of the Directive on Formal Drafting of International Legal Agreements¹² expressly obliges all Ministries and State Organizations to implement the provisions of international agreements that have passed into law.

5. If the answer to (3) is yes, does the vote require a supermajority?

No. Article 120-H-10 of the Parliament's Internal Rules of Procedure provides that a simple majority of half plus one Members of Parliament present is sufficient. A quorum for Parliamentary sessions is met when two thirds of the total MPs are present. This two third requirement is currently 200 MPs. Therefore, at the time of this writing, a majority of 101 MPs suffices.

History: Article 7 of the 1906 Constitution provided that in order to discuss any matter, the presence of two thirds of the MPs was necessary and that the presence of three quarters of MPs was required to vote on agenda. The Internal Rules of Order (18 October 1906) echoed this requirement in article 73 and clarified that voting would not take place without the presence of three quarters of MPs. Furthermore, article 4 of the Constitution provided that the number of MPs was 162 which could be increased to 200 if necessary. There was no specific voting requirement for treaties.

6. If the answer to (3) is yes, may the legislature introduce reservations or other modifications to the treaty?

Yes. The Executive has an obligation to conduct studies and assessments in line with national interests on the need for making a reservation to a formal treaty and to provide its comprehensive report to Parliament (article 206(2) of the Parliament's Internal Rules of Procedure, article 8 of BMDCIA). However, the Parliament may also request modifications to a treaty submitted to it for ratification. This is stipulated in article 206 of the Parliament's Internal Rules of Procedure. The Executive would then have to re-negotiate the terms of the treaty based on Parliament's requirements. The Parliament incorporates any reservation to the text of the treaty it deems

¹² Adopted by the Cabinet on 10 December 2011, No. H46921 T/181311, available at: <http://rc.majlis.ir/fa/law/show/801501>

appropriate within the text of the law whereby the treaty itself is ratified. Examples include the texts of Iran's reservations to the Convention on the Rights of the Child, the OIC Convention to Combat Terrorism, and the Convention on the Rights of Persons with Disabilities.¹³ Furthermore, the BMDCIA stipulates that if necessary and where a reservation is prohibited or is against the object and purpose of the treaty, the Executive is to draft an interpretative declaration in its stead.

History: This power for Parliamentary objection to the terms of a treaty and the possibility of requiring modifications existed in the previous Internal Rules of Order in force during the pre-revolutionary system and was incorporated in article 32 of the Internal Rules of Order of the Parliament of 8 Jan 1910 and has been maintained and further elaborated in ensuing amendments and revisions of the Parliament's Internal Rules of Procedure.

7. If the answer to (3) is yes, are there alternative procedures the executive can use to enter into binding international agreements without a legislative vote?

No. Insofar as formal treaties are concerned, no alternative procedures have been foreseen.

History: Article 24 of the Constitution of 1906 provided an exemption to Parliamentary ratification of treaties where it was expedient to conceal certain treaties. In such cases, the government did not have to submit the treaties to Parliament as long as such expediency existed. Article 52 of the amended Constitution in 1907 provided that the King was to declare such treaties to the Parliament and Senate with relevant explanations after the necessity for concealment had become moot.

8. Is ratification of treaties subject to contemporary review of conformity with the constitution?

Yes. All legislation, including treaties ratified by Parliament, is to be reviewed by the Guardian Council to ensure compliance with the Constitution and the Official State religion. Article 72 of the Constitution provides: "The Islamic Parliament of Iran may not enact laws contrary to the Constitution or to the doctrines and laws of the country's official religion. It is the duty of the Guardian Council to determine any such violation, in accordance with Article 96 of the Constitution." The Guardian Council must make its decision in ten days of the submission of the

¹³ For the text of these laws in Farsi, see: CRC (<http://dastour.ir/brows/?lid=271250>), OIC Convention (<http://dastour.ir/brows/?lid=320173>), CRPD (<http://dastour.ir/brows/?lid=320173>).

law to the Council. If the said Council does not reach a decision in that time period, the law becomes effective by virtue of article 94 of the Constitution.¹⁴

History: The pre-revolutionary system did not provide a mechanism for conformity with the Constitution, but it did contain provisions regarding compliance with the official religion.

9. Who has the power to withdraw from treaties? Is this power subject to a legislative vote or other requirements?

The Executive with the assent of Parliament. Since formal treaties are to be ratified by Parliament and become law, the process for withdrawal, amendment, revision, and ratification of protocols to such treaties also follow the same procedure as described above.

10. Are the answers to the questions above different for specific categories of treaties, e.g., human rights treaties?

Yes. Certain types of international treaties require a supermajority. The Constitution specifies changes made to the nation's boundaries. Article 78 of the Constitution provides: "All changes in the country's frontiers are forbidden, with the exception of minor amendments in the interests of the country, provided such changes are not unilateral, do not encroach on the country's independence and territorial integrity, and are approved by four-fifths of all members of the Islamic Parliament of Iran."¹⁵

Furthermore, certain types of agreements are prohibited. For example, article 153 of the Constitution declares: "Any kind of agreement resulting in foreign control of the country's natural resources, economy, army, culture, and other aspects of national life, is forbidden." The establishment of foreign military bases in Iran (article 146), the transfer of irreplaceable treasures (article 83), and granting concessions to foreigners (article 81) have been specifically prohibited in the Constitution. In addition to these, the BMDCIA further stipulates in article 6 that these prohibitions are also to be observed in informal agreements and *inter alia* adds the following to the list:

¹⁴ Article 94: "All legislation passed by the Islamic Parliament of Iran must be sent to the Guardian Council. The Guardian Council must review it within ten days of its receipt to verify its compatibility with the criteria of Islam and the Constitution. If it finds the legislation incompatible, it will be returned to the Parliament for review. Otherwise the legislation will be considered passed."

Article 95: "When the Guardian Council considers ten days inadequate for completing the process of review and delivering a definite opinion, the Islamic Parliament of Iran may be requested to grant an extension not exceeding ten days citing the grounds for the request."

¹⁵ Reflected in article 120 (A) of the Parliament's Internal Rules of Procedure.

- a. The violation of Iran's territorial integrity and comprehensive independence;
- b. Influence of foreigners over Iran's natural, economic, cultural, military resources and other affairs;
- c. Interference in the affairs of another State;
- d. Enlistment of foreigners in the Iranian military.

11. Does the constitution expressly authorize the State to join international organizations and/or delegate powers to them? If so, which one(s)?

No. This is subject to the requirements for formal treaties as discussed above. The issue was disputed among MPs and as a result the Speaker of Parliament¹⁶ requested the Guardian Council for its interpretive opinion on 12 January 1988.¹⁷ The Council replied a week later¹⁸ and declared that since membership in international organizations carries with it the effects of the Constitutional provisions stipulated in articles 77 and 125, Bills that seek such membership are considered to be international agreements and must be ratified by Parliament.

B. Status

1. Do ratified treaties automatically become part of domestic law without implementing legislation?

Yes. Treaties passed by Parliament are considered to be the law of the land (article 9 of the Civil Code). However, in view of the necessity of specific regulations to implement certain treaties, the relevant legislation may be complemented through bylaws. However, the lack of bylaws is not an impediment to implementing treaties *per se*.

2. If the answer to (1) is yes, is the legal effect of treaties limited by doctrines under which certain treaties are deprived of such effect (e.g., non-self-executing)?

No. Upon ratification by Parliament, the treaty provisions have the force of law and must be implemented by all branches of government.

3. If the answer to (1) is yes, what is the relationship of treaties to ordinary statutes (superior, equal, inferior)?

¹⁶ At the time, this was Akbar Hashemi Rafsanjani.

¹⁷ Request No. D.H./250/32851

¹⁸ Opinion No. 12887 of 19 January 1988, available at: <http://www.shora-gc.ir/Portal/Home/ShowPage.aspx?Object=News&ID=ec9235b9-97fd-4fa2-8eed-39ae854b5a87&LayoutID=41ac3004-064d-4591-9605-3bb75173947b&CategoryID=e2beada8-28bd-4ff4-a9f8-84d4ee0a2973>

Equal. Article 9 of the Civil Code of Iran (enacted on 10 May 1928) provides: “The provisions of treaties concluded between the Iranian Government and other governments in accordance with the Constitution have the force of law.” Once a treaty is passed into law by Parliament, it is considered to be on a par with other legislation it adopts.

4. If the answer to (1) is yes, what is the relationship of treaties to constitutional provisions (superior, equal, inferior)?

Inferior. Legislation passed by parliament (in this case: formal treaties) has the force of “ordinary law” as opposed to “Constitutional law” and as such, is inferior to the provisions of the Constitution.

5. Is there a rule or presumption that domestic statutes (and/or other law) should be interpreted in conformity with obligations under ratified treaties?

No. The general rules of interpretation apply.

6. Does the constitution expressly refer to international human rights treaties (e.g., the International Covenant on Civil and Political Rights or the European Convention on Human Rights)? If so, which one(s) and are they formally incorporated into domestic law?

No.

7. Other than the treaties mentioned in (6), are the answers to questions (1) through (5) different for specific categories of treaties?

No.

C. Federal States

1. In the case of a federal state, may the federal government enter into treaties that relate to matters within the jurisdiction of subnational governments?

Not applicable.

2. May the federal government adopt legislation to implement a treaty that would not normally be within its constitutional legislative jurisdiction?

Not applicable.

3. Is there a requirement that the federal government consult and/or obtain the approval of subnational governments before entering into treaties?

Not applicable.

4. What is the relationship of treaties to subnational legislation (superior, equal, inferior)?

Not applicable.

5. Do subnational governments have the authority to enter into binding international agreements?

Not applicable.

6. Are the answers to the questions above different for specific categories of treaties, e.g., human rights treaties?

Not applicable.

II. Customary International Law (CIL)

A. Status

1. Do CIL rules automatically become part of domestic law without implementing legislation?

No. None of Iran's Constitutional provisions make reference to CIL. Article 166 of the Constitution provides: "The verdicts of courts must be well-reasoned and documented with reference to the articles and clauses of the law on which they are based." Article 167 goes on to state: "The judge must endeavor to base his judgment in each case on codified laws. If he cannot find such basis, he should deliver judgment on the basis of authoritative Islamic sources and reputable rulings (fatwa). He may not refrain from admitting and examining cases and delivering judgment on the excuse of the silence or inadequacy of law in a matter, or it's being general or ambiguous." Hence, the status of CIL in relation to Iran's domestic law is uncertain from a reading of the Constitution.

The Iranian legal system is a hybrid of Civil Law and Islamic Law, the legal system is largely reliant on codified law rather than customary law, and it is well established that codified law

prevails over customary law. Custom does play a role, but only insofar as has been permitted by codified law. Article 3 of the Civil Procedure Code,¹⁹ with the intent to prevent a *non liquet*, provides:

“Justices of the Courts [judges of the courts] shall adjudicate claims, issue judgments, and settle disputes based on law. If positive [posited] laws are incomprehensive or unspecific or contradictory or non-existent in the case in question, they shall issue their ruling of the case by reference to reputable Islamic sources or reputable *fatawa* and legal principles that don’t contradict the criteria of *Shari’a*, and they may not refrain from hearing claims and issuing judgments due to the silence or deficiency or brevity or contradiction of the law, else they shall be held to be in denial of justice and convicted accordingly.

Note- If a judge is a *mujtahid* and considers the law to be in violation of *Shari’a*, the case shall be referred to another Chamber for adjudication.”

Of course this provision in and of itself may not result in a uniform jurisprudence on issues that are inadequately regulated. The Iranian judicial system is based on the French Civil Law system. The sole authority capable of creating uniform judicial practice in Iran is the Supreme Court and courts of first instance and of equal standing do not have to abide by each other’s decisions. It will ultimately fall on the Supreme Court to decide on diverging judgments from the lower courts on issues such as the implementation of CIL.

CIL has been referenced in particular legislation adopted by Parliament or regulations passed by the Cabinet. For instance, the Maritime Act of 1965 refers to CIL in several instances, including damages (article 187) and any cases not covered by the Act or other legislation (article 194). Other legislation also reference CIL, but the application of CIL will be limited to the scope of the relevant legislation.

2. If the answer to (1) is yes, what is the relationship of CIL to ordinary statutes (superior, equal, inferior)?²⁰

Inferior. Judges are to base their judgments on codified law (article 167 of the Constitution) and only if they fail to find the rules in “positive law” (article 3 of the Code of Civil Procedure) can they resort to other sources for their judgments.

For instance, article 194 of Iran’s maritime law provides: “In cases not covered by this or other laws of the country, international custom and principles shall be applied.” What this means is that: 1- The application of custom generally and CIL in particular depends on a legislative (codified) provision allowing such application (there are doctrinal disputes about this); 2- Where such

¹⁹ Aini Dadrassii Madani [Civil Procedure Code] Tehran 1379 [2000] (Iran).

²⁰ CCP = CUSTLAW2

provision exists, CIL will take a secondary role in the order of application: the judge or other relevant authority will first look to codified national law, and as a secondary or complementary source refer to CIL if and to the extent necessary or provided by law. There are cases where custom may prevail over supplementary provisions of law, but I have not found instances of this for CIL.

In the specific case of foreign state immunity, legislation does exist in Iran and courts act in accordance with that legislation and relevant bylaw

3. If the answer to (1) is yes, what is the relationship of CIL to constitutional provisions (superior, equal, inferior)?

Inferior. Legislation, custom, and regulations are considered inferior to the Constitution and article 72 of the Constitution proclaims that the Parliament may not enact laws contrary to the Constitution. The powers of the Leadership (the highest office) are also circumscribed by the Constitution. The possibility of resorting to CIL is specified in particular legislation.

4. Is there a rule or presumption that domestic statutes (and/or other law) should be interpreted in conformity with CIL?

No. Academic and doctrinal disputes exist, but there is no rule or presumption in practice.

5. Does the constitution expressly refer to international human rights instruments other than treaties (e.g., the Universal Declaration of Human Rights or the American Declaration of the Rights and Duties of Man)? If so, which one(s) and are they formally incorporated into domestic law?

No.

6. Other than as may relate to the instruments mentioned in (5), are the answers to questions (1) through (4) different for specific categories of CIL rules?

No.

B. Federal States

1. In the case of a federal state, what is the relationship of CIL to subnational legislation (superior, equal, inferior)?

Not applicable.

2. Is the answer to (1) different for specific categories of CIL rules, e.g., human rights obligations?

Not applicable.