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ANALYSIS OF THE EFFECTIVENESS OF THE LAW «ON INTERNATIONAL TREATIES OF THE REPUBLIC OF KAZAKHSTAN»

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Abstract. *Recently, the interest of the scientific community in the problems of designing international treaties has increased significantly, which is explained by a number of reasons. Firstly, the limits of legal regulation of international relations are expanding and, accordingly, the requirements for the quality of treaty acts, the consistency and coherence of their legal structures are increasing. Secondly, in the context of the internationalization of law, there is a convergence of international and national legal systems, the assertion of the priority of universally recognized principles of international law over national legislation, which implies the unification of many institutions of law, including law-making mechanisms [1].*

The Law of the Republic of Kazakhstan «On International Treaties of the Republic of Kazakhstan» (hereinafter referred to as the Law) determines the procedure for concluding, implementing, amending and terminating international treaties.

International treaties of the Republic of Kazakhstan are concluded, implemented, amended and terminated in accordance with the Constitution of the Republic of Kazakhstan, generally recognized principles and norms of international law, the provisions of the international treaty itself, the Vienna Convention on the Law of International Treaties, this Law and other legislative acts of the Republic of Kazakhstan.

The Address of the President of the Republic to the people of Kazakhstan «Strategy «Kazakhstan-2050»: New political course of an established state» sets specific tasks for a consistent and predictable foreign policy, which is based on strengthening regional and global security. Only a world based on international treaties, where the obligations stipulated in them must be strictly observed, can be safe.

The authors analyzed the effectiveness of the Law «On International Treaties of the Republic of Kazakhstan» and proposed new solutions to this issue.

Keywords: *international treaties, cooperation, analysis, reservations, EAEU, legislation*

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АНАЛИЗ ЭФФЕКТИВНОСТИ ЗАКОНА «О МЕЖДУНАРОДНЫХ ДОГОВОРАХ РЕСПУБЛИКИ КАЗАХСТАН»

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Аннотация. *В последнее время интерес научной общественности к проблемам конструирования международных договоров значительно возрос, что объясняется рядом причин. Во-первых, расширяются пределы правового регулирования международных отношений и, соответственно, возрастают требования к качеству договорных актов, согласованности и слаженности их юридических конструкций. Во-вторых, в условиях интернационализации права происходит сближение международной и национальных правовых систем, утверждение приоритета общепризнанных принципов международного права перед национальным законодательством, что предполагает унификацию многих институтов права, в том числе механизмов правотворчества [1].*

Закон Республики Казахстан «О международных договорах Республики Казахстан» (далее – Закон) определяет порядок заключения, выполнения, изменения и прекращения международных договоров.

Международные договоры Республики Казахстан заключаются, выполняются, изменяются и прекращаются в соответствии с Конституцией Республики Казахстан, общепризнанными принципами и нормами международного права, положениями самого международного договора, Венской конвенцией о праве международных договоров, настоящим Законом и иными законодательными актами Республики Казахстан.

*В Послании Президента Республики народу Казахстана «**Стратегия «Казахстан-2050»: Новый политический курс состоявшегося государства**»[2] поставлены конкретные задачи последовательной и предсказуемой внешней политики, в основе которой – укрепление региональной и глобальной безопасности. Безопасным может быть только мир, основанный на международных договорах, где предусмотренные в них обязательства должны неукоснительно соблюдаться.*

Авторы провели анализ эффективности Закона «О международных договорах Республики Казахстан»[3] и предложили новые пути решения в этом вопросе.

Ключевые слова: *международные договора, сотрудничество, анализ, оговорки, ЕАЭС, законодательство.*

2 https://adilet.zan.kz/rus/docs/K1200002050

*3 Закон Республики Казахстан от 30 мая 2005 года № 54 «О международных договорах Республики Казахстан». https://adilet.zan.kz/rus/docs/Z050000054_*

«ҚАЗАҚСТАН РЕСПУБЛИКАСЫНЫҢ ХАЛЫҚАРАЛЫҚ ШАРТТАРЫ ТУРАЛЫ» ЗАҢНЫҢ ТИІМДІЛІГІН ТАЛДАУ

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Аннотация. *Соңғы уақытта халықаралық шарттарды жобалау мәселелеріне ғылыми қоғамдастықтың қызығушылығы айтарлықтай артты, бұл бірқатар себептермен түсіндіріледі. Біріншіден, халықаралық қатынастарды құқықтық реттеу шекаралары кеңейіп, сәйкесінше шарттық актілердің сапасына, олардың құқықтық құрылымдарының бірізділігі мен үйлесімділігіне қойылатын талаптар артып келеді. Екіншіден, құқықтың интернационалдануы жағдайында халықаралық және ұлттық құқықтық жүйелердің жақындасуы, халықаралық құқықтың жалпыға бірдей танылған қағидаттарының ұлттық заңнамадан басымдылығының бекітілуі орын алуда, бұл көптеген құқық институттарын, соның ішінде құқықты біріктіруді білдіреді. -жасау механизмдері [1].*

«Қазақстан Республикасының халықаралық шарттары туралы» Қазақстан Республикасының Заңы (бұдан әрі – Заң) халықаралық шарттарды жасасу, орындау, өзгерту және тоқтату тәртібін айқындайды.

Қазақстан Республикасының халықаралық шарттары Қазақстан Республикасының Конституциясына, халықаралық құқықтың жалпы танылған қағидаттары мен нормаларына, халықаралық шарттың өзінің ережелеріне, құқық туралы Вена конвенциясына сәйкес жасалады, жүзеге асырылады, өзгертіледі және тоқтатылады. Халықаралық шарттар, осы Заң және Қазақстан Республикасының өзге де заңнамалық актілері.

Республика Президентінің «Қазақстан-2050» Стратегиясы: қалыптасқан мемлекеттің жаңа саяси бағыты» атты Қазақстан халқына Жолдауында өңірлік және жаһандық қауіпсіздікті нығайтуға негізделген дәйекті және болжамды сыртқы саясаттың нақты міндеттері белгіленген. Тек халықаралық шарттарға негізделген, оларда көзделген міндеттемелер қатаң сақталуы тиіс әлем ғана қауіпсіз бола алады.

Авторлар «Қазақстан Республикасының халықаралық шарттары туралы» Заңының тиімділігіне талдау жасап, бұл мәселені шешудің жаңа жолдарын ұсынды.

Түйінді сөздер: *халықаралық шарттар, ынтымақтастық, талдау, ескертпелер, ЕАЭО, заңнама*

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Introduction

In 2012, in the Message of the people of Kazakhstan, the following was determined by the Main Constitution: «*During the years of independence, Kazakhstan has entered as an equal participant in international processes, and managed to create favorable external conditions. Our priorities are interests - development with a discussion of neighbors - Russia, China, the countries of Central Asia, United States and the union of Asian countries. We will strengthen the Customs Union and the Common Economic Space.*

Our immediate goal is to create the Eurasian Economic Union. At the same time, we clearly state that issues will be decided by consensus. Political sovereignty will not be infringed. The balance of our foreign policy means the development of friendly and predictable relations with all states that play a significant role in European affairs and are of practical interest to Kazakhstan.

However, the international situation and the geopolitical environment are dynamically changing and are not always on the sidelines. A gigantic arc of instability stretched from North Africa and the East East to Northeast Asia. It is undergoing serious changes in the balance of power both at the global level and in some regions of the planet. Accordingly, the role of security mechanisms is increasing, such as the UN, interactions, interactions, CSTO, SCO, CICA and others. There is a new arrival of national security in Central Asia. In this situation, the policy of Kazakhstan should be modernized, as well as domestic policy[4] ».

In the Message of January 31, 2017, the first initiative is «accelerated technological modernization of the economy»[5] . Within the framework of international cooperation, the protection and promotion of national economic interests is required. These concerns, first, work within the EAEU, the SCO, and interface with the Silk Road Economic Belt. Why should we restructure and intensify the work of economic diplomacy.

Work should be continued to bring national legislation in line with accepted international obligations and international standards. At the same time, in this work, it is necessary, first of all, to be guided by the internal needs and priorities in the development of the country.

To achieve the goals of the foreign policy of the state, a balanced and balanced approach to the conclusion of international treaties and participation in international organizations is required, which should be preceded by serious work to predict socio-economic, political, legal and other consequences[6] .

The following international documents in the field of international treaties ratified by the Republic of Kazakhstan can be listed: 1) Vienna Convention on the Law of Treaties of May 23, 1969 - the Republic of Kazakhstan joined on March 31, 1993; 2) Agreement between the Republic of Kazakhstan and the Russian Federation on the application of international agreements within the framework of the formation of a customs union, ratified by the Law of the Republic of June 30, 2010; 3) Decision of the Supreme Eurasian Economic Council of November 21, 2014 «On the official publication of international treaties within the framework of the Eurasian Economic Union, international treaties of the Eurasian Economic Union concluded with third states, their integration associations and international organizations, decisions of the bodies of the Eurasian Economic Union».

The foregoing leads to the conclusion that the Law complies with the strategic goals of the state, and also does not contradict the provisions of the above international documents and fully complies with the international obligations of the Republic of Kazakhstan.

Methods

The article uses formal-logical and dialectical methods, comparative legal, empirical analysis, as well as quantitative, qualitative and special methods of scientific research.

Results and discussion

International treaties are the normative-legal basis; they allow foreseeing and coordinating the interests, positions and actions of the parties in cooperation between states. The purpose of their conclusion is the concretization, clear legal establishment and consolidation of the mutual rights and obligations of the parties. This model of regulation of international relations establishes the stability and consistency of the development of the world community.

As is known, the CIS countries have a common political and legal past. At the turn of the XX-XXI centuries, each of them faced the question of choosing a further direction of development. Kurashvili A.Y. indicates that a number of states have chosen Euro-Atlantic integration as their priority (Georgia, Moldova, Ukraine). Others focus on traditional values, adjusting their legal positions in relation to them (Kyrgyzstan, Tajikistan, Uzbekistan, partially Azerbaijan and Turkmenistan, including Kazakhstan). Others continue the Soviet traditions, making the necessary changes to them (Armenia, Belarus, Russia). The difference in the political and legal courses of these countries cannot but be reflected in the issues of concluding and implementing contracts. For example, the bodies responsible for concluding agreements are defined differently, the domestic

4 Послание Президента Республики Казахстан - Лидера Нации Н.А. Назарбаева Народу Казахстана «Стратегия «Казахстан-2050»: Новый политический курс состоявшегося государства» (Астана, 14 декабря 2012 года) // Интернет-ресурс: https://online.zakon.kz/Document/?doc_id=31305418#pos=3;-137

5 Послание Президента Республики Казахстан Н.Назарбаева народу Казахстана. 31 января 2017 г. «Третья модернизация Казахстана: глобальная конкурентоспособность» Интернет-ресурс: http://www.akorda.kz/ru/addresses/addresses_of_president/poslanie-prezidenta-respubliki-kazahstan-nnazarbaeva-narodu-kazahstana-31-yanvarya-2017-g

*6 Указ Президента Республики Казахстан от 24 августа 2009 года № 858 «О Концепции правовой политики Республики Казахстан на период с 2010 до 2020 года». Интернет-ресурс: http://adilet.zan.kz/rus/docs/U090000858_*

procedure for their approval varies, the nature of their implementation in legal systems, their implementation, terminology is interpreted differently. The study of the process of concluding agreements under the legislation of the CIS countries makes it possible to better understand and take into account modern trends in the formation of international treaty norms and the degree of legal participation of individual states in them [2].

Osminin B.I. indicates in his work that in the UK there is a clear distinction between the operation of international treaties in international law and their operation in domestic law. In international law, a treaty becomes valid if it is ratified by the king / queen and entered into force, but in domestic terms it is not applicable until an act of parliament is passed giving it effect in the domestic sphere. Most common law countries follow this tradition and deny the direct domestic effect of international treaties without the issuance of appropriate legislation. The incorporation of treaty provisions into national law can take a number of basic forms. For example, the text of a treaty may be annexed to an act of parliament that provides that treaty provisions have the force of law. The essential provisions of the contract may be materially reproduced (including in a modified form) in laws. In addition, the law may either refer to a particular treaty and specify the circumstances under which it applies, or refer to treaties in a particular area. Finally, the contract can be implemented by the executive authorities on the basis of the law or their own powers [3, 44-53].

Thus, the rights and obligations arising from international treaties do not automatically become part of UK law. Parliament decides not on the issue of ratification or non-ratification, but how it will implement this agreement or part of it in the legislation. If the Parliament comes to the conclusion that it will not be able to fulfill the obligations under the contract, then the government rejects it.

The conclusion of international treaties in Canada is carried out by the executive authorities. Legislatures adopt acts to fulfill contractual obligations. The implementation of an international treaty is carried out through the issuance of a statute or resolution According to the decision of the Supreme Court of Canada, adopted in 2002, «the norms of international treaties are not binding in Canada until they are incorporated into Canadian law by an act of legislation» [4, 242-243].

As for domestic legislation, when analyzing the Law of the Republic of Kazakhstan «On International Treaties», typical defects were identified that contribute to the formation of various practices for applying the current legislation:

1. In accordance with paragraph 1 of Article 2-2 of the Law, the concept of concluding an international treaty is developed by the central state body in the form approved by the order of the Minister of Foreign Affairs of the Republic of Kazakhstan.

This form of the Concept includes ten main positions that the central state body must fill out, among them the following:

- the subject of regulation of the international treaty that is proposed to be concluded;
- the purpose of the international treaty that is proposed to be concluded;
- substantiation of the expediency of concluding an international treaty;
- the effect (social, financial and economic, legal, other possible effect) expected from the implementation of an international treaty in the event of its conclusion;
- expected terms of the conclusion of the international treaty;
- estimated timeframes for conducting domestic procedures necessary for the entry into force of an international treaty;
- the existence of other international treaties with a similar subject of regulation, the participants of which are the Republic of Kazakhstan and the foreign state (states) with which it is supposed to conclude an international treaty (including within the framework of international organizations)[7] .

Despite the wide range of information that is reflected in the Concept, we recommend that it be supplemented with such a criterion as «The presence of other legislative acts with a similar subject of regulation, concluded international treaties».

As you know, international treaties ratified by a country have priority over its laws (clause 3 of article 4 of the Constitution). Consequently, when planning the conclusion of an international treaty, it is necessary to make appropriate amendments to existing laws. In this regard, the addition of the form of the concept will lead to its greater informativeness and will contribute to an increase in the efficiency of planning legislative work.

7 *Приказ Министра иностранных дел Республики Казахстан «Об утверждении формы концепции заключения международного договора Республики Казахстан» от 11 марта 2014 года https://adilet.zan.kz/rus/docs/V1400009318*

2. According to the content of Article 3 of the Law, international treaties, to which the Republic of Kazakhstan intends to become a party, must be subject to legal expertise of the Ministry of Justice and scientific expertise. Because within the framework of one-article issues of both legal and scientific expertise are covered, we recommend specifying the type of expertise in each case.

In particular, part one of paragraph 2 of Article 3 of the Law reads: «International treaties, to which the Republic of Kazakhstan intends to become a party, as well as draft international treaties that have passed the examination of the Ministry of Justice of the Republic of Kazakhstan, are subject to approval by the Ministry of Foreign Affairs of the Republic of Kazakhstan».

We believe that in this case two types of expertise are implied (legal and scientific), that is, only after passing legal expertise and scientific expertise, international treaties are agreed by the Ministry of Foreign Affairs. [5].

However, scientific expertise is organized by the Ministry of Justice, but carried out by independent scientific organizations. In this case, the authorship of the conclusion of scientific expertise fully belongs to another entity, and not to the Ministry of Justice. In other words, we believe it is incorrect to indicate that the Ministry of Justice carries out all examinations of international treaties.

For reference: In accordance with paragraph 56 of Government Decree No. 386 of 06/08/2021, Scientific legal expertise of international treaties or draft international treaties is carried out by an expert or an expert commission included in the register of experts.

If it is assumed that there is only a conclusion of the legal expertise of the Ministry of Justice, then in order to eliminate the ambiguous interpretation of the clause, we recommend clarifying the wording «those who came to the mandatory legal expertise of the Ministry of Justice».

3. Paragraph 3 of Article 4 of the Law defines the following tasks of scientific expertise:

1) assessing the quality, validity, timeliness and legitimacy of participation in an international treaty, to which the Republic of Kazakhstan intends to become a party, or a draft international treaty;

2) observance in an international treaty, to which the Republic of Kazakhstan intends to become a party, or a draft international treaty of the rights and freedoms of a person and citizen guaranteed by the Constitution of the Republic of Kazakhstan;

3) determining the possible effectiveness of an international treaty, to which the Republic of Kazakhstan intends to become a party, as well as a draft international treaty;

3-1) determining the need for amendments and additions to the legislation of the Republic of Kazakhstan in connection with the conclusion of international treaties subject to ratification;

4) identifying possible negative consequences of concluding an international treaty;

5) assessing the compliance of the legislation of the Republic of Kazakhstan with an international treaty, to which the Republic of Kazakhstan intends to become a party, or with a draft international treaty.

Therefore, it is advisable to supplement paragraph 3 of Article 4 of the Law with the tasks of linguistic expertise, or separate the tasks of legal and linguistic expertise, where only the tasks of legal expertise will be reflected in one paragraph, and the tasks of linguistic expertise will be defined in another paragraph.

4. In accordance with paragraph 5 of Article 20 of the Law, general supervision and control over the implementation of international treaties of the Republic of Kazakhstan is carried out by the Ministry of Foreign Affairs of the Republic of Kazakhstan.

At the same time, in accordance with Article 21 of the Law, state bodies (in agreement with the Ministry of Foreign Affairs) make proposals for taking measures in case of violation of obligations by other participants.

Given the fact that the Ministry of Foreign Affairs exercises control under article 20 of the Law, it should also have the right to independently apply for the necessary measures.

Otherwise, the Ministry of Foreign Affairs should be empowered not to control the implementation of international treaties, but to coordinate such activities. An exception may be agreements initiated directly by the Ministry of Foreign Affairs.

In this case, it is necessary to approve the procedure for such coordination and control over the execution of international treaties, which would approve the schedules, deadlines and, possibly, the methodology for such control.

5. Subparagraph 11) of Article 1 of the Law provides for the definition of the concepts of «ratification», «approval», «acceptance» and «accession», meaning that, depending on the case, an international act having such a name, made on the basis of the relevant regulatory legal act, through which the Republic of Kazakhstan expresses internationally, its consent to be

bound by an international treaty.

In both cases, it is not entirely clear why ratification is an international act. Ratification is a purely domestic process of studying, discussing, evaluating an international treaty by the domestic authorities of a particular country regarding whether the provisions of this international treaty meet the vital interests of this state, which ends in case of approval by the adoption of a domestic act (law, decree) on ratification by domestic the country's legislative body, Parliament. We agree with the opinion of Doctor of Law, Professor M.A. Sarsembaev, which should be replaced in both definitions of the term «international act» with «domestic act» [6].

6. Article 19 of the Law defines reservations to multilateral international treaties.

Reservations to international treaties are given only in this article. However, the Convention on the Law of Treaties deals with reservations in five articles. Reservations allow the state to protect the fundamental interests of a country that has acceded to or ratified a multilateral international treaty.

Thus, Article 19 of the Convention «Formulation of reservations» states that «a State may, when signing, ratifying, accepting or approving a treaty or acceding to it, formulate a reservation, unless: a) the reservation is prohibited by the treaty; (b) the treaty provides that only certain reservations may be made, which do not include the reservation in question; or (c) in cases not covered by paragraphs (a) and (b), the reservation is incompatible with the object and purpose of the treaty»6.

In relation to domestic legislation, in our opinion, Article 20 of the Convention is of interest regarding the acceptance of reservations and objections to them: «1. A reservation expressly permitted by a treaty does not require any subsequent acceptance by the other contracting States, unless the treaty provides for such acceptance. 2. If it is clear from the limited number of States participating in the negotiations and from the object and purpose of the treaty that the application of the treaty as a whole between all its parties is an essential condition for the consent of each party to be bound by the treaty, then a reservation requires acceptance by all the parties. 3. When a treaty is a constituent instrument of an international organization, and unless it otherwise provides, a reservation requires acceptance by the competent organ of that organization. 4. In cases not covered by the preceding paragraphs, and unless the treaty provides otherwise: (a) the acceptance of a reservation by another contracting State makes the State which has formulated the reservation a party to that treaty in relation to the State which has accepted the reservation, if the treaty is in force or when it enters into force for those states; (b) An objection by another contracting State to a reservation shall not prevent the entry into force of the treaty between the State objecting to the reservation and the State which has formulated the reservation, unless the State objecting to the reservation expressly declares to the contrary; (c) An act expressing the consent of a State to be bound by a treaty and containing a reservation shall take effect as soon as at least one of the other contracting States accepts the reservation. 5. In so far as paragraphs 2 and 4 are concerned, and unless the treaty otherwise provides, a reservation shall be deemed to have been accepted by a State if it does not object to it before the end of the twelve-month period after it has been notified of such reservation, or until the date on which it expressed its consent to be bound by the treaty, whichever of these dates is the later[8] .

The ideas of Article 21 of the Convention on the legal effects of reservations and objections to reservations could be useful and interesting for the analyzed Law: «1. A reservation effective in respect of another party in accordance with articles 19, 20 and 23: (a) Modifies for the reserving State, in its relations with that other party, the provisions of the treaty to which the reservation relates, within the scope of the reservation; and (b) modifies those provisions to the same extent for that other party in its relations with the reserving State. 2. A reservation does not change the provisions of the treaty for the other parties in their relations with each other. 3. If the State objecting to the reservation did not object to the entry into force of the treaty between itself and the reserving State, the provisions to which the reservation relates shall not apply between those two States within the scope of such a reservation».

Withdrawal of reservations and objections to reservations laid down in Article 22 of the Convention could be interesting concepts for the Law, the definitions of which are well-defined: «1. Unless otherwise provided by the treaty, a reservation may be withdrawn at any time and its withdrawal does not require the consent of the State which has accepted the reservation.

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2. Unless the treaty provides otherwise, an objection to a reservation may be withdrawn at any time. 3. Unless otherwise provided by the treaty or otherwise provided: (a) the withdrawal of a reservation shall take effect in respect of the other contracting State only after that latter has received notification thereof; (b) The withdrawal of an objection to a reservation does not take effect until the reserving State has received notification thereof».

Procedural issues relating to reservations, enshrined in Article 23 of the Convention, are defined in 4 provisions: «1. A reservation, an express acceptance of a reservation and an objection to a reservation must be made in writing and communicated to the contracting States and other States entitled to become parties to the treaty. 2. If a reservation is made at the time of signature of a treaty subject to ratification, acceptance or approval, it must be formally confirmed by the reserving State when it expresses its consent to be bound by the treaty. In this case, the reservation is considered to have been made on the day of its confirmation. 3. An express acceptance of a reservation, or an objection to a reservation made before it is confirmed, does not in itself require confirmation. 4. Withdrawal of a reservation or objection to a reservation must be made in writing».

Such procedural issues would also fit in the text of the Law under consideration.

Conclusion

Analysis of the Law showed sufficient efficiency of its application, and statistical analysis revealed stability. Meanwhile, the proposals and recommendations outlined in this reference are aimed at further improving the procedure for concluding, implementing, amending and terminating international treaties of the Republic of Kazakhstan.

At the same time, we offer recommendations regarding the conduct of scientific expertise on international treaties, to which the Republic of Kazakhstan intends to become a party, as well as on draft international treaties by an authorized organization.

At the same time, objectively, there is a need for legislative consolidation of the examination by an authorized organization.

Scientific expertise, along with assessing the quality of the validity, timeliness and legitimacy of the participation of the Republic of Kazakhstan in an international treaty, is also aimed at determining the possible effectiveness of an international treaty and identifying possible negative consequences from its conclusion.

The conclusion of an international treaty is of strategic importance for the national interests of the state. In this regard, we believe that issues of national importance should be considered within the framework of state bodies and organizations accountable to them. The Institute, as a scientific organization involved in the process of rule-making and the implementation of the state policy of legal support for the activities of the state, is the most suitable organization for this.

Considering the foregoing, it is proposed to consider the possibility of introducing amendments and additions to paragraph 2 of Article 4 of the analyzed Law, according to which the scientific examination of draft international treaties will be assigned to «an authorized organization determined by the Government of the Republic of Kazakhstan», as well as, accordingly, to the Decree of the Government of the Republic of Kazakhstan dated September 14 2010 №938 «On approval of the Rules for conducting scientific expertise under international treaties, to which the Republic of Kazakhstan intends to become a party, as well as under draft international treaties».

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