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### UKRAINIAN-SWEDISH RELATIONS AND TREATIES OF THE XVII–XVIII CENTURIES\*

**ABSTRACT.** It can be said that Sweden’s appeal to Ukraine during the Thirty Years War (1618–1648) and the formation of an imperial state was quite understandable: Ukraine was the enemy of Sweden’s enemies. But the peculiarities of political and economic development of Sweden and its allies caused their claims to the West Ukrainian and Belarus lands. This made it impossible to conclude a full-fledged political treaty. The like situation is with Ukrainian-Swedish relations in 1708–1709, when Sweden was a guarantor of possession of West Ukrainian lands by Polish-Lithuanian state. Ukrainian-Swedish treaties of the XVII – early XVIII centuries had only a military-tactical character and a short-lived action.

Only a crisis after Swedish-Ukrainian forces defeat and prolonged living hand-by-hand in the Ottoman Empire (1709–1714) gradually brought royal Swedish protectorate as a form of military alliance to full-fledged recognition of Ukraine as the state and concluding treaty of political nature. Unfortunately, its implementation was very limited. In addition, the close encounter with foreign legal culture and other circumstances of Ukrainian-Swedish relations gave the impetus to reviewing the grounds of state and law of Ukraine and the emergence of the “Pacts and Resolutions of the Rights and Privileges of the Viysko Zaporozke”, known as the Constitution of Ukraine of 1710. We argue that this document together with confirmation and assecuration charters by Karl XII is not only a monument of Ukrainian constitutionalism, but also a treaty between Ukraine and its protector, the king of Sweden.

**KEYWORDS:** Constitution of Ukraine of 1710; Ukrainian-Swedish treaties; Ukrainian-Swedish relations.

#### *Ukrainian context*

Models of the statehood of European peoples in the Middle Ages and in the Early Modernity were formed in relations with their “own” or “foreign” monarchs. Such relations were entered by one or a group of social strata,

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and the object of relations were always primarily the rights and privileges of representatives of free social strata and groups, including the system of estate-representative bodies – on the one hand, the powers of the monarch, the system of subordinated to him public authorities – on the other hand.

At the same time under the rule of most monarchs there were several regions, the estates of each region entered into relations with the sovereign separately. Each region had different social, economic and legal systems, constituting legally and in fact a separate state. Long and complex monarch titles showed that a certain king, tsar, or emperor has under his authority some states, and not one.

Therefore in many cases there was no clear distinction between constitutional and international law. The process of their delineation was long – from the Westphalia treaties of the mid – XVII century to the Vienna Treaty of the early XIX century.

The main Eastern European states of that time – Rzech Pospolita, Crimean Khanate and Russia – by their legal culture were the late medieval and relied precisely on such a system of relations. The privileged social strata of Central Ukraine entered into constitutional and international relations with their monarchs.

The Cossack state was first recognized in the middle of the XVII century through the specific rights of individual strata within the Rzech Pospolita. At the same time, in this case, full-fledged statehood and a separate monarch's agreement with the population of Ukraine were not possible because they could deny the basic elements of the legal system of the Commonwealth. Attempts to reform it in order to transform Ukraine into a subject of federation were unsuccessful despite numerous projects and lengthy military confrontation. Therefore, the Ukrainian structures of the Cossack estate self-government in this system could not legally turn into full-fledged bodies of power and existed in a state of permanent war. At the same time, Ukrainians of the XVII century recognized themselves as a free people and an autonomous state, albeit not sovereign one.

Ukrainian statehood was recognized by the Crimean Khanate as autonomous in the Rzech Pospolita, but long diplomatic attempts to implement this model were not successful. Later attempts to establish the Crimean protectorate over Ukraine also did not have a stable success.

The third model of Ukrainian statehood – in relations with the tsarist government, which was constituted in the 1654 agreement, for certain period proved to be more successful than others, and turned into a mainstream of legal development of Ukraine in the second half of the XVII century. The parties had the opportunity to build relations “from a blank sheet”,

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not limited to any previous legal heritage. In spite of centralist tendencies, relations between the parties generally evolved dynamically, and the treaties with the tsar sufficiently adequately reflected the peculiarities of the political and legal evolution of Ukraine. These agreements mirrored the compromise between the main political forces in Ukraine and between Ukraine and tsarist government and became constitutional in nature and scope of legal regulation, basic documents for the development of the Ukrainian statehood at the time. They fully recognized the existence of the Ukrainian Cossack state.

In terms of violations by the tsar of norms and principles of this model after 1700 and his desire to eliminate Ukrainian state the government of Ivan Mazepa and Ukrainian political actors were forced to consider possible alternatives, but no real options existed.

#### *The first attempt*

Ukrainian-Swedish relations during this period appeared in 1631, when king Gustav Adolf, in the context of the Thirty Years War appealed to the Cossack hetman Ivan Kulaga-Petrazhytskyi with a proposal for an alliance against the Pope and the Catholic states. The Cossack republic on the border lands of the Rzech Pospolita was perceived as a state by Sweden. Although, of course, at that time this military-political creation was not a real state yet. This effort of contact provided for the betrayal of Cossacks against Rzech Pospolita and therefore was not successful, envoys were passed to government forces.

#### *Relations of the middle of the XVII century*

Active contacts were established between Ukraine and Sweden since 1651 at the time of the queen Christina and hetman Bohdan Khmelnytskyi. Since 1654, the Ukrainian party had offered to conclude a peace between Sweden and Russia, with a dual protectorate of these states in relation to Ukraine or with a guarantee of Sweden for the inviolability of Ukrainian statehood under the protectorate of the Russian tsar, and their alliance against the Rzech Pospolita. It was assumed that in the future the Ukrainian-Swedish alliance could be directed against Russia or the Ottoman Empire.

At the same time, the parties entered into a dispute over the division of the territory of the Rzech Pospolita. Hetman Khmelnytskyi sought the unification of all Ukrainian and Belarus lands in one state, and Karl X Gustav and his ally Transylvania claimed to parts of the West Ukrainian lands. The Ukrainian hetman was ready to acknowledge the Swedish protectorate with a condition for resolving the territorial question to the benefit of Ukraine, the peaceful settlement of relations with Russia and the conclusion of a tripartite alliance.

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Sweden at that time needed and received substantial Ukrainian military assistance, but was not ready to limit its expansionist aspirations.

But after the start of the Swedish-Russian war in 1655, Karl X was ready for the full-fledge recognition of Ukraine independence from the Rzech Pospolita and Russia and the establishment of own protectorate for her. This was also recognized in the Radnot treaty of Sweden with Transylvania in 1656. But both of these states claimed under this treaty on parts of the historical Ukrainian and Belarus lands.

In fact, Sweden offered Ukraine the same inadequate autonomy that it had within the Rzech Pospolita, and also claimed to some spread of Protestantism in Ukraine. Representatives of Ukraine declared unacceptability of such conditions, especially territorial. Finally, the new Swedish embassy has bypassed the issue of the territory, offering Ukraine to resolve it on it's own by agreement with the Rzech Pospolita, and insisted that Ukraine had to begin a war against Russia. This agreement was not concluded because of the refusal of the Ukrainian government and the death of hetman Bohdan Khmelnytskyi.

The treaty was concluded in the city of Korsun on October 6, 1657 by new hetman Ivan Vyhovskyi. Text of the treaty was approved by the General Council of Ukraine – with an explanation that it does not cancel the protectorate of the Russian tsar.

Of all the issues discussed by the parties, the contract settled only one – equal political and military defensive and offensive alliance was set against all enemies of the parties except Russia, against which Ukraine refused to fight and with which kept the contractual relationship. The diplomacy of the parties should also be agreed upon in cases where issues concern both of them.

The treaty was preliminary in nature and contained a link to further Ukrainian proposals that should be considered at negotiations with the Swedish king and enter into a final contract. In particular, was offered the protectorate of Sweden with conditions of recognition of Ukraine to be “politically subjective, free and not subordinated people” (*Subiectus pro liberta gente et nulli subiecta*), guarantee of its statehood and territorial integrity within limits extended on Western Ukrainian and Belarus lands, the consolidation of these provisions in the treaties of the parties with the Rzech Pospolita. Was conditioned also bilateral free trade, permission to hire Swedish military and civilian personnel, purchase of weapons.

The final agreement was never concluded. But the preliminary treaty was taken into account by the hetman Ivan Vyhovskyi government that demanded the conclusion of peace agreements with Sweden at the negotiations with other states, in particular with the Rzech Pospolita. Similarly, the treaty was recognized as valid and to a certain extent adhered by Karl X Gustav. At the

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same time, auxiliary Swedish troops were not given after the request of hetman Vyhovskyi to the king, and Sweden has entered into a truce, and subsequently a permanent peace treaty with Russia during its attack on Ukraine.

*Relations of the government of Ivan Mazepa*

In the conditions of the Northern War, Sweden and Russia were bound by treaties with the two kings of the Rzecz Pospolita. And in both cases, it was about preserving the integrity of the Rzecz Pospolita. The Ottoman Empire was also bound by the treaty on this. Regardless of the outcome of the war it overscored the desire of Ukraine to restore the unity of its eastern and western parts in one state. At the beginning of the war, Ukrainian troops were forced to fight on the part of Russia, significant were human and financial losses. But the crisis in Russian-Ukrainian relations became principal in connection with the plans of the Russian tsar Peter I to reform the social and political system of Ukraine, partly dismantling its statehood.

Negotiations between Karl XII and the Ukrainian government of Ivan Mazepa in 1708 were conducted. But rather doubtful and unlikely is information about the conclusion of a political agreement. This would contradict the alliance treaty between Sweden and the Rzecz Pospolita, could discredit the king and deprive his ally. Most likely, it was concluded an agreement about military cooperation (temporary Swedish garrisons in the fortresses, housing and supply of Swedish troops, operations management, and operations plan). But, again, the sources are too uncertain about this.

What is unconditional is the adoption by the Ukrainian government at the end of October, 1708, in one form or another of the protectorate of Karl XII, with the condition of protection against Russia. Ivan Mazepa argued that the commitments of Karl XII included also the restoration of “rights and privileges” of Ukraine and were in written form. It is not excluded, and this is indicated by the sources that Ivan Mazepa hoped that Ukraine’s withdrawal from Russian protection would be peaceful. And perhaps that it will encourage the Russian tsar to conclude an agreement with Karl XII on terms favorable for Ukraine and Sweden.

The most important and in negotiations with Karl XII for Ukraine, of course, were the preservation of its statehood and restoration of territorial integrity. Judging by the letter from Zaporozka Sich to Ivan Mazepa, the negotiations were about the double protection of Sweden and the Rzecz Pospolita. Karl XII himself soon began to proclaim that there is no word about protectorate of the Rzecz Pospolita over Ukraine. Most likely, this emphasis was not casual, it corresponded to the dominant orientation in Ukrainian society.

The conclusion of another Ukrainian-Swedish agreement took place in April 1709. This fact is quite interesting. Ukrainian state-building at that time had several centers with similar names. The main state formation can be considered Viysko Zaporozke headed by hetman. Another was the Zaporozka Sich, headed by the koshovyi otaman. Zaporozka Sich for a long time had different international legal status. It joined the Viysko Zaporozke under Russian protection in the late XVII century without its will and caused its resistance. In April 1709 Zaporozka Sich recognized its unity with the Viysko Zaporozke together with the adoption of the protectorate of Karl XII.

Both the terms of association and the terms of protectorate, however, were inaccurate, the question of the claims of the Rzecz Pospolita for these parts of the Ukrainian lands, as claimed by uncertain sources, one more time was not resolved. The terms of protectorate, as we can suppose, were an obligation to preserve the statehood of Ukraine and its liberation from Russia. In historiography, there is a well-grounded opinion practically not noticed by modern scholars regarding the great influence of this written or public oral agreement on the future formulation of the provisions of the “Pacts and Resolutions” known as the Ukrainian Constitution of 1710 – because the question was raised as to the legal consolidation of the unification of the two centers of the Ukrainian state-building.

#### *“Bender Commission”*

Another important fact of Ukrainian-Swedish cooperation, which also fundamentally influenced the development of Ukrainian constitutionalism, became the so-called “Bender Commission” – a dispute and a trial that took place in the autumn of 1709 after the death of hetman Ivan Mazepa regarding his legacy.

The sphere of financial management in Ukraine was not sufficiently ordered and state treasure was not clearly distinguished from hetman’s private costs. There was a practice of extra-legal, dependent on the circumstances solving the problem of the hetmans heritage. All this has made inevitable property dispute between the individual heir of Ivan Mazepa, his nephew Andriy Voynarovskiy, on the one hand, and the governments of the Viysko Zaporozke and Zaporozka Sich – on the other. While situated in another state and with questionable rights to execute the court functions Ukrainian officials were forced to turn to Karl XII as a mediator.

Collective appeal by governmental officials to Karl XII of October 7, 1709 – is the first document of the future litigation. This document had a much broader significance and was in fact a statement of political positions, a vision of the situation and a declaration of intentions. This monument can also be

considered as a declaration by the government to be a temporary supreme body of power in the absence of the hetman.

One of the most important topics raised in the document were Ukrainian-Swedish relations. The key point here is the assertion of the officials that they are not acknowledged with plans of the late hetman regarding the order of Ukrainian state after its future liberation with the help of Sweden, and also the request to the king to reveal the plans of the hetman and the content of the agreements between them. At the same time, it was, rather, not curiosity, but disavow of any secret agreements that were not coordinated with the government and the General Council. What is proclaimed in the document is a constant character of the Swedish protectorate, as well as the sanction of holding the hetman's election by the king, the right of the king to approve the decisions of the General Council and to be the highest judicial authority in Ukrainian affairs, his commitment to the defense of Ukraine and the preservation of the rights and privileges of the population.

Simultaneously document presenting the vision of the key elements of the treaty which the newly elected hetman had to conclude with Swedish king:

1. Swedish obligation to held the war with Russia to the full release of Ukraine (in the previously recognized borders).
2. Swedish guaranty of the fixation of the Ukrainian state and its territory in future international treaties.
3. Swedish guarantee of Ukrainian statehood and territorial integrity.

In addition, the officials insisted on the need for Sweden to conclude an alliance treaty with the Ottoman Empire and guarantee the Ukrainian state interests in it. These provisions reveal the content of Swedish protectorate over Ukraine. The authors of the document considered future treaty as a traditional, renovation of Bohdan Khmelnytskyi and Karl X alliance.

The question of the hetman's property inheritance, which authors of the document requested to solve the king of Sweden, in particular circumstances was of exceptional value. It determined the possibilities of material survival of Ukrainian Government, its diplomatic activities and military actions. This problem became the cause of the emergence of at least three more statements of the parties between October 22 and November 9, 1709. They are fully focused on the issue of inheritance and became the primary material for the trial that took place November 28–30, 1709 near city of Bender and was conducted by the commission specially appointed by Karl XII from Swedish officers. It is known that besides the statements of the parties, the commission also heard the testimony of witnesses.

The essence of the dispute and the course of events have shown a significant difference in the legal culture and state-building of Sweden and Ukraine.

It was clear to Karl XII that the individual heir of Ivan Mazepa should inherit both the power and the treasury (he immediately transferred all the property of the deceased to Andriy Voynarovskiy). On the other hand, representatives of the Ukrainian state could rely only to ambiguous legal custom. The need for disclosure of the specific content of this custom, as well as the additional argument, led to a much wider range of political and legal issues, the most important of which were, of course, the problems of character, sources and correlation of the power institutions of the Viysko Zaporozke, as well as the status of the Zaporozka Sich.

When determining the essential features of the Ukrainian political system, the officials clearly emphasized the traditional democracy, expressly condemning the authoritarian tendencies during the hetmanship of Ivan Mazepa, as well as tyranny in Russia. Undoubtedly, hetman's authority was exaggerated, and it is primarily not about the display of realities of Ukraine, but about the political and legal ideals of Ukrainian ruling elite of that time.

Thus, the hetman according to the document is a elected official. At the time of hetman's absence, the government takes over the hetman's powers and organizes elections. Hetman's power is substantially limited by the General Council. In particular, under the supervision of the General Council are public costs spending of the treasure (separated her from hetman's private funds). Hetman appoints members of the government, but may use them only for public, not his private affairs. All other officials are elected by the General Council, and approved by hetman.

One more topic of the discussion was the status of the Zaporozka Sich. The reason for the appearance of this element was the dispute about whether the Zaporozka Sich is legitimate, in the person of its leader (koshovyi otaman), to be a party to the process of hetman's property. The uncertainty of the legal status of Zaporozka Sich in relation to the Viysko Zaporozke authorities allowed Andriy Voynarovskiy to define it as a completely separate political organism that was not subject to the hetman's power. The answer of the officials for this was not legal: Zaporozka Sich is the historical beginning of the Cossacks.

The court commission prepared for Karl XII the report, on the basis of which he recognized the right to inherit Ivan Mazepa for his nephew Andriy Voynarovskiy. It is believed that the decision of the king was due to the need to borrow money that was supposedly easier to do from an individual than from the Ukrainian state treasure. But, in our opinion, the main cause of this court decision was the misunderstanding by the Swedish legal culture carriers of the categories and content of Ukrainian statehood not sufficiently legally regulated.



The “Bender commission” has become an important stage in the development of Ukrainian political and legal thought. For the first time conditions appeared for reviewing the legal grounds of the state and law of Ukraine. The discussion, for the first time after a long period, was conducted in public, rather than in a narrow circle of conspirators, put forward legal ideas, not authoritarian or violent decisions.

Important for the ideological development of emigration were strong condemnation of authoritarian methods of government, the appeal in search for a fair model of the organization of power to interpretation of historical experience. But the slogan of returning to tradition meant actually developing new state-building principles.

There is reason to assert that the need realized by the officials during the “Bender Commission” of powers correlation legal consolidation become one of the main preconditions for the emergence of the Constitution of 1710.

*Relations of the government of Pylyp Orlyk*

“Pacts and Resolutions of the Rights and Privileges of the Viysko Zaporozke”, known as the Constitution of Ukraine of 1710, are not only a monument of Ukrainian constitutionalism, but also a draft treaty between Ukraine and its protector, the king of Sweden, and this is our personal thesis, which we argue.

The Preamble to the Constitution and to the oath on its compliance by hetman Pylyp Orlyk indicates that Ukrainian-Swedish alliance is traditional and in times of hetman Bohdan Khmelnytskyi it helped Ukraine to free itself from the yoke of the Rzecz Pospolita. It is noted that the election of a new hetman was sanctioned by Karl XII.

The word “protectorate” is used ten times in the Constitution. Different contexts of its use give the grounds to define it as the supreme power of the monarch towards the voluntarily attached state that provides his no interference in internal affairs of the state and is about the foreign policy and military issues. In fact, it refers to the state, though not sovereign, in relation to which the protector acts as the guarantor of preserving statehood and territorial integrity, preserving the rights and privileges of the population. Protectorate implies certain subordination only to the monarch, and not to other states subject to him. The protectorate is defined as mutually binding and conditional. The state (free people) can refuse it if the protector violates the conditions and thus reveals his tyranny.

Constitution of 1710 records the presence of protectorate and also offers a program of further development of relations with king: guaranteeing borders of Viysko Zaporozke according to previously internationally recognized borders (Art. 2), the non-interference of other states in the affairs of Ukraine

(Art. 2), the conclusion of the treaty on the constant hereditary protectorate (Art. 2), the liberation of the territory of the Zaporozka Sich and its accession to the Viysko Zaporozke (Art. 4), the release of Ukrainian prisoners of war in Sweden (Art. 2), the inclusion in the Swedish-Russian treaty of the provisions on release of Ukrainian prisoners and compensation for damage inflicted by Russia (Art. 2).

Evidence of the implementation of the protectorate of Karl XII in relation to Ukraine and the fact that the Constitution of 1710 was also a Ukrainian-Swedish treaty is also confirmation charter of the king of May 10, 1710 (*Confirmatio Horum Pactorum a Rege Sueciae*). The document not only approves the Constitution, but also proclaims the constant character of the protectorate over Ukrainian people and the king's commitment to guarantee the provisions of the Constitution – respectively, also on the statehood and territorial integrity of Ukraine. The form of the Constitution of 1710 and its confirmation essentially corresponds to the traditional practice of approval by the monarch of a social contract – as was the case, for example, in the *Rzech Pospolita* from 1572.

It is no coincidence that on the same day another charter of Karl XII was introduced (*Diploma Assecurarium pro Duce et Exercito Zaporoviensi*), where certain provisions of the Constitution of 1710 were implemented and the king took the commitment to enter into a peace treaty with Russia only on condition that Viysko Zaporozke and the entire Ukrainian people will be liberated from the tsarist authorities, ensuring the territorial integrity of Ukraine, its freedom from external interference.

Thus, the Constitution of 1710 and the related charters of Karl XII is not only constitutional, but a set of bilateral treaties. Such way of perception of these acts is evidenced by further diplomatic documents of hetman Pylyp Orlyk's government. At the same time, a later letter from hetman Pylyp Orlyk to Karl XII introduces a certain clarification to this understanding: it is a protectorate for the time of war, which, after liberation, must be approved by a large council of privileged strata by its essence and concrete provisions of treaty.

Under various conditions and in various circumstances, the government of Pylyp Orlyk continued to adhere to this treaty of 1710. That is why we can see sharp disappointment in his correspondence with the members of the government in 1721, since the issue of Ukrainian statehood in the Swedish-Russian Nishtadt Treaty was ignored.

CONCLUSION. It can be said that Sweden's appeal to Ukraine during the Thirty Years War and the formation of an imperial state was quite understandable: Ukraine was the enemy of Sweden's enemies. But the peculiarities of political and economic development of Sweden and its allies caused their claims to

the West Ukrainian and Belarus lands. This made it impossible to conclude a full-fledged political treaty. Ukrainian-Swedish treaties of the XVII – early XVIII centuries had a military-tactical character and a short-lived action.

Only a crisis after Swedish-Ukrainian forces defeat and prolonged living hand-by-hand in the Ottoman Empire gradually brought royal Swedish protectorate as a form of military alliance to full-fledged recognition of Ukraine as the state and concluding treaty of political nature. Unfortunately, its implementation was very limited. In addition, the close encounter with foreign legal culture and other circumstances of Ukrainian-Swedish relations gave the impetus to reviewing the grounds of state and law of Ukraine and the emergence of the Constitution of 1710.

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### УКРАЇНСЬКО-ШВЕДСЬКІ ВІДНОСИНИ ТА ДОГОВОРИ XVII–XVIII СТОЛІТЬ\*

АНОТАЦІЯ. Звернення Швеції до України під час Тридцятирічної війни (1618–1648 рр.) й утворення імперської держави можна вважати цілком зрозумілим: Україна була ворогом ворогів Швеції. Однак особливості політичного та економічного розвитку Швеції та її союзників призвели до виникнення їхніх претензій на західноукраїнські та білоруські землі. Це унеможливило укладення повноцінного політичного договору. Аналогічна ситуація склалася в українсько-шведських відносинах у 1708–1709 рр., коли Швеція була гарантом володіння західноукраїнськими землями польсько-литовською державою. Українсько-шведські договори XVII – початку XVIII ст. мали лише військово-тактичний характер і короточасну дію.

Лише під впливом кризи після розгрому шведсько-українських військ і тривалого проживання пліч-о-пліч в Османській імперії (1709–1714 рр.), королівський шведський протекторат як форма військового союзу поступово прийшов до повноцінного визнання України державою й укладення договору політичного характеру. На жаль, його реалізація мала досить обмежений характер. Крім того, тісне знайомство із зарубіжною правовою культурою та інші обставини українсько-шведських відносин дали поштовх до перегляду основ державно-правового устрою України та призвели до появи “Пактів і Конституцій прав і вольностей Війська Запорозького”, відомих як Конституція України 1710 р. Ми стверджуємо, що цей документ, разом із підтверджувальними грамотами Карла XII, є не лише пам’яткою українського конституціоналізму, а й договором між Україною та її покровителем – королем Швеції.

Ключові слова: Конституція України 1710 р.; українсько-шведські договори; українсько-шведські відносини.

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