

## **Introduction to the Law of Treaties**

A treaty is a written international agreement concluded between States or other persons of International Law and governed by International Law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation. In English, the term ‘treaty’ is used as a generic term embracing all kinds of international agreements in written form. In addition to the term ‘treaty’, many other terms are used, such as ‘accord’, ‘act’, ‘arrangement’, ‘charter’, ‘covenant’, ‘convention’, ‘declaration’, ‘general act’, ‘pact’, ‘protocol’, ‘statute’, as well as the term ‘agreement’ itself. Whatever the appellation of the agreement, it does not affect its validity under International Law.

Treaties can be traced back as far as the early-recorded history of Mankind. Evidence for their existence has been found throughout the history. Treaties have been the major legal instruments for regulating relations between States. States concluded treaties in every conceivable subject. Ten of thousands treaties have been registered with the United Nations since 1946. Until 1980, treaties had been governed by international customary law. In 1969, the Vienna Convention on the Law of Treaties was signed, codifying and developing existing customary rules; it came into force in 1980.

The 1969 Vienna Convention on the Law of Treaties defines ‘treaty’ as ‘an international agreement concluded between States in written form and governed by International Law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation.’ It further provides that it ‘does not apply to international agreements concluded between States and other subjects of international law or between such other subjects of international law, or to international agreements not in written form’. These provisions exclude agreements between states which are governed by other than International Law, agreements between States and international organizations or between international organizations, and oral agreements. The reason for the exclusion of these types of international agreements is to avoid complication and complexity if they are included in a single convention with written agreements between States, since the rules governing them differ in certain aspects from the rules governing written agreements between States. A special convention applicable to agreements between states and international organizations, or between international

organizations, namely “the Convention on the Law of Treaties between States and International Organizations or between International Organizations”, was signed in 1986. However, this Convention has not yet entered into force.

The following sections are devoted to the rules applicable to the written agreements between States as provided by the 1969 Vienna Convention on the Law of Treaties. However, the rules provided by this Convention are not inclusive; other rules existed under customary international law continue to govern questions not regulated by the Convention.

## **Formation and Conclusion of Treaties**

Treaties may be concluded by States in any manner they wish. There are no obligatory prescribed forms or procedures to be followed. Negotiating,

formulating, signing and adopting a treaty are subject to the intention and consent of the contracting States. However, the 1969 Convention on the Law of Treaties provides general rules applicable to the conclusion of treaties, rules regarding the capacity and the competent persons to conclude treaties, the adoption and authentication of the text of treaties, and the adoption of treaties.

### **1. The Capacity to Conclude Treaties**

Under the Convention, every State possesses capacity to conclude treaties. Since States are represented by persons, the Convention provides rules to ensure that persons representing States have the power to adopt or authenticate the text of a treaty, or to express the consent of the State bound by a treaty. Such persons must produce what is known as “full powers”. “Full powers” refers to the document issued by the competent authority of the concerned State certifying that the persons represent it. This requirement is necessary to ensure the States parties to the treaty that they are dealing with the competent persons. However, there are certain persons who need not to produce the “full powers”. These persons are:

- (1) Heads of States, heads of governments and the ministers for foreign affairs, for the purpose of performing all acts related to the conclusion of a treaty;
- (2) Heads of diplomatic missions, for the purpose of adopting the text of a treaty between their States;
- (3) Representatives accredited by States to an international conference or to international organization or one of its organs, for the purpose of adopting the text of a treaty in that conference, organization or organ.

### **2. Adoption and Authentication of the Text of Treaties** [8]

Once a draft of a treaty has been agreed upon by the competent persons, several stages need to be followed before it becomes legally binding. First, the text of the treaty has to be adopted. The adoption of the text of a treaty implies that the form and content of the text of the proposed treaty are settled. It takes place by the consent of all the States participating in its drawing up, except the adoption at an international conference, which takes place by the vote of two-third of the States present and voting, unless by the same majority they decide to apply a different

rule. The adoption of the text of a treaty does not mean that the participating States have expressed consent to be bound by the treaty, or that the treaty has been adopted.

Second, the text of a treaty has to be authenticated. Authentication is a procedural step whereby the text of the treaty is established as correct and genuine, and not subject to alteration. It is necessary to enable the States parties to the treaty to know definitively its content so that there will be no confusion as to its exact terms. The authentication of the text of a treaty takes place according to the procedure provided in the text or agreed upon by the States participating in its drawing up. Failing such procedure, authentication may take place by the signature, signature *ad referendum* or initiating by the representatives of the participating States.

### **3. The Adoption of Treaties**

A treaty has to be adopted by the participating States to become binding upon them. States adopt a treaty by giving their consent to it. The consent of the States parties to a treaty is an essential factor because States are bound only by their consent. The consent may be expressed by signature, exchange of instruments constituting a treaty, ratification, acceptance, approval or accession, or by any other means if so agreed.

#### **(1) Consent by signature**

A State may be regarded as consented to a treaty by signature when the treaty provides that signature shall have that effect, when it is established that the negotiating States were agreed that signature should have that effect, or when the intention of the State to give that effect to the signature appears from the full powers of its representatives or was expressed during the negotiation. Signing the treaty means officially affixing the names of the representatives of the contracting States.

The act of signature is usually a formal event. Often in important treaties, heads of States formally affix their signatures in a ceremony. Usually in multilateral conventions, the representatives of the participating States sign the treaties during a special closing session held for that reason.

(2) Consent by exchange of instruments constituting a treaty

A State may be regarded as consented to a treaty by an exchange of instruments constituting a treaty when the treaty provides that the exchange of such instrument has that effect, or when it is established that the States were agreed that the exchange of the instrument should have that effect. Nowadays, often each State signs an instrument constituting a treaty and sends it to the other State (or States) for its signature.

(3) Consent by ratification, acceptance or approval

The signing of the treaty by the representative of a State is either a means of expressing the final consent of the State to be bound by the treaty, or an expression of provisional consent subject to ratification, acceptance or approval. The effect of signature depends upon the terms of the treaty, the agreement of the negotiating States or their intention. If the treaty is subject to ratification (acceptance or approval), then it does not become binding until it is ratified by competent authority of contracting State, namely the head of the State. Ratification by the competent authority of the contracting State is a step well established historically to ensure that the representative of the State did not exceed his powers or instructions with regard to the conclusion of the treaty. It allows a State to examine the provisions of a treaty before undertaking formal obligations. Moreover, it enables a State, in the period between signature and ratification, to pass the required legislation or to obtain the required approval. The question of how a state ratifies treaties is a matter for its internal law alone. The rules related to ratification vary from State to State.

The consent of a state to be bound by a treaty is expressed by ratification (acceptance or approval) when the treaty provides for such consent to be expressed by means of ratification, when it is established that the negotiating states were agreed that ratification should be required, when the representatives of the State has signed the treaty subject to ratification, or when the intention of the States to sign the treaty subject to ratification appears from the full powers of its representative or was expressed during the negotiation.

Ratification occurs when instruments of ratification are exchanged between the contracting States, or are deposited with the depositary. In the case of multilateral

treaty, it usually provides that the instruments of ratification should be deposited with the State or the international organization that is appointed by the treaty to act as the depositary.

#### **(4) Consent by accession**

In addition to signature and ratification, a State may become a party bound by a treaty by accession. Accession is a formal acceptance of a treaty by a State which did not participate in negotiating and signing it. It is possible if the treaty provides that consent to it may be expressed by accession, if it is established that the negotiating States were agreed that consent may be expressed by accession, or if all the States parties to the treaty have subsequently agreed that consent may be expressed by accession. Accession has the same effects as signature and ratification combined. It is the practice in the modern times that certain treaties remain open for accession by particular States for some periods.