International Treaties Seminar: Road Safety

Participation in multilateral treaties

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Treaties

- International agreements concluded between States or/and international organizations 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.
Treaties

- Treaties are drawn up by the negotiating States (and/or international organizations).

- Text is authenticated (established as authentic and definitive) by a procedure agreed upon by States participating in its drawing up (signature, initialing, adoption, etc.)

- Original is prepared on basis of the agreed and authenticated text.
Secretary-General’s Role as Depositary

- Multilateral treaties normally designate a depositary.

- The depositary begins to perform his role, once the multilateral treaty is adopted.

- Original of a multilateral treaty is prepared by the depositary on basis of text as adopted.
Secretary-General’s Role as Depositary

- Secretary-General is designated as Depositary of 560 multilateral treaties.

- These treaties provide a comprehensive network of legal norms affecting international behavior.

- Some treaties have significant implications for individuals and communities.

- And business activities of corporations.
The Secretary-General is not obligated to accept the depositary role but normally does, where:

- It is an open multilateral treaty of a universal nature;
- It has been adopted by the General Assembly;
- Concluded by a conference convened by a UN organ;
- Regional treaties drawn up within the framework of the regional economic commissions.
Secretary-General’s Role as Depositary

- The Secretary-General is responsible for **ensuring the proper execution** of all treaty actions relating to a treaty.

- Guided in the performance of the depositary functions by the following:
  - Provisions of the relevant treaty (final clauses);
  - The practice of the S-G as depositary (Summary of Practice of the Secretary-General as Depositary);
  - Articles 76 and 77 of the Vienna Convention on the Law of Treaties, 1969;
  - Resolutions of the GA and other UN organs;
  - International law.

- The Secretary-General provides advice and assistance relating to the conclusion of such treaties, particularly on final clauses (ST/SGB/2001/7 of 28 August 2001).
Status of Treaties Deposited with the Secretary-General

- Secretary-General publishes "The Multilateral Treaties Deposited with the Secretary-General".
  - The most comprehensive collection of this type in the world.
  - Provides details on the status of the multilateral treaties deposited with the Secretary-General.
    - signatures, ratifications, declarations, reservations, etc.
    - Updated daily.
    - The Secretary-General depositary notifications are daily posted on the Internet and sent by e-mail by subscription.
Depositary and Administrative Functions

- The Secretary-General is given numerous administrative functions under the multilateral treaties as well.

  - E.g., collect information, convene and arrange meetings of the parties, make reports, dispatch study groups, etc.

  - However, he is not disposed to being allocated such functions in his capacity as depositary.
Encouraging Wider Participation

- In 2000, the Millennium Year, a campaign to encourage wider participation in the multilateral treaties deposited with the Secretary-General.
  - A key awareness raising effort.
  - Many treaties negotiated with meticulous care and adopted with great enthusiasm have, after many years, not achieved universal participation.
  - Some not even in force.
- The Millennium Summit Treaty Event proved to be a major success
  - decided to hold such an event each year and
  - 1878 treaty actions have been deposited since 2000.
Training

- Assistance is provided to countries to become party to treaties. i.e., to sign and ratify, accede to or undertake other treaty actions and to draft final clauses.
  - Secretariat has prepared a treaty handbook to provide guidance to countries to undertake treaty actions.
  - It has also prepared a final clauses handbook to provide a reference tool to draft final clauses of multilateral treaties.
  - Handbooks are available in all UN official languages.
  - Handbooks are supplemented with training sessions for government officials and others.
  - Training sessions are conducted in New York and in the regions.
Final clauses
Signature

- No positive legal obligations.

- Indicates intention to express consent to be bound.

- Creates an obligation to refrain in good faith from acts that would be contrary to the object and purpose of a treaty (until it shall have made its intention clear not to become a party to the treaty – art. 18 VCLT).

- No time limit for ratification.
Who Can Sign a Multilateral Treaty?

- Head of State.
- Heads of Government.
- Minister for Foreign Affairs.
- Acting or *Ad Interim* Head of State or Government or Minister for Foreign Affairs.
- All other representatives must be in possession of “full powers.”
Signature
Depositary Review

- Is the treaty open for signature?
- Does the treaty allow your State to sign?
- Who will sign?
- Are full powers required?
- Appointment for signature.
Final Clauses: How to Become Party to a Multilateral Treaty?

- Signature + Consent to be bound
  - Referred to as “Simple Signature” + ratification, acceptance or approval.
- Definitive Signature.
- Accession.
- Formal confirmation.
- Succession.
- Deposit of instruments.
Instrument of Consent to Be Bound

- Identify treaty.
- Declaration of undertaking
  - Expression of intent of the Government to be bound by the treaty and to undertake faithfully to observe and implement its provisions.
- Issued and signed
  - Head of State or Government or the MFA or by a person exercising the power of one of the three authorities *ad interim*.
- Dated
Consent to be Bound
Additional Requirements

- Mandatory Declarations.
- Optional Declarations.
- Notifications.
Final Clauses
Entry into force

- Treaties enter into force in accordance with their final provisions:
  - Upon a certain number of States depositing instruments of ratification;
  - A specific time after a certain number of States have deposited instruments of ratification;
  - Upon a certain percentage, proportion or category of States depositing instruments of ratification;
  - On a specific date.
Reservations

- A reservation is an statement, however phrased or named, which purports to exclude or modify the legal effects of the treaty provisions.

- Legally binding, so, it must be included in a duly signed instrument of ratification, accession, etc. or signed separately.

- Made at the time of expression of consent to be bound. (May be done upon signature but must be confirmed upon deposit of instrument of ratification, accession, etc.)

- Modification, withdrawal and late reservations.
Reservations

- Reservations
  - Authorized?
  - Prohibited?
  - Silent?
Amendments

- In the past, treaties rarely included amendment provisions.

- Today, most contemporary treaties include a mechanism for their amendment.

- Amendment procedures: diverse and often elaborate.

- Amendment procedures have caused practical difficulties.
Provisions on amendments should include rules governing:

- Proposal of amendments (by a Party).
- Submission of the amendment proposal for circulation to all Parties (normally by the relevant secretariat).
- Adoption procedures (if including a specific proportion of votes, clearly indicating whether this proportion relates to all the Parties or all the Parties present at the time that the vote is taken).
- Circulation of the adopted amendment by the depositary.
- Consent to be bound (acceptance/ratification).
- Entry into force (if including a specific proportion, indicating whether the number of acceptances is calculated on the basis of the number of Parties at the time of adoption or at the time of acceptance).
- Effect (binding only those that accepted or binding all).
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