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AN APPRAISAL OF INSTRUMENTS OF EXTERNAL
RELATIONS UNDER THE INTERNATIONAL LAW

Prof. P. E. O. Oguno PhD
Okafor Chimaobi Esq



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¹Prof. P. E. O. Oguno PhD
Faculty of Law
Anambra State University
Anambra State Nigeria (Now Chukwuemeka Odumegwu Ojukwu University)
Email: poguno@yahoo.com

²Okafor Chimaobi Esq
Faculty of Law
Chukwuemeka Odumegwu Ojukwu University
Igbariam, Nigeria.

Abstract

International treaties are most frequent means of creating international rules or standards that States and other actors of international community are supposed to abide by. Their importance has been highly increased in the context of modern international law. The enforcement quality of international law was often questioned which has been settled by the increasing treaty making process. Further the universality of human rights through the international treaties can be looked as an achievement. The international law believes that nothing can be done without or against the will of a sovereign State. International treaty law in this sense can also be called as a meeting point of the necessity to take international obligations.

Keywords: *Relations, Treaties, Instruments and International Law*

1. INTRODUCTION

Treaties form the basis of most parts of modern international law. They serve to satisfy a fundamental need of States to regulate by consent issues of common concern, and thus to bring stability into their mutual relations. As an instrument for ensuring stability, reliability and order in international relations, treaties are one of the most important elements of international peace and security. This is why, from the earliest days in the history of international law, treaties have always been the primary source of legal relations between entities today known as States. The Preamble of the VCLT itself emphasizes the fundamental role of treaties in the history of international relations and especially the importance of treaties for developing peaceful co-operation among nations. This fundamental importance of treaties proved to be a continuum, while the rules and procedures of treaty-making, as well as the contents of international agreements, changed through the centuries¹.

Definition of Key Words

A treaty is “an agreement formally signed, ratified, or adhered to between two nations or sovereigns; an international agreement concluded between two or more states in written form and governed by international law”².

External Relations

International organizations and institutions are by definition endowed with international legal personality (International Organizations or Institutions, General Aspects). By virtue of this status they have the capacity to enter into legal relations with States and other subjects of international law. As a general rule, international organizations also enjoy legal personality under domestic law and may therefore equally entertain external legal relations on the domestic level.

This relationship is what is referred to as external relations³.

State party

A ‘State party’ to a treaty is a country that has ratified or acceded to that particular treaty, and is therefore legally bound by the provisions in the instrument⁴.

Validity of Treaties

The term validity of treaties designates in a comprehensive manner the conditions a treaty must fulfill in order to produce a legal effect and the consequences in case of non-compliance (Compliance). These conditions concern (a) the power to conclude an international treaty (Treaties,

¹Dörr O., Schmalenbach K. (2012) Introduction: On the Role of Treaties in the Development of International Law. In: Dörr O., Schmalenbach K. (eds) Vienna Convention on the Law of Treaties. Springer, Berlin, Heidelberg

²Black's Law Dictionary, 9th ed. 2009

³Max Planck Encyclopedia of Public International Law [MPEPIL], 2009

⁴Treaty Reference Guide, 1999

Conclusion and Entry into Force ; Treaty Making Power); (b) the consent of the parties; (c) the legality of treaties; and (d) requirements for registration and publication (Treaties, Registration and Publication)⁵.

Instruments

International legal instruments generally include a Preamble (stating the reasons for and underlying understandings of the drafters and adopters of the instrument) and a series of 'articles', which lay out the obligations of those States choosing to be bound by it and procedural matters involving the treaty.

2. THE HISTORY OF TREATY AS INSTRUMENT OF EXTERNAL RELATIONS

The 1648 Peace Treaties of Westphalia established the framework for modern treaties and recognised the right of the sovereign to govern free from outside interference.

The Vienna Convention on the Law of Treaties is the UN agreement that codifies the rules that guide treaty relations between States. The Convention provides an international legal framework for these relations in times of peace (the effect on treaties of the outbreak of hostilities between States is explicitly excluded from the reach of the Convention). This framework includes the rules on the conclusion and entry into force of treaties, their observance, application, interpretation, amendment and modification, and rules on the invalidity, termination and suspension of the operation of treaties. By providing this legal framework, the Convention promotes the purposes of the UN set forth in its Charter, including the maintenance of international peace and security, the development of friendly relations between states and the achievement of cooperation among nations.

The treaty text may provide for the manner by which it takes effect. Generally, treaties will enter into force when it has been signed and ratified by a certain number of parties. Parties to a treaty may ratify a treaty with reservations or other declarations unless the terms of the treaty place restrictions on those actions. A reservation is a country's attempt to modify certain terms of the treaty, as it applies between itself and other countries.

Multilateral treaties are published in sets such as the United Nations Treaty Series (UNTS). Only treaties deposited with the UN Secretary General become part of the UNTS. Although most multilateral (and many bilateral) treaties are deposited with the UN as a matter of course, states are under no specific obligation to do so. A good source of information on the role of the UN as a treaty depository is the Summary of Practice of the Secretary-General as Depository of Multilateral Treaties on the UN website⁶.

⁵Max Planck Encyclopedia of Public International Law (MPEPIL), 2009

⁶<http://unimelb.libguides.com/internationallaw/treaties>

An Introduction to the Vienna Convention on the Law of Treaties

The Vienna Convention on the Law of Treaties of 1969 (VCLT) is the main instrument that regulates treaties. It defines a treaty and relates to how treaties are made, amended, interpreted, how they operate and are terminated. It does not aim to create specific substantive rights or obligations for parties – this is left to the specific treaty (i.e. the Vienna Convention on Diplomatic Relations creates rights and obligations for States in their diplomatic relations).

VCLT governs treaties irrespective of its subject matter or objectives – e.g.: treaties to regulate conduct of hostilities (Geneva Conventions on 1949); treaties setting up an international organisation (UN Charter of 1945); and treaties regulating matters between States and other parties on the law of the sea (UN Convention on the Law of the Sea of 1982).

VCLT is a “treaty on treaties”.

What is a treaty?

Article 2(1) (a) of the VCLT defines a treaty as:

“treaty” means 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;

Analysis of definition

(1) International agreement concluded between States governed by international law

The VCLT relates only to treaties concluded between States who are parties to the VCLT, and for treaties that entered into force after the VCLT came into force (The VCLT came into force in 1980. See Article 4 of the VCLT). NB: this does not prevent a provision of the VCLT that reflects customary international law from applying to a treaty even if it does not meet the above requirements. In the *Kasikili/Sedudu Island Case* the ICJ held that Article 31 of the VCLT on treaty interpretations reflected customary international law and that therefore applied despite the fact that both Botswana and Namibia were not parties to the VCLT and the treaty in question entered into force in 1890.

VCLT applied to treaties between States. This does not mean that treaties cannot be concluded between other subjects of international law. As the International Law Commission pointed out in its commentaries, Articles 1, 2 (a) and 3 is not “in anyway intended to deny that other subjects of international law, such as international organisations and insurgent communities, may conclude treaties.” See Articles 3 and 4 of the VCLT. The latter says:

The present Convention applies to any treaty which is the constituent instrument of an international organization and to any treaty adopted within an international organization without prejudice to any relevant rules of the organization⁷.

3. TREATY AS A SOURCE OF INTERNATIONAL LAW

The main sources of international law are treaty law, international customary law and general principles of law recognized by civilized nations.

Treaties and Conventions are written agreements that states willingly sign and ratify and as such are obliged to follow. Such agreements, which are also called statutes or protocols, given the mutual relations between states. They are, however, only binding on those states that have signed and also ratified the particular treaty.

The Vienna Convention of the Law of Treaties of 1969 sets out the fundamental legal rules relating to treaties. The Vienna Convention defines a treaty, identifies who has the capacity to conclude a treaty, and outlines treaty interpretation, disputes, and reservations.

The basis of treaty law is ‘pactasuntservanda’, which means that agreements must be honoured and adhered to⁸.

According to the International Law Commission, "the law of treaties is not itself dependent on treaty, but is part of general customary international law. Queries might arise if the law of treaties were embodied in a multilateral convention, but some States did not become parties to the convention, or became parties to it and then subsequently denounced it; for they would in fact be or remain bound by the provisions of the treaty in so far as these embodied customary international law *de legelata*. No doubt this difficulty arises whenever a convention embodies rules of customary international law. In practice, this often does not matter. In the case of the law of treaties it might matter — for the law of treaties is itself the basis of the force and effect of all treaties. It follows from all this that if it were ever decided to cast the Code, or any part of it, in the form of an international convention, considerable drafting changes, and possibly the omission of some material, would almost certainly be required⁹."

3.1 TREATIES AND THE DEVELOPMENT OF INTERNATIONAL LAW

In the Declaration of the High-level Meeting on the Rule of Law, Member States reaffirmed that States shall abide by all their obligations under international law Treaties and the Development of International Law

⁷<https://ruwanthikagunaratne.wordpress.com/2013/05/26/law-of-treaties-vienna-convention-on-law-of-treaties-1969/>

⁸<https://www.diakonia.se/en/IHL/The-Law/International-Law1/Sources-of-IL/>

⁹https://legal.un.org/ilc/summaries/1_1.shtml

In doing so, Member States echoed the Preamble of the Charter of the United Nations which states as one of the aims of the UN “to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained”.

The Secretary-General is the main depositary of multilateral treaties in the world. At present, over 560 multilateral treaties are deposited with the Secretary-General, addressing a broad range of issues including the human rights, disarmament and the environment. As depositary, the Secretary-General is responsible for ensuring the proper execution of all treaty actions relating to that treaty. In practice, the Treaty Section of the United Nations Office of Legal Affairs carries out depositary functions on behalf of the Secretary-General.

In accordance with Article 102 of the Charter of the United Nations, and with the aim of ensuring that all treaties and international agreements remain in the public domain, the Secretariat of the United Nations, through the Treaty Section of the Office of Legal Affairs, also supports the registration and subsequent publication of all treaties concluded by Member States.

In fulfillment of these functions, the Secretary-General maintains a comprehensive on-line resource, the United Nations Treaty Collection, which provides access to up-to-date information on the status of all Multilateral Treaties Deposited with the Secretary-General and the tens of thousands of treaties registered by States in accordance with Article 102 of the Charter¹⁰.

STATUTORY PROVISION ON THE VALIDITY, INVALIDITY, TERMINATION AND SUSPENSION OF THE OPERATION OF TREATIES

SECTION 1: General Provisions

Article 42 Validity and continuance in force of treaties

1. The validity of a treaty or of the consent of a State to be bound by a treaty may be impeached only through the application of the present Convention.
2. The termination of a treaty, its denunciation or the withdrawal of a party, may take place only as a result of the application of the provisions of the treaty or of the present Convention. The same rule applies to suspension of the operation of a treaty.

SECTION 2: Invalidity of Treaties

Article 46 Provisions of internal law regarding competence to conclude treaties

1. A State may not invoke the fact that its consent to be bound by a treaty has been expressed in violation of a provision of its internal law regarding competence to conclude treaties as invalidating its consent unless that violation was manifest and concerned a rule of its internal law of fundamental importance.

¹⁰<https://www.un.org/ruleoflaw/thematic-areas/international-law-courts-tribunals/treaties-and-the-development-of-international-law/>

2. A violation is manifest if it would be objectively evident to any State conducting itself in the matter in accordance with normal practice and in good faith.

SECTION 3: Termination and Suspension of the Operation of Treaties

Article 60 - Termination or suspension of the operation of a treaty as a consequence of its breach

1. A material breach of a bilateral treaty by one of the parties entitles the other to invoke the breach as a ground for terminating the treaty or suspending its operation in whole or in part.
2. A material breach of a multilateral treaty by one of the parties entitles:
 - (a) the other parties by unanimous agreement to suspend the operation of the treaty in whole or in part or to terminate it either: in the relations between themselves and the defaulting State, or as between all the parties;
 - (b) a party specially affected by the breach to invoke it as a ground for suspending the operation of the treaty in whole or in part in the relations between itself and the defaulting State;
 - (c) any party other than the defaulting State to invoke the breach as a ground for suspending the operation of the treaty in whole or in part with respect to itself if the treaty is of such a character that a material breach of its provisions by one party radically changes the position of every party with respect to the further performance of its obligations under the treaty.
3. A material breach of a treaty, for the purposes of this article, consists in: a repudiation of the treaty not sanctioned by the present Convention; or the violation of a provision essential to the accomplishment of the object or purpose of the treaty.
4. The foregoing paragraphs are without prejudice to any provision in the treaty applicable in the event of a breach.
5. Paragraphs 1 to 3 do not apply to provisions relating to the protection of the human person contained in treaties of a humanitarian character, in particular to provisions prohibiting any form of reprisals against persons protected by such treaties¹¹.

4. PROCEDURES FOR VALIDATING TREATY UNDER THE INTERNATIONAL LAW

Acceptance and Approval

The instruments of "acceptance" or "approval" of a treaty have the same legal effect as ratification and consequently express the consent of a state to be bound by a treaty. In the practice of certain states acceptance and approval have been used instead of ratification when, at a national level, constitutional law does not require the treaty to be ratified by the head of state¹².

¹¹[Art.60, Vienna Convention on the Law of Treaties 1969]

¹²[Arts.2 (1) (b) and 14 (2), Vienna Convention on the Law of Treaties 1969]

Accession

"Accession" is the act whereby a state accepts the offer or the opportunity to become a party to a treaty already negotiated and signed by other states. It has the same legal effect as ratification. Accession usually occurs after the treaty has entered into force. The Secretary-General of the United Nations, in his function as depositary, has also accepted accessions to some conventions before their entry into force. The conditions under which accession may occur and the procedure involved depend on the provisions of the treaty. A treaty might provide for the accession of all other states or for a limited and defined number of states. In the absence of such a provision, accession can only occur where the negotiating states were agreed or subsequently agree on it in the case of the state in question¹³.

Act of Formal Confirmation

"Act of formal confirmation" is used as an equivalent for the term "ratification" when an international organization expresses its consent to be bound to a treaty¹⁴.

Adoption

"Adoption" is the formal act by which the form and content of a proposed treaty text are established. As a general rule, the adoption of the text of a treaty takes place through the expression of the consent of the states participating in the treaty-making process. Treaties that are negotiated within an international organization will usually be adopted by a resolution of a representative organ of the organization whose membership more or less corresponds to the potential participation in the treaty in question. A treaty can also be adopted by an international conference which has specifically been convened for setting up the treaty, by a vote of two thirds of the states present and voting, unless, by the same majority, they have decided to apply a different rule¹⁵.

Amendment

The term "amendment" refers to the formal alteration of treaty provisions affecting all the parties to the particular agreement. Such alterations must be effected with the same formalities that attended the original formation of the treaty. Many multilateral treaties lay down specific requirements to be satisfied for amendments to be adopted. In the absence of such provisions, amendments require the consent of all the parties¹⁶.

Authentication

The term "authentication" refers to the procedure whereby the text of a treaty is established as authentic and definitive. Once a treaty has been authenticated, states cannot unilaterally change its provisions. If states which negotiated a given treaty do not agree on specific procedures for

¹³[Arts.2 (1) (b) and 15, Vienna Convention on the Law of Treaties 1969]

¹⁴[Arts.2 (1) (b bis) and 14, Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations 1986]

¹⁵[Art.9, Vienna Convention of the Law of Treaties 1969]

¹⁶[Art.40, Vienna Convention of the Law of Treaties 1969]

authentication, a treaty will usually be authenticated by signature, signature ad referendum or the initialing by the representatives of those states¹⁷.

Correction of Errors

If, after the authentication of a text, the signatory and contracting states are agreed that it contains an error, it can be corrected by initialing the corrected treaty text, by executing or exchanging an instrument containing the correction or by executing the corrected text of the whole treaty by the same procedure as in the case of the original text. If there is a depositary, the depositary must communicate the proposed corrections to all signatory and contracting states. In the UN practice, the Secretary-General, in his function as depositary, informs all parties to a treaty of the errors and the proposal to correct it. If, on the expiry of an appropriate time-limit, no objections are raised by the signatory and contracting states, the depositary circulates a process-verbal of rectification and causes the corrections to be effected in the authentic text(s)¹⁸.

5. Declarations and Treaties under the International Law

Sometimes states make "declarations" as to their understanding of some matter or as to the interpretation of a particular provision. Unlike reservations, declarations merely clarify the state's position and do not purport to exclude or modify the legal effect of a treaty. Usually, declarations are made at the time of the deposit of the corresponding instrument or at the time of signature.

The term "declaration" is used for various international instruments. However, declarations are not always legally binding. The term is often deliberately chosen to indicate that the parties do not intend to create binding obligations but merely want to declare certain aspirations. An example is the 1992 Rio Declaration. Declarations can however also be treaties in the generic sense intended to be binding at international law. It is therefore necessary to establish in each individual case whether the parties intended to create binding obligations. Ascertaining the intention of the parties can often be a difficult task. Some instruments entitled "declarations" were not originally intended to have binding force, but their provisions may have reflected customary international law or may have gained binding character as customary law at a later stage. Such was the case with the 1948 Universal Declaration of Human Rights. Declarations that are intended to have binding effects could be classified as follows:

- a. A declaration can be a treaty in the proper sense. A significant example is the Joint Declaration between the United Kingdom and China on the Question of Hong Kong of 1984.
- b. An interpretative declaration is an instrument that is annexed to a treaty with the goal of interpreting or explaining the provisions of the latter.
- c. A declaration can also be an informal agreement with respect to a matter of minor importance.

¹⁷[Art.10, Vienna Convention on the Law of Treaties 1969]

¹⁸[Art.79, Vienna Convention on the Law of Treaties 1969]

- d. A series of unilateral declarations can constitute binding agreements. A typical example are declarations under the Optional Clause of the Statute of the International Court of Justice that create legal bonds between the declarants, although not directly addressed to each other. Another example is the unilateral Declaration on the Suez Canal and the arrangements for its operation issued by Egypt in 1957 which was considered to be an engagement of an international character.¹⁹

CONCLUSION

In conclusion, this paper has basically highlighted the features and importance of international treaties from the perspective of international law. Furthermore, the issue of reservation in the treaty making process has been explained to be losing its significance as it isolates the State from the global arena.

RECOMMENDATIONS

States must continue to relate with each other and TREATY is an important means for this relationship. I therefore believe that states should be encouraged to obey the treaties that they enter with themselves and International organizations.

Therefore I will advise that states and non-state actors should ensure that treaties that they enter with each other will be for the peace and prosperity of the entire human race.

¹⁹ [Art.42, Vienna Convention on the Law of Treaties 1969]