Public International Law

(Lecture 4)

UNIT III :- THE SOURCES OF INTERNATIONAL LAW

1. Article 38 of the ICJ Statutes
2. Treaties: Concept, Conclusion, Reservation, Conditions of Validity, Interpretation, Termination
3. Statute of the International Court of Justice (Article 38)
4. The Vienna Convention on the Law of Treaties (1969)

? ICJ, Case Concerning the Gabcikovo-Nagymaros Project (Hungary/Slovakia)

Sources of International Law

It is an obligation on the subjects of international law to observe the rules of international law. A question arises as to from where rules have come into existence in international law? Methods by which these rules have been discovered or created are known as the sources of international law. But what are the methods by which rules have been discovered or created, or to say, what are the sources of international law or not precisely clear in the absence of any codified rules in this regard. International law commission while making survey of international law with a view to select the topics for codification, discussed the topic of "sources of international law" for codification. However, it decided not to place the topic on the list of the suitable topics for codification. It was considered by members that from the point of view of clarity the codification of the sources of international law would have been more disadvantages than advantages. In the absence of any codified law on the sources of international law, article 38 of the statute of international Court of Justice has become relevant which directs the court to apply:

a) International conventions, whether general or particular, establishing rules expressly recognised by the contesting States;
b) International custom, as evidence of a general practice accepted as Law;
c) The general principles of law recognised by civilised nations;
d) Subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.

2. This provision shall not prejudice the power of the Court to decide a case *ex aequo et bond,* if the parties agree thereto.

The above is the text of highest authority. It is generally regarded as a complete statement on the sources of International law, despite the fact that the Article does not refer any where the expression 'sources'. They are applied not only by the international Court of Justice but also represent the practice of tribunals. A point which is relevant to note is that the court is expected to apply the above sources in

order in which they appeal. Thus, the international convention shall be given preference by the court in deciding a case which the parties refer to it. In those cases where conventions are not available, they will be decided in accordance with international customs. General Principles of law recognised by civilised nations shall find place only where conventions and customs are not available. Judicial decision and the teachings of the most highly qualified publicist of the various nations have been regarded as subsidiary means for the determination of rules of law and shall be taken into account only when the source is referred to in clause (a), (b) and (c) are not available. It is to be noted that while source (d) has been regarded as subsidiary means for the determination of rules of law, nothing has been stated to the sources mention under clause (a), (b) and (c). Thus, the source (d) is different from the rest of the sources.

It is submitted that the list enumerated in the above Article is not exhaustive. For instance, Article 38 makes no reference to resolutions of the General Assembly of the United Nations or to diplomatic correspondence, both of them figure prominently in the Court's judgments. Further, if Article 38 be simply declaratory, it clearly cannot inhibit the emergence of new sources of law, brought into being by the development of the international community and its progressive organisation. International Law is dynamic and fast changing with the passage of time. The growing scope of International Law has widened the scope for the creation of new methods of law making so that it can serve the needs of international community more effectively. It may be mentioned that as and when new methods of law making come into use, they will be the result of the application of legal rules created by operation of sources already recognised : of treaties and of custom. Thus, every new source is indirectly envisaged in the list under Article 38 Para 1 and is simply the product of the law emanating from the sources which are mentioned in the list.

Following are the sources of International law:

1. Customs
2. Treaties

3. General Principles of law recognised by the civilised nation
4. Judicial decisions
5. Writing of jurists
6. Equity
7. Resolution of the General Assembly

Statute of ICJ

Introduction

The Permanent Court of International Justice:

The idea of peacefully settling disputes at the international level is a very old one. Systems of mediation and arbitration were known, but not the establishment of a permanent bench of judges to settle disputes, employing strict judicial techniques. However, at the end of the First World War, and with the creation of the League of Nations, under a mandate of the Article 14 of the Covenant of the League of Nations, a concrete shape was given to the idea of a Permanent Court of International Justice (hereinafter, the Permanent Court or the PCIJ). The Permanent Court was established with 15 judges elected by the Assembly and the Council of the League of Nations. They represented the main forms of civilization and the principal forms of legal systems of the world. The Statute, which governed the operation of the Permanent Court, was however an instrument independent from the Covenant of the League of Nations. Only States could be parties before the Permanent Court. But it was empowered to give advisory opinions to the Assembly and the Council of the League of Nations. The Permanent Court, which came into operation in1922 and ceased functioning in 1940 with the outbreak of the Second World War, dealt with 29 contentious cases and gave 27 advisory opinions.

The International Court of Justice:

The Permanent Court was dissolved in 1946, followed by a decision at the San Francisco Conference to create a new International Court of Justice (hereinafter, the ICJ or the Court) on the same lines as the Permanent Court, but as a principal judicial organ of the United Nations.1 Contrary to the Statute of

the PCIJ, the Statute of the ICJ is an integral part of the Charter of the United Nations (Article 92 of the UN Charter).2 Both instruments were adopted on 26 June 1945, and came into force on 24 October 1945.

Organisation of ICJ

Basic Texts

The basic texts on the Court and its work are:

- The Charter of the United Nations, Articles 92 to 96, which establishes the general lines of the work of the Court;
- The Statue of the Court, which determines its organization, competence and procedures; and
- The Rules of the Court, which deal with matters concerning the judges and assessors, the presidency of the Court, the work of the chambers, the internal functioning of the Court and of its registry, as well as the proceedings in the contentious and advisory cases.

Composition of the Court

The International Court of Justice is composed of 15 judges elected for a period of nine years; no more than one national of any State may be a member of the Court. The judges represent the main legal systems of the world. The Court elects, for a term of three years, the President and Vice-President of the Court. The Court is assisted by a Registry, headed by a Registrar.

Elections are held every three years for five vacancies of the Court each time. Eligible as judges are persons of high moral character and possessing the qualifications required in their respective countries for appointment to the highest judicial offices, or jurisconsults of recognized competence in international law. The election is held simultaneously both in the General Assembly and in the Security Council, each voting independently of the other. In order to get elected, a candidate must obtain an absolute majority in both forums.

The Court may establish chambers composed of three or more judges. Such Chambers were constituted upon request of the parties, for example, in the Gulf of Maine, Frontier Disputes, ELSI and Land, Island and Maritime Frontier cases. The Court also established a special chamber for environmental matters. It should be pointed out that a judgement rendered by a chamber is considered a judgement of the Court.

The Bench

All the judges of the Court, including ad-hoc judges, constitute the Bench of the Court in a case. No member can be dismissed unless, in the opinion of other members, he/she has ceased to fulfil the required conditions (Article 18 of the Statute).

During his/her term of office, no judge should engage in any political or administrative functions or in any other occupation of a professional nature (Article 16 of the Statute). Further, no judge may participate in a case brought before the Court in which he/she has previously been involved as agent or counsel for one of the parties, as a member of a commission of inquiry, or as a member of a national or international tribunal or arbitration.

In this sense, a member of the Court may declare that he/she should not take part in the decision in a particular case. It is also open to the President of the Court to suggest that for some special reasons one of the members of the Court should not sit in a particular case and should give his/her notice accordingly. In case of disagreement between the judge concerned and the President, the matter shall be settled by a decision of the Court.

Official Languages

The official languages of the Court are English and French. If the parties agree, the case can be conducted and the judgement delivered exclusively in either English or French. The Court may also authorize, at the request of a party, a language other than French or English to be used by that party. In such a case, an English or French translation has to be attached to the judgement (Article 39 of the Statute).

JURISDICTION AND APPLICABLE LAW

Types of Jurisdiction

The International Court of Justice possesses two types of jurisdiction:

(i) Contentious jurisdiction Contentious jurisdiction involves States that submit the dispute by consent to the Court for a binding decision.

(ii) Advisory jurisdiction Advisory jurisdiction, on the other hand, concerns questions referred to the Court by the General Assembly, the Security Council or other organs and specialized agencies of the United Nations. Those questions can only refer to legal questions arising within the scope of their activities. Advisory opinions given by the International Court of Justice are not binding.

Mainline and Incidental jurisdiction

A distinction can be made between incidental jurisdiction and mainline jurisdiction. Incidental jurisdiction relates to a series of miscellaneous and interlocutory matters; for example the power of the Court to decide a dispute as to its own jurisdiction in a given case; its general authority to control the proceedings; its ability to deal with interim measures of protection; and the discontinuance of a case. Mainline jurisdiction, on the other hand, concerns the power of the Court to render a binding decision on the substance and merits of a case placed before it.

Jurisdiction Rationae Personae

The Statute of the ICJ establishes that for contentious jurisdiction, only States can be parties before the Court (Article 34(1) of the Statute of the ICJ). However, States are entitled to sponsor the claims of their nationals against other States. This is generally done by way of diplomatic protection. Such protection under international law can be exercised by the State of nationality only after the person concerned has exhausted local/judicial remedies available in the jurisdiction of the State in which the person has suffered the legal injury.

Exhaustion of local remedies is more than a procedural requirement. Without their exhaustion, no remedies for legal injury can be envisaged at the international level. On the other hand, for a foreign national to exhaust local remedies, such remedies should not only be available, but they should also be effective and not merely notional or illusory. However, these are matters for judgement in a given case.

The question has also been raised as to whether an individual could renounce through a contract with a foreign government his/her right to seek diplomatic protection from the State of his or her nationality. It is argued that the exercise of diplomatic protection is a right of the State, and its nationals cannot therefore seek its exemption through a contract; this can only be exercised at the discretion of the State. It is also common nowadays for States to agree, in bilateral treaties, to submit dispute concerning foreign investment directly to arbitration outside their jurisdiction without requiring the investing company or individuals to exhaust local remedies.

It is understood that a State cannot sponsor the claims of its national against another State of which he or she or the entity is also a national. Further, in the case of persons with dual or multiple nationality, only the State with which the person enjoys a "genuine link" can exercise diplomatic protection (see the Nottebohm case). It is also held that where the legal interests of company are injured in a foreign jurisdiction, only the State in whose jurisdiction the company is incorporated has the right to sponsor its claims and not the State of nationality of the shareholders, even if they

constitute a majority share holding in the company, except where: (1) the rights of the shareholders are directly affected; (2) the company has ceased to exist in the country of incorporation; and (3) The State of incorporation is the country responsible for the injury of the company.

Basis for Jurisdiction The basis for jurisdiction is the consent of the States parties to a dispute. Consent can be expressed in one of the following ways:

Special Agreement

The conclusion of a special agreement (compromis) to submit the dispute after it has arisen. For example, a compromis was concluded between Hungary and Slovakia on 7 April 1993, by which they submitted to the Court the dispute concerning the Gabcikovo Nagymaros Project.12

Jurisdictional Clause

Another way of conferring jurisdiction on the Court is through the inclusion of a jurisdictional clause in a treaty. Generally, through this compromissory clause the States parties agree, in advance, to submit to the Court any dispute concerning the implementation and interpretation of the treaty.

"The jurisdiction of the Court comprises all cases which the parties refer to it and all matters specially provided for in the Charter of the United Nations or in treaties and conventions in force."

Several treaties contain such compromissory clauses conferring jurisdiction upon the Court in respect of the parties to those treaties.

Declarations made under Article 36(2) of the Statute

The jurisdiction of the International Court of Justice also exists by virtue of declarations made by States, that they recognize as compulsory its jurisdiction in relation to any other State accepting the same obligation in all legal disputes

concerning the matters specified in Article 36(2) of the Statute. This method of conferring jurisdiction on the ICJ is also known as the Optional Clause.

The States Parties to the present Statute may at any time declare that they recognize as compulsory ipso facto and without special agreement in relation to any of the States accepting the same obligations, the jurisdiction of the court in all legal disputes concerning:

a) the interpretation of a treaty;
b) any question of international law;
c) the existence of any fact which, if established, would constitute a breach of an international obligation;
d) the nature or extent of the reparation to be made for the breach of an international obligation.

The Doctrine of Forum Prorogatum

In accordance with the Forum Prorogatum doctrine, the Court infers the consent of the State, expressed in an informal and implied manner, and after the case has been brought before it. The Court has upheld its jurisdiction even where consent has been given after the initiation of proceedings, in an implied or informal way or by a succession of acts.

For example, in the Corfu Channel case, the Court pointed out that Albania, not a party to the Statute, would have been entitled to object to the jurisdiction of the Court, by virtue of the unilateral initiation of the proceedings by the United Kingdom. Nevertheless, as indicated in its letter of 2 July 1947 to the Court, Albania accepted the recommendation of the Security Council and the jurisdiction of the Court for this case. Therefore Albania was precluded thereafter from objecting to the jurisdiction.

Conditional and Unconditional Jurisdiction

Under Article 36(3) of the Statute, declarations may be made “unconditionally or on condition of reciprocity on the part of several or certain States, or for a certain time.”

This provision seems to contemplate “not a limitation of the jurisdiction accepted but a condition as to the operation of the declaration itself”. In other words, it is possible for a State making a declaration under Article 36(2) to specify the time limits and the States in respect of which it would operate. In that sense, the provision contemplates a principle of reciprocity in the form of a choice of partners.

Reservations to Jurisdiction

Declarations under Article 36(2) can be made with such reservations as the author State may deem fit to specify.18 It is understood that the jurisdiction of the Court exists only to the extent there is common ground between the declarations of each of the parties on the given subject matter. Reciprocity is therefore an important feature of the Optional Clause system.

Applicable Law

Matters before the International Court of Justice are decided in accordance with international law. According to the Statute, the Court is required to apply:

a) International conventions, whether general or particular, establishing rules expressly recognized by the contesting States;
b) International custom, as evidence of a general practice accepted as Law;
c) The general principles of law recognized by civilized nations;
d) Subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.

Further, while the primary function of the Court is to settle the dispute in accordance with international law, Article 38(2) gives power to the Court to decide a dispute ex aqueo et bono, that is on the basis of equity, if the parties agree. This provision shall not prejudice the power of the Court to decide a case ex aequo et bono, if the parties agree thereto.

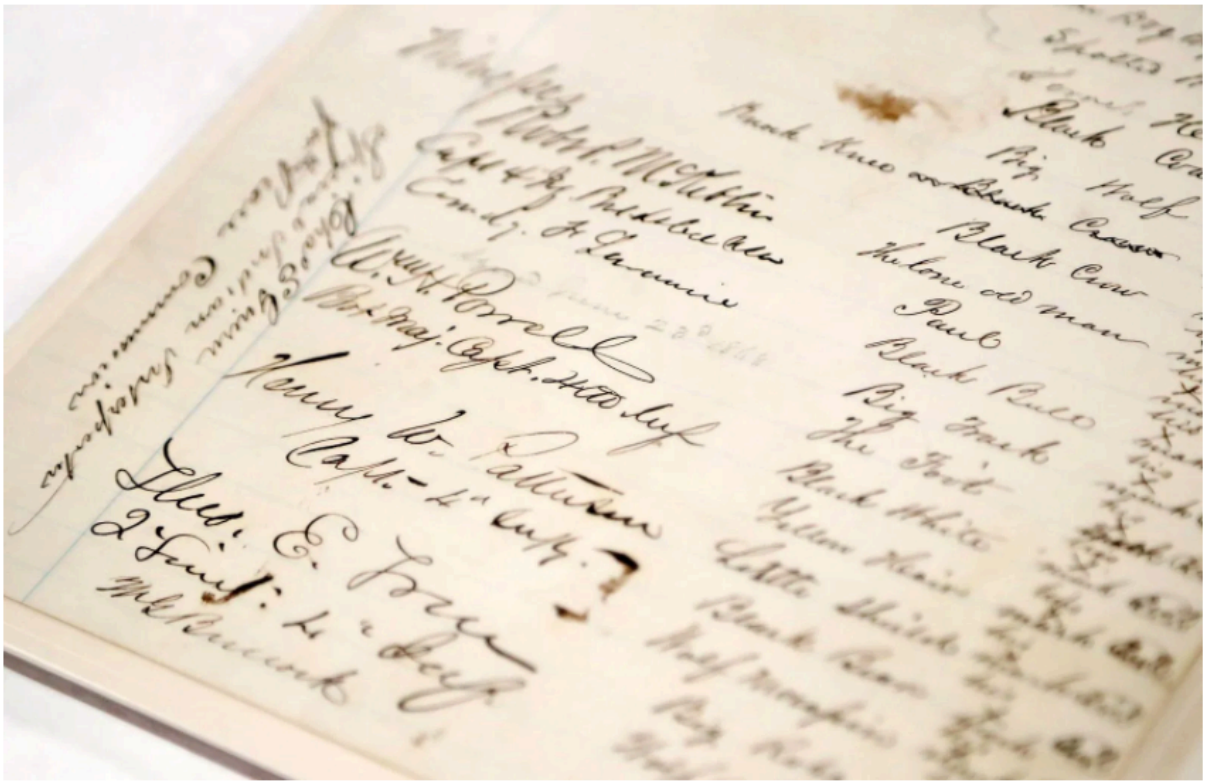
2. This provision shall not prejudice the power of the Court to decide a case *ex aequo et bond,* if the parties agree thereto.

Treaties

TREATIES: THE LANGUAGE OF INTERNATIONAL AGREEMENT

We begin with a formal written agreement between states, also called a treaty. In this section, we will come to understand a treaty's core elements and functions. As we move through the material, consider what makes a treaty different from other agreements that you have encountered in your life, such as a contract or a simple promise from a friend. You will be able to identify what makes a treaty unique by the end of this section.

The major source for the law of treaties is the 1969 Vienna Convention on the Law of Treaties (VCLT). This "treaty about treaties" was created by the International Law Commission. Groups of scholars from the mostly European powers, such as Great Britain, came together after the end of World War II to form this commission. So, while the VCLT has been now widely adopted by most countries around the world, you should be aware of its European beginnings. Some language reveals a focus on Western ideas about negotiation and agreement in contrast to practices elsewhere in the world.



The VCLT gives the following definition *"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.*

There are five main parts, also called elements, to this definition.

- First, a treaty is an "international agreement," which means that it is not purely a purely domestic agreement occurring within one state.
- Second, the definition emphasizes an agreement "between States." In other words, only states can sign treaties. You have already learned much about states in the Working Paper: Introduction to Public International Law, including various theories about sovereignty and the way that states are recognized. For now, keep in mind the words of the Montevideo Convention, which defines states as having: a) a permanent population; b) a defined territory; c) government; and d) capacity to enter into relations with the other states.
- The third element requires a treaty to be written. A verbal agreement between states would not qualify as a treaty.
- Fourth, a treaty is "governed by international law." This means that parties to a treaty agree to legally bind themselves to the treaty. When we say that a state legally binds itself, we mean that the state agrees to be punished according to international law if it does not carry out its treaty commitments.
- Fifth, a treaty can be composed of one or more legal instruments. Legal instruments are writings or other expressions of intent used to create a legal agreement. Therefore, states entering into an agreement may write their agreement in one document, or they may rely on several documents or legal instruments, to describe the terms of their agreement.

In practice, you may also hear treaties referred to as agreements, pacts, compacts, or even covenants. Use of these different terms is common. To determine whether a certain agreement is a treaty, remember to look to the five elements listed above. Does the agreement meet all five elements? All must be satisfied for a treaty to exist.

Government directives, protocols, and memoranda of understanding are all examples of state declarations that are not treaties, often because the state is not agreeing to legally bind itself to the terms of its declaration. A written agreement between states is only a treaty if it is binding under international law.

Through this comparison, you should also be able to see the purpose of treaties. By creating more than a mere understanding, treaties impose concrete obligations upon participating states. Becoming party to a treaty means that you accept a formal writing as law. A memorandum of understanding, by contrast, has no legal effect. So, states who are parties to a treaty can have greater confidence that the terms to which they have agreed be followed by other parties. This higher confidence promotes greater trust and cooperation between states.

Types of Treaties

Treaties can vary greatly depending on the parties involved and the topic being addressed. Here, we want to focus on the number of parties to a treaty, as the number of different states that sign a treaty can affect the way a treaty operates. It is most useful to begin with the difference between bilateral and multilateral treaties.

A **bilateral treaty** is a treaty between two parties. Because only two states need to agree, states use bilateral treaties to conduct direct affairs with a foreign nation. States often use these types of treaties to establish trade agreements and to recognize political agreement. For example, the United States and Iraq conduct bilateral trade and investment through the bilateral United StatesIraq Trade and Investment Framework Agreement (TIFA). This treaty regulates things such as taxes on the goods shipped between both countries and the requirements for investing in the other nation's businesses. India and Iraq have used a bilateral treaty to express partnership and diplomatic relations through their 1952 Treaty of Friendship.

Bilateral treaties have several advantages. Generally, it is easier to make an agreement with one party than with multiple parties, so bilateral treaties often offer

advantages in the ease of negotiation. For similar reasons, bilateral treaties are often easier to amend than multilateral treaties. We will discuss treaty amendment later in this section.

However, bilateral treaties also present challenges. One of the most common issues with bilateral treaties is enforcement. With only one other interested party to be accountable to, bilateral treaty parties take risks in ensuring that their obligations will be met. Members of the United Nations enjoy some protection from this risk through the Article 36 jurisdiction of the International Court of Justice.

A **multilateral treaty**, in contrast, is a treaty signed between three or more parties. Such treaties can include agreements between states in a particular region, like the East African Community, or agreements by most or all of the states in the world created to address global issues.

Multilateral treaties are an advantageous way for states to make joint commitments to a particular issue. Consider the Treaty Establishing the Arab Maghreb Union, a North-African partnership between Morocco, Algeria, Libya, Mauritania, and Tunisia.10 These member nations entered into the treaty in order to "pursue a common policy in different domains" and to uphold beliefs such as "Arab national identity" in the midst of differing worldviews. A multilateral treaty proved an effective way for these states to express a common stance on their views and to support one another in the face of opposition.

In comparison, the Kyoto Protocol to the United Nations Framework Convention on Climate Change, better known as the Kyoto Protocol, is an example of a global-issue multilateral treaty. The treaty has been accepted by 192 countries, meaning it is considered law in nearly every country in the world. This is important, because the treaty attempts to solve a worldwide issue—climate change—by regulating how much carbon emissions countries can release into the atmosphere. Without widespread acceptance of this treaty, certain countries could still release emissions

into the atmosphere that would travel across borders and harm countries that were following the rules.

Yet multilateral treaties also present unique challenges due to their complexity. Negotiating terms of treaties with multiple parties is inherently more difficult. It requires significant coordination and time. While members to a multilateral treaty also have the benefit of more parties available to hold individual parties accountable to the terms of the agreement, enforcement also proves complex. Parties must ensure that they share a common interpretation of the terms of the treaty and appropriate means of enforcement when the terms are violated.

Treaty Formation

Treaty formation involves four basic steps:

1) negotiation and drafting;
2) authentication and adoption;
3) expressing consent; and
4) entry into force.

The VCLT provides guidance on how each step of the process works.

Negotiation and Drafting

First, parties must come together to negotiate, or discuss, a treaty topic. Who has the power to negotiate on behalf of a state government? VCLT Article 7 states that negotiators are determined through the "accreditation of state representatives." This process allows only individuals with full powers to negotiate a treaty on a state's behalf. Full powers means the negotiating state has given clear authorization to their representative to negotiate. A state can authorize a representative in writing, and certain government officials, such as a president or foreign affairs minister, have "full powers" as a function of their position. Once representatives have been identified, negotiations can begin.

Treaty negotiations vary in size and scope. The formation of a treaty can be very complex, and often many people want to have a say in creating its final terms. While creation of a bilateral treaty may only require a few meetings between small negotiating teams, creation of a multilateral treaty may involve large assemblies who negotiate in lengthy, formalized debates. Consider that the treaty establishing the United Nations, the U.N. Charter, required more than fifty participating countries and nearly a year of negotiations.

Alongside the verbal discussions in negotiations, drafting occurs. Drafting involves putting the tentative terms of an agreement in writing. Throughout a typical treaty formation process, negotiators from all parties look at multiple rounds of drafts and suggest changes to the language. The VCLT provides few explicit rules on drafting, so treaty parties have flexibility in deciding how they want to structure the process.

Adoption and Authentication

Once all parties have settled on final terms, they move to treaty adoption, in which parties agree on the official treaty text. VCLT Article 9 says that the standard rule for adopting a treaty is by obtaining "the consent of all the States participating in its drawing up." However, if the treaty is being formed at a large international conference, the conference members can agree to adopt the treaty by a two-thirds vote of the parties present. Conference members can also vote to change the number of votes needed for this form of adoption.

To prevent misunderstandings about the treaty language, representatives from all states confirm the final words in a process known as treaty authentication. **Treaty authentication** is the process in which each party signs or initials the treaty text to establish that the text is final. VCLT Article 10 also allows states to authenticate the treaty by a different procedure, if they agree to do so. Once treaty authentication is complete, states can then bind themselves to the treaty by expressing their consent.

Expressing Consent

Let us look at the multiple ways in which the VCLT allows states to express their consent to a treaty. Means of Expressing Consent to Be Bound by a Treaty: VCLT Article 11: The consent of a State to be bound by a treaty may be expressed by signature, exchange of instruments constituting a treaty, ratification, acceptance, approval or accession, or by another means if so agreed.

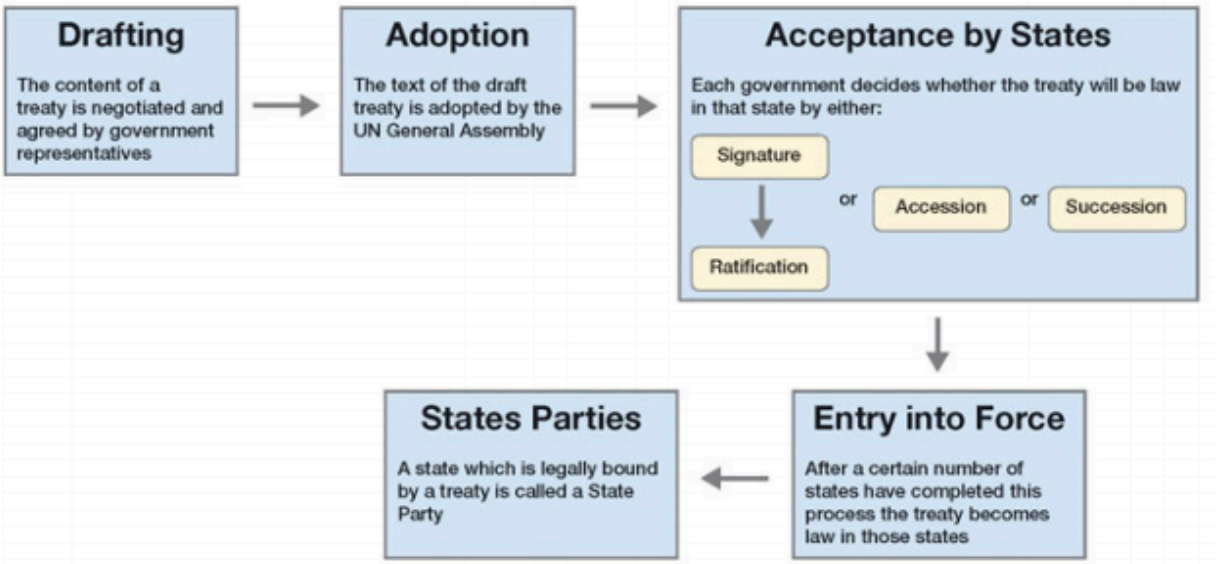
The VCLT goes on to specify rules for the most common forms of consent: Article 12 governs consent by signature, in which consent is expressed by signing the treaty at negotiations. Article 14 governs consent by ratification, in which a state legislature approves the state's consent to be bound. Finally, Article 15 governs consent by accession, in which a state that did not participate in the negotiations agrees to become party to the treaty.

It is clear from Article 11 that the VCLT encourages different forms of treaty acceptance, and more than one type of acceptance can be used. What is most important is that the parties clearly express their intent to be bound, in whatever form.

Entry Into Force

Once one party expresses its consent to be bound by a treaty's terms, the treaty still needs to take formal legal effect. This is known as the treaty's entry into force. VCLT Article 24 states that, unless the parties agree otherwise, a treaty will enter into force when "all negotiating states" have expressed their consent to be bound to the treaty's terms. So, just because one state has expressed its consent to be bound by a treaty, this does not mean that the treaty is in effect. That state must instead wait until all other negotiating states have also done so. For a summary of the treaty formation material we have covered so far, look at the following diagram:

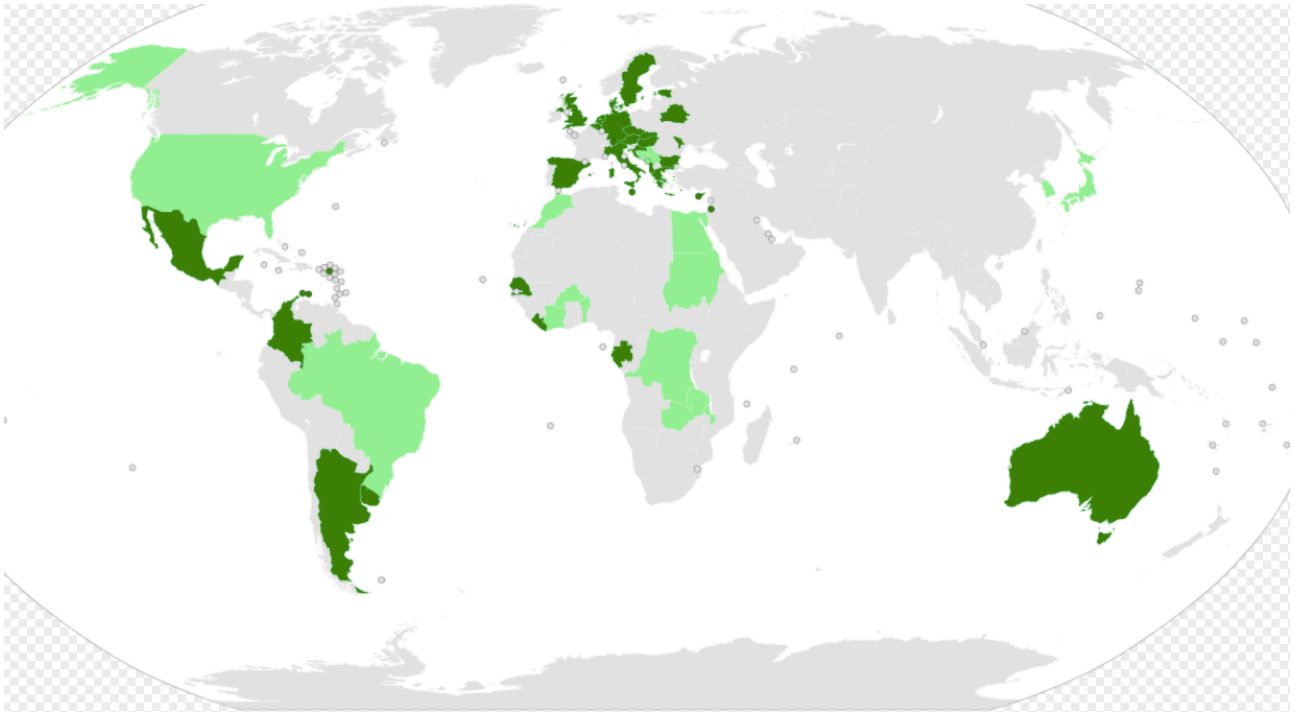
The Treaty Process



Vienna Convention on Law of Treaties

Vienna Convention on the Law of Treaties, an international agreement governing treaties between states that was drafted by the International Law Commission of the United Nations and adopted on May 23, 1969, and that entered into force on January 27, 1980.

A convention governing international treaties was one of the first efforts undertaken by the International Law Commission, and James Brierly was assigned as special rapporteur in 1949 to address the subject. After his resignation in 1952, each of his successors began the work anew. Sir Humphrey Waldock, appointed in 1961, produced six reports from which the commission was able to create a draft to submit to the UN General Assembly in 1966 with a recommendation that a conference be convened to conclude a convention based on the draft. The conference held its first meeting in 1968, and the convention was adopted at its second session the following year.



The convention applies only to written treaties between states. The first part of the document defines the terms and scope of the agreement. The second part lays out the

rules for the conclusion and adoption of treaties, including the consent of parties to be bound by treaties and the formulation of reservations—that is, declining to be bound by one or more particular provisions of a treaty while accepting the rest. The third part deals with the application and interpretation of treaties, and the fourth part discusses means of modifying or amending treaties. These parts essentially codify existing customary law. The most important part of the convention, Part V, delineates grounds and rules for invalidating, terminating, or suspending treaties and includes a provision granting the International Court of Justice jurisdiction in the event of disputes arising from the application of those rules. The final parts discuss the effects on treaties of changes of government within a state, alterations in consular relations between states, and the outbreak of hostilities between states as well as the rules for depositaries, registration, and ratification.

It was necessary for 35 member states of the United Nations to ratify the treaty before it could go into effect. Although it took until 1979 to secure those ratifications, more than half of the UN members had agreed to the convention by early 2018. Even those members that had not ratified the document, such as the United States, generally followed the prescriptions of the agreement.

ICJ, Case Concerning the Gabcikovo-Nagymaros Project (Hungary/ Slovakia)

On 2 July 1993 the Governments of the Republic of Hungary and of the Slovak Republic notified jointly to the Registry of the Court a Special Agreement, signed at Brussels on 7 April 1993, for the submission to the Court of certain issues arising out of differences which had existed between the Republic of Hungary and the Czech and Slovak Federal Republic regarding the implementation and the termination of the Budapest Treaty of 16 September 1977 on the Construction and Operation of the Gabčíkovo-Nagymaros Barrage System and on the construction and operation of the "provisional solution". The Special Agreement records that the Slovak Republic is in this respect the sole successor State of the Czech and Slovak Federal Republic. In Article 2 of the Special Agreement, the Court was asked to say : *(a)* whether the Republic of Hungary was entitled to suspend and subsequently abandon, in 1989, the works on the Nagymaros project and on that part of the Gabčíkovo project for which the Treaty attributed responsibility to the Republic of Hungary ; *(b)* whether the Czech and Slovak Federal Republic was entitled to proceed, in November 1991, to the "provisional solution" and to put into operation from October 1992 this system (the damming up of the Danube at river kilometre 1,851.7 on Czechoslovak territory and the resulting consequences for the water and navigation course) ; and *(c)* what were the legal effects of the notification, on 19 May 1992, of the termination of the Treaty by the Republic of Hungary. The Court was also requested to determine the legal consequences, including the rights and obligations for the Parties, arising from its Judgment on the above-mentioned questions. Each of the Parties filed a Memorial, a Counter Memorial and a Reply accompanied by a large number of annexes.

In June 1995, the Agent of Slovakia requested the Court to visit the site of the Gabčíkovo-Nagymaros hydroelectric dam project on the Danube for the purpose of obtaining evidence. A "Protocol of Agreement" was thus signed in November 1995 between the two Parties. The visit to the site, the first such visit by the Court in its 50-

year history, took place from 1 to 4 April 1997 between the first and second rounds of oral pleadings.

In its Judgment of 25 September 1997, the Court asserted that Hungary was not entitled to suspend and subsequently abandon, in 1989, the works on the Nagymaros project and on the part of the Gabčíkovo project for which it was responsible, and that Czechoslovakia was entitled to proceed, in November 1991, to the "provisional solution" as described by the terms of the Special Agreement. On the other hand, the Court stated that Czechoslovakia was not entitled to put into operation, from October 1992, the barrage system in question and that Slovakia, as successor to Czechoslovakia, had become Party to the Treaty of 16 September 1977 as from 1 January 1993. The Court also decided that Hungary and Slovakia must negotiate in good faith in the light of the prevailing situation and must take all necessary measures to ensure the achievement of the objectives of the said Treaty, in accordance with such modalities as they might agree upon. Further, Hungary was to compensate Slovakia for the damage sustained by Czechoslovakia and by Slovakia on account of the suspension and abandonment by Hungary of works for which it was responsible,

whereas, again according to the Judgment of the Court, Slovakia was to compensate Hungary for the damage it had sustained on account of the putting into operation of the dam by Czechoslovakia and its maintenance in service by Slovakia.

On 3 September 1998, Slovakia filed in the Registry of the Court a request for an additional Judgment in the case. Slovakia considered such a Judgment necessary because of the unwillingness of Hungary to implement the Judgment delivered by the Court on 25 September 1997. In its request, Slovakia stated that the Parties had conducted a series of negotiations of the modalities for executing the 1997 Judgment and had initialled a draft Framework Agreement, which had been approved by the Slovak Government. However, according to the latter, Hungary had decided to postpone its approval and had even disavowed it when the new Hungarian Government had come into office. Slovakia requested the Court to determine the modalities for executing the Judgment, and, as the basis for its request, invoked the Special Agreement signed at Brussels on 7 April 1993 by itself and Hungary. After the filing by Hungary of a statement of its position on Slovakia's request, the Parties resumed negotiations and informed the Court on a regular basis of the progress in them.

By a letter from the Agent of Slovakia dated 30 June 2017, the Slovak Government requested that the Court "place on record the discontinuance of the proceedings [instituted by means of the request for an additional Judgment in the case] and . . . direct the removal of the case from the List". In a letter dated 12 July 2017, the Agent of Hungary stated that his Government "d[id] not oppose the discontinuance of the proceedings instituted by means of the Request of Slovakia of 3 September 1998 for an additional judgment".

By a letter to both Agents dated 18 July 2017, the Court communicated its decision to place on record the discontinuance of the procedure begun by means of Slovakia's request and informed them that it had taken note that both Parties reserved their

respective right under Article 5, paragraph 3, of the Special Agreement of 7 April 1993 between Hungary and Slovakia to request the Court to render an additional judgment to determine the means of executing its Judgment of 25 September 1997.