Seminar on the importance of key trade and transport conventions

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Participation in the Multilateral Treaty Framework

The objective of this presentation is to provide the most important information regarding the process to become a party to a multilateral treaty, with a view to facilitating the possible participation of States in the multilateral treaty framework in the areas of trade and transport. Attention will be focused on the legal requirements and practical arrangements that are needed in view of participating to such treaties, in order to ensure a smooth and efficient handling of the matter. For this purpose, the presentation will address a number of “frequently asked questions” in the area.

What office should a Government contact with a view to becoming a party to multilateral treaties in the area of trade and transport?

All matters relating to participation in multilateral treaties deposited with the Secretary-General are handled by the Treaty Section of the United Nations Office of Legal Affairs.

Like all modern multilateral treaties, the treaties in the area of trade and transport appoint a depositary. The depositary is the custodian of the original of the treaty. He is also in charge of receiving all signatures, instruments of ratification, approval, acceptance or accession, as well as all notifications relating to participation in the treaty. The depositary further informs States of all these treaty actions, as well as of the entry into force of the treaty. Finally, the depositary is the authoritative source of information regarding participation to the multilateral treaties deposited with him.

Most of the multilateral treaties concluded in the framework of the United Nations entrust their depositary functions to the Secretary-General of the United Nations. All the depositary functions of the Secretary-General for more than 560 multilateral treaties concluded in the framework of the United Nations are entrusted to one single office (irrespective of the subject-matter of the convention): the Treaty Section of the United Nations Office of Legal Affairs.

This is the case, in particular, of most of the conventions in the area of trade and transport which were discussed at this seminar: the Customs Convention on the International Transport of Goods Under Cover of TIR Carnets (The TIR Convention), the International Convention on the Harmonization of Frontier Controls of Goods, the Customs Convention on Containers, the Customs Convention on the Temporary Importation of Commercial Road Vehicles, and the United Nations Convention on the Law of the Sea.

Two of the conventions mentioned today, however, have different depositaries. The World Trade Organization (WTO) Trade Facilitation Agreement is considered part of the WTO Agreement, which is deposited with the WTO. The International Convention on the Simplification and Harmonization of Customs Procedures (The Revised Kyoto Convention) is deposited with the Customs Co-operation Council.
What kinds of communications are handled by the Treaty Section?

The Treaty Section receives all communications relating to the participation of a State to multilateral treaties deposited with the Secretary-General, including: signatures and full powers; instruments of ratification, acceptance, approval or accession; interpretative declarations, reservations, objections to reservations; and any other notification which the treaty provides shall be sent to the depositary.

Why are there different offices involved in operation of the same treaty? What is the division of labour between the Treaty Section and such other offices (in the United Nations and elsewhere)?

It is important to distinguish depositary and secretariat functions. In general terms, it may be said that the depositary functions are those relating to participation in the treaty (how to become a party and under what conditions), while secretariat functions relate to the implementation of the treaty, once the latter has entered into force. Secretariat functions include support to bodies created by the treaty (e.g., conferences of the parties), capacity-building and technical support relating to the implementation of treaty obligations, promotion of the treaty, etc.

While depositary functions of the Secretary-General are solely entrusted to the Treaty Section, secretariat functions are performed by a wide array of offices in the United Nations and elsewhere, depending on the subject-matter of the treaty. Thus, for example, the United Nations Economic Commission for Europe exercises secretariat functions for several treaties in the area of transport; the Division of Ocean Affairs and the Law of the Sea in the Office of Legal Affairs exercises secretariat functions for the United Nations Convention on the Law of the Sea and its implementing agreements.

What is the process to become a party to a multilateral treaty?

Following the successful conclusion of the negotiations, the text of a multilateral treaty is adopted and established as authentic and definitive. The treaty is thereafter open to signature. In general, the signature of a multilateral treaty does not yet imply that the State accepts to be bound by it. By signing a multilateral treaty, the State signals its intention to launch the domestic processes for consenting to be bound by the treaty (e.g., ratification) and undertakes to refrain from acts which would defeat the object and purpose of the treaty. (Some multilateral treaties open the possibility for States to express their consent to be bound through their signature, which is then known as a “definitive signature”; this is determined on the basis of the final clauses of the treaty.)

The State’s consent to be bound by a multilateral treaty (e.g., a ratification or acceptance) requires a domestic procedure, which varies depending on the country’s own constitution or legislation. In some cases, this internal process requires the intervention of the legislative bodies; some countries may allow, at least in certain areas, for the executive power to take action at the international level on its own.

The domestic process by which the State agrees to be bound by a multilateral treaty is to be distinguished from the act by which it expresses its consent to be bound on the international plane. The latter is effected through the submission to the depositary of an
instrument of ratification, acceptance, approval or accession, by which the State undertakes to fulfill its obligations under the treaty concerned.

Most treaties in the area of trade and transport are already closed for signature. States that have signed them may thereafter ratify, accept or approve them. In any event, however, these treaties remain open for accession for States that have not signed them.

**What are the legal requirements for the international instrument by which a State expresses its consent to be bound by a treaty (ratification, accession, etc.)?**

To be accepted in deposit by the Treaty Section, an instrument of ratification, acceptance, approval or accession needs to include the following:

- Indication of the title, date and place of conclusion of the treaty concerned;
- The full name and title of the person signing the instrument;
- An unambiguous expression of the intent of the State to consider itself bound by the treaty and to undertake faithfully to observe and implement its provisions;
- The date and place where the instrument was issued; and
- The signature

Two important requirements need to be kept in mind.

First, under international law, an instrument of consent to be bound by a treaty (ratification, acceptance, approval or accession) needs to be signed by the Head of State, Head of Government or Minister for Foreign Affairs. Any other authority (including the minister in charge of the topic domestically, such as the minister of transport) cannot sign the instrument without full powers.

Second, to effect the deposit, the instrument must be submitted to the Treaty Section, which is the sole office that discharges the depositary functions of the Secretary-General. No other office (including the office that is in charge of the secretariat functions for the treaty) may receive the document for this purpose.

The date of effect of the treaty action will be that of receipt of the instrument by the Treaty Section. If the instrument is sent to another office and then forwarded to the Treaty Section, the date of effect will still be that of receipt at the United Nations Headquarters. It is therefore important to send these instruments directly to the Treaty Section to ensure their prompt legal effect.

Treaties on trade and transport usually contain provisions that restrict the formulation of reservations. For example, the TIR Convention and the Convention on the Harmonization of Frontier Controls of Goods only allow for reservations to their provisions on dispute settlement, the United Nations Convention on the Law of the Sea only permits reservations and declarations in very definite cases (provided for in articles 309 and 310). In these cases, instruments containing reservations that are not allowed by the treaty will not be accepted in deposit.

If there is any problem with the instrument (a legal requirement that is not met), the Treaty Section will contact the State representatives signalling the issue, and the deposit will not be effected until the matter is settled.
**How does a Government effect the deposit of an instrument of ratification, accession, etc.?**

The deposit of an instrument of consent to be bound by a multilateral treaty may be effected in two ways.

As a first option, the Permanent Mission of the State to the United Nations may simply send the relevant instrument to the Treaty Section, under cover of a note verbale. The Section will be able to effect the deposit on this basis. It should be noted that, in its current practice, the Treaty Section accepts to effect the deposit of an instrument on the basis of the submission of a simple copy of the original (e.g., a copy sent by the appropriate authority by fax or email), subject to two conditions: (i) the document submitted must be a copy of the signed version of the instrument; and (ii) the deposit is effected subject to the later receipt of the original. This allows for the deposit to take place (and the treaty to enter into force) earlier, especially when it may take some time for the original to be sent to the United Nations Headquarters.

A second option is to organize a ceremony for the deposit of the instrument concerned. The Treaty Section organizes such ceremonies frequently, upon the request of a Government. The ceremony simply consists of the handing of the instrument by the State representative (e.g., the Permanent Representative to the United Nations) to an officer of the Office of Legal Affairs (usually, the Chief of the Section). These ceremonies offer an excellent photo opportunity (a picture of the ceremony is posted on the official website of the Treaty Section and may be made available to national authorities upon request). It is important to underline that, in order to be able to confirm the holding of a ceremony, the Treaty Section needs to receive an advance copy of the signed instrument, in order to verify that the instrument is in due and proper form.

**What is the Treaty Event and how can a State participate in it?**

The annual Treaty Event organized by the Secretary-General provides a special opportunity for treaty ceremonies. The Event is organized in conjunction with the general debate of the General Assembly and provides a distinct opportunity for Heads of State, Head of Government, Minister for Foreign Affairs or other dignitaries present in New York to sign multilateral treaties deposited with the Secretary-General or perform other treaty actions relating to these treaties (such as the deposit of an instrument of ratification or accession).

The Secretary-General’s letter inviting Heads of State and Government to the 2016 Treaty Event is to be sent in the course of May. As every year, the Treaty Section highlights a number of treaties for action at the Treaty Event. This year, these highlighted treaties include a number of multilateral treaties in the area of transit and transport, as well as the law of the sea. It should be noted, however, that States may seize the opportunity of the Treaty Event to take action on any of the hundreds of multilateral treaties deposited with the Secretary-General.

The Treaty Event consists of a series of solemn treaty ceremonies, which take place in a dedicated space near the General Assembly Hall. The Event has high visibility, allowing for the presence of national media and being covered daily by the Department of Public Information.
Organized since the year 2000, the Treaty Event has become an important feature in the annual international law agenda. This year, it is expected that we will reach the landmark of 2,000 treaty actions performed in the context of the Event.

Finally, it should be noted that, occasionally, the Treaty Section also organizes special treaty events for specific treaties, either at Headquarters or in other locations.

**What happens once after the signature or deposit of an instrument with the Treaty Section?**

Upon the performance of a treaty action (signature, deposit of the instrument of consent to be bound), the Treaty Section circulates electronically, through the Automated Subscription Services of its website, a depositary notification, which describes the treaty action performed, the relevant State and the treaty, with an indication of the legal effects of the action (e.g., the date of entry into force of the treaty, upon the deposit of an instrument of ratification). The depositary notification is usually circulated on the same day of the signing or the deposit. The website of the Treaty Section is updated accordingly (e.g., listing the State among the Parties to the treaty) and an entry is included in the Journal of the United Nations of the following day. If applicable, a picture of the ceremony will also be made available on the website of the Treaty Section.

It is important to underline that, in most cases, a multilateral treaty does not enter into force for the State immediately upon the deposit of an instrument of consent to be bound. Most treaties provide for a period between the deposit of the instrument and the entry into force. For example, the TIR Convention provides that it shall enter into force six months after the deposit of an instrument of accession; the Convention on the Harmonization of Frontier Controls of Goods provides that it shall enter into force three months after such deposit.

**What happens once a State becomes a party to the treaty?**

The entry into force of the treaty implies that the State will enjoy the rights and be bound by the obligations provided for under the treaty concerned. This opens the phase of implementation of the treaty for the State, which, as noted above, will usually be handled by an office performing the secretariat functions for the treaty.

However, Government authorities should continue to monitor the depositary notifications issued by the Treaty Section, as well as its website, in order to keep abreast of any subsequent developments regarding the treaty. For example, Governments should be informed of which States may have subsequently joined the treaty, of what reservations or objections may have been made, or of amendments or corrections to the treaty. Indeed, all these may affect the operation of the treaty for the State. Thus, for example, under the relevant rules of international law, as codified by the Vienna Convention on the Law of Treaties, a State is considered as having tacitly accepted any reservation, if it does not object to it within a period of twelve months.
Where can one find up-to-date information relating to the status of multilateral treaties deposited with the Secretary-General?

While many sources may include information relating to the status of multilateral treaties (including the websites and publications of offices discharging secretariat functions for the treaties concerned), the only authoritative source with respect to matters relating to the participation in the multilateral agreements deposited with the Secretary-General is the Treaty Section. The Section makes available this information through its official website (https://treaties.un.org), which contains, among others: copies of all depositary notifications issued by the Secretary-General; electronic versions of certified true copies of multilateral treaties; information on the status of multilateral treaties, including date of entry into force, number and list of Parties; text of reservations, objections, declarations; amendments; corrections; pictures of ceremonies; etc. The website of the Treaty Section is updated on a daily basis.

How can one learn more about depositary functions and treaties deposited with the Secretary-General?

The Treaty Section is available to provide any information and technical assistance Governments may require with respect to participation in the multilateral treaty framework, including models of instrument of accession, advice on how to proceed with the deposit of instruments and information relating to the participants, text and entry into force of the treaty.

The Treaty Section further organizes two seminars on treaty law and practice at Headquarters every year (usually in June and November), as well as regional workshops upon request and availability from Governments.

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