INTERNATIONAL CONFERENCE OF NATURAL AND SOCIAL-HUMANITARIAN SCIENCES
Volume 02, Issue 08, 2025
Belgium, Brussels

INTERNATIONAL TREATIES – THE CHALLENGES OF THE MULTILATERAL TREATY SYSTEMS

Elbek Khasanov
LLB, Tashkent State University of Law
LL.M., Pennsylvania State University
Independent Comparative Law Researcher

ANNOTATION

This article analyzes the challenges of multilateral international treaty-making. It focuses on key issues such as implementation, state consent, conflicting interests, and ratification processes. The author emphasizes that effective treaty-making requires harmonization of domestic norms, sufficient resources, political will, and coordination among states. The study highlights the difficulties in achieving agreements that serve both national and international interests and stresses the need for collaboration and shared commitment among the international community to ensure successful treaties.

INTRODUCTION

There are perhaps few areas of international law where confusion and clarity reign supreme more than that of the sources (Van Hoot, 1983). The Statute of the International Court of Justice has formalized the sources of international law[1]. Article 38 of the Statute provides that:

The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply:

(a) international conventions, whether general or particular, establishing rules expresslyrecognized 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 mosthighly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.

[1] See more at Statute of the International Court of Justice, 24 October 1945. https://www.icj-cij.org/en/statute [2] See more at Vienna Convention on the Law of Treaties, 1969. UN Treaty Series Vol. 1155,1-18232 Article 2. 1. (a)

Customary international law (state practice) and international conventions (treaties) are the legal basis for multilateral treaty making. In the area of treaty law, two important international conventions have been accepted:

1) the Vienna Convention on the Law of Treaties, 1969
2) the Vienna Convention on the Law of Treaties between International Organizations and States, 1986

According to the Convention[2], a 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.*

In this paper, the challenging aspects of international treaty making are analyzed through different perspectives. Among the contractual issues of international law three major and common problems are studied which challenge states to make effective international treaties.

Issues of implementation

In international legal practice, the phrase "implementation" is commonly used (Current international law, 2007). This term can be found in UN General Assembly and other UN bodies' resolutions, as well as resolutions from other international organizations. In dictionaries, implementation is defined as "fulfillment of international and domestic law norms on the execution of international law norms; it also includes the creation of conditions for such fulfillment at international and domestic standards (Webster's Encyclopedic Unabridged Dictionary of the English Language, 1996).

It is important to point out that national remedies used for the realization of international law include: the normative statements of general character regulating the relation between international and domestic law, and the conclusion, execution and denunciation of international treaties, and also, determining the competency of state bodies in the field of the implementation of international law; national legal statements adopted in order to ensure the realization of the international obligation occurring from certain international treaties; legal guaranteeing activity of state bodies related to the implementation; national law application experience (Shelton, 2015).

Governments appear to have vast powers in the study of forms and techniques, as well as in determining when rights and freedoms will be implemented in this circumstance. Uncertainty in identifying the norms for implementing these treaties is linked to a wide range of opportunities (various levels of economic and political

development) for each state party to apply the terms of the treaties on its own territory.

There are also some issues related to some spheres of international rule making where typical challenges occur. For instance, the majority of post-Soviet countries have similar challenges in incorporating international human rights norms into their legal systems (Litvinova & Glushkova, 2016). As a result, academics underline that creating effective (rather than bureaucratic) state institutions for human rights protection is also an issue.

National wealth is also to be noted that the ability of a country to implement with often severe treaty obligations is boosted by its wealth. The implementation process leading to domestic appliance is likely to be facilitated if the resources to achieve these objectives are available, as well as the political will to do so.

Finally, because of the expenses and risks of drafting a treaty, it is clear that drafting agencies are focusing their efforts on other ways to harmonize legislation. UNIDROIT and UNCITRAL's current work programs emphasize non-State rules as a means of harmonization.[2] However, the existence of successful conventions suggests that it may be desirable to embark on such a project, assuming enough stakeholder support.

Problem of consent in multilateral treaty making

When global issues occurred, special changes might be made, usually in compliance with consent requirements. Even in circumstances where international disputes were uncommon, clearer coordination between states was occasionally required. States should be able to cohabit peacefully if they can establish a consensus on regional and international issues.

However, states have to prove that living in cooperation is preferable to living in a state of conflict. The mechanism's complexity is due in part to the necessity for "transfers" between the participants, and it was designed to establish consensus. The Peace of Westphalia is a good example of a negotiated agreement and a sequence of transfers between sworn foes that resulted in a better situation for all sides. However, it demonstrates how difficult it is to overcome transaction costs on a global scale. Peace was eventually reached, but only after decades of horrific bloodshed (Andrew, 2011).

The practice of using transfers to get an assent of the parties involved has some similarities like domestic law. In domestic law, however, no one would argue that a

[2] See more at UNCITRAL working programme: https://uncitral.un.org/en/working_groups; UNIDROIT working programme: https://www.unidroit.org/about-unidroit/work-programme

contract can solve every significant problem. It is clear that some forms require a government with the authority to make decisions on behalf of citizens. Government should be responsible for national defense, public order (such as police and internal affairs), public services (such as roads), and other functions. However, there is a contradiction, this contrasts with the reality of the international system, where nothing can be termed a government with any certainty (Watson, J. (1992). There is no legislative or authority that can compel governments to operate in a way that promotes the common good.

States' collective decision-making is still a consent-based procedure (Andrew, 2011). Some issues of multilateral treaty making might be solved easily in turn, even if it requires the consent. The clear illustration for this can be those situations in which states have common interests. Through this way, each state will act as necessary to solve the problem. These issues are simple to resolve that they can hardly be described as "problems." Sweden and Bolivia, for example, have no desire to use force against one another. They share a desire to keep the peace.

Another type of problem, known as coordination issues, is equally simple to solve without jeopardizing the principle of consent. These are instances where states want to collaborate but can't agree on how to do so. The Warsaw Convention, for example, harmonizes requirements on everything from safety to luggage marking.[3] When the parties' interests aren't so well matched, things become more complicated. The prisoner's dilemma is the archetypal example of competing interests. In these cases, a solution requires that states behave differently than they would in the absence of cooperation. Attempts to solve such problems can fail for a variety of reasons, including a failure to acquire one or more states' approval. This was the situation with the Mine Ban Treaty of 1997, which outlawed all antipersonnel landmines.[4] Despite the fact that many states signed the pact, several, notably the United States, declined because the conditions did not serve their interests (Koh, 1998).

In these cases, failure to reach an agreement might be regarded as an inability to overcome transaction costs. If transfers were available, for example, to address circumstances such as the Mine Ban Treaty, individuals who stood to gain the most from the agreement (or those who are most enthusiastic about the deal) may transfer

[3] The "Warsaw System" for international air carrier liability consists of the following instruments: Convention for the Unification of Certain Rules Relating to International Transportation by Air, Oct. 12, 1929

[4] U.N. Convention on the Prohibition of the Use, Stockpiling, Production and transfer of Anti-Personnel Mines and on their Destruction, open for signature Sept. 18, 1997 (entry into force Mar. 1, 1999) (http://www.unhcr.org/refworld/docid/3ae6b3ad0.html).

value in some manner to those who stood to lose. Nonetheless, the failure to persuade others to join might be regarded as a failure to identify and offer sufficient transfers to persuade non-participants that it is in their best interests.

Ratification

There is another type of challenge of ratification of international treaties which is linked with complicated procedures of domestic legal systems. Ratification of international treaties is easier if the required modifications in domestic law are limited. States wish that international law mirror their own legal norms. States can use treaties as a tool to promote national legal solutions. International law is imprisoned by the state as Ralph Amissah calls it (Amissah, 2000). The 2001 United Nations Convention on the Assignment of Receivables in International Trade (which has been ratified by one State) experienced a number of problems, one of which was that most States needed to make considerable adjustments to bring the Convention into compliance with domestic law (Boss, 2007).

As for challenges connected with political systems, the European governments have been a mix of pluralistic and autocratic political systems, with varying rates of economic growth and legal systems. It is possible that the ratification negotiations in these various political systems go in quite different directions. Because of the accompanying public debate and negotiations, open pluralistic systems are predicted to cause deadlocks and delays in ratification of international agreements. Highly centralized and closed regimes, on the other hand, can quickly ratify treaties if they are deemed to be in the national interest (Spector & Korula, 1993).

The level of public concern about particular issue areas varies by country. Furthermore, public attention is likely to differ depending on whether the most important global challenges are local or international in scope. When public awareness about particular issue is high, public pressure on parliamentary organizations charged with ratifying international treaties can be effectively mobilized (Spector & Korula, 1993). This pressure, in the form of catalytic beginning activities, lobbying, education, and implementation help, can be a beneficial influence in lowering ratification time and other hindering.

In corporation with above challenges, the number of actual issues of ratification exists such as proliferation of clauses that prevent the extension of protection beyond that provided by domestic law; the refusal for internal purposes of dynamic interpretation of treaty texts and the rejection by national institutions of such an interpretation by international judicial authorities, resulting in a distortion of the treaty's meaning; the elimination of the contract's self-executing nature without enacting implementing legislation.

Conclusion

There are common challenges in multilateral treaty system to. Primarily, there are many situations in which parties with essentially conflicting interests can come to a treaty by exchanging interests. In addition, governments are frequently unable to overcome the issues such as harmonization of domestic norms, sufficient resources, the will to enter into treaty. However, every member of the international community expresses their own interests and needs which have to be met in good manner. At the same time, there are narrow interests and internal standards in treaty conclusion at the expense of the interests of all members of international society. These reason, particularly, cause states to fail in achieving effective international treaties. All of this suggests that nations should devote resources and experience to reach a common will.

References

[1] Vienna Convention on the Law of Treaties, UNTC. (1969). www.treaties.un.org, Retrieved 2022, https://treaties.un.org/pages/ViewDetailsIII.aspx?src=TREATY&mtdsg_no=XXIII1&chapter=23&Temp=mtdsg3&clang=_en

[2] Vienna Convention on the Law of Treaties between International Organizations and States,
UNTC. (1986). www.treaties.un.org, Retrieved 2022, https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXIII-3&chapter=23&clang=_en

[3] Statute of the Court | International Court of Justice. (1945). www.icj-cij.org, Retrieved 2022, https://www.icj-cij.org/en/statute

[4] Fifty-ninth Session (2007) — International Law Commission. (2007b). www.legal.un.org.
Retrieved 2022, https://legal.un.org/ilc/sessions/59/

[5] Fias, Z., Sulyok, M. & Aniko S., (2019) Interstate relations, *Iurisperitus Kiadó*, University of Szeged

[6] Gowland-Debbas, V., (1998). Multilateral treaty making: the current status of challenges to and the reforms needed in the international legislative process, *American society of international law.*

[7] Koh, H., (1998). The 1998 Frankel Lecture: Bringing International Law Home, 35 *HOUS.L.REV.*

[8] Van Hoot, G., (1983). Rethinking the Sources of International Law, *Kluwer Law and Taxation Publishers*

[9] Watson, J. (1992). State Consent and the Sources of International Obligation. *Proceedings of the ASIL Annual Meeting*, 86, doi: https://10.1017/S027250370009443X

[10] Random House Value Publishing, (1996). Webster's Encyclopedic Unabridged Dictionary of the English Language, *Gramercy Books*, 2 ed.

[11] Guzman, A., (2011). The Consent Problem in International Law. www.scholarship.org https://escholarship.org/uc/item/04x8x174#article_main

[12] Guzman A. & Simmons, B., (2002) To Settle or Empanel? An Empirical Analysis of Litigation and Settlement at the WTO, 3 J. *LEG.STUD*. 205

[13] Litvinova, I. & Glushkova, I. (2016). Human rights in Russia and the world: Development Strategies, Problems, Solutions. *The review of the Liberal Arts University*, (1)

[14] Hoekstra, J., (2021). Political barriers in the ratification of international commercial law conventions, *Uniform Law Review*, Vol. 26, N. 1, https://doi.org/10.1093/ulr/unab003 [15] Amissah, R., (2000). 'Revisiting the Autonomous Contract—Transnational Contract Law
Trends and Supportive Structure' in Ian F Fletcher, Loukas Mistelis, L. and Cremona, M.
(editors), *Foundations and Perspectives of International Trade Law*

[16] Boss, A., (2007). 'The Future of the Uniform Commercial Code Process in an Increasingly
International World', *Ohio State Journal*

[17] Spector, B., & Korula, A., (1993) Problems of ratifying international environmental agreements Overcoming initial obstacles in the post-agreement negotiation process, *Global Environmental Change*, Butterworth-Heinemann Ltd.

[18] International Economics. (2019, July 18). Challenges for Implementing the Trade Facilitation Agreement.
https://www.tradeeconomics.com/iec_publication/challenges-trade-facilitationagreement/

[19] https://uncitral.un.org/

[20] https://www.unidroit.org/