

Welcome and Namaste !



Multilateral Treaty Negotiations and Negotiations with Multilateral Financial Institutions: Challenges and Strategies

(A brief presentation for Inter-action)

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General Views on Treaties

Unlike municipal law, the various methods by which rights and duties may be created, in international law they are relatively simple,

Treaties perform a variety of functions on international level that in national law are performed by many legal acts like constitution, parliamentary acts, rules, deeds ,

There is no International Parliament as such, and international law is created on the basis of a treaty,

A treaty is basically an agreement between parties(basically states) on the international scene,

States transact a vast amount of their business by using the device of the legal instrument know as “ treaty”

State cooperation extended, territory acquired, dispute settled, war terminated, alliance established under a treaty.

Meaning of a Treaty: What is a Treaty ?

1. Meaning of a Treaty under the customary International Law:

A Treaty, is a binding formal agreement that establishes obligations between two or more subjects of international law (primarily states and international organizations).

2. Definition of a Treaty under the Modern Treaty Law : Meaning of the Modern International Law

3. Vienna Convention on Law of the Treaties, 1969 defines a treaty as an international agreement concluded between States in written form and governed by international law ,whether embodied in a single instrument or two or more related instruments and whatever its particular designation.

Hence, a Treaty is :

An Agreement,

- **Concluded between states,**
- **In written form,**
- **Governed by international law,**
- **Whether embodied in a single instrument or in the two or more instruments,**
- **Whatever its particular designation.**

Meaning of a Treaty: What is a Treaty ?

Vienna Convention on Law of the Treaties, 1969 does not address the existing treaty making practice of the world,

Vienna Convention on the Law of Treaties Concluded between States and International Organization and between International Organization, 1986 was concluded which further defines a treaty.

Nepal Treaty Act, 1990:

Agreement concluded between two or more states and between state and international intergovernmental organization.

Treaty may be classified Bilateral or Multilateral

Importance of a Treaty in International Law : Why

Multilateral Treaties are concluded?

Main source of international law:

- **Law Making Treaty,**
 - **Treaty Contracts**
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Means of codification and progressive development of International Law:

- **Meaning of Codification,**
- **Meaning of Progressive development of Law**

Constitution of an international/regional organization:

- **Charter,**
- **Statute,**
- **WTO Establishing Agreement**

Means of cooperation among states.

Means of settlement of disputes.

Demonstration of international personality.

Transfer of capital and technology to the developing countries.

Treaty Making Procedures: Treaty Negotiations

Every state and only state has the capacity to make a treaty (VCLT art.6),

International intergovernmental organizations ,(but not NGO) may become a party to a treaty,

A state or an organization authorizes a person to represent it in the negotiation or adoption of a treaty, it provides to the person a document known as “full powers”,

Certain categories of dignitaries may perform the treaty making job even without a full powers (Art.7,VCLT)

In case of a multilateral treaty the person’s credentials to the conference may serve a similar function of the full powers.

Credential Committees are formed to examine the Credentials.

Preparation of a Multilateral Treaty Negotiations

1, Multilateral treaties are drafted either by **an expert body (ILC)** or by **the Diplomatic Conference of the States** (normally open ended),

2, ILC : (composed of 34 individuals recognized for their expertise and qualifications in international law) a subsidiary body of the General Assembly drafted many international conventions,

- UNCDC
- Hague Conference of Private International Law ,
- UN Specialized Body, (ICAO, ILO, UNICEF)
- UNIDROIT ,

Preparation of a Multilateral Treaty for Negotiations

- 1. Policy Resolution by the Competent Body (UNGA),**
- 2. Formation of an ad hoc committee to prepare drafts articles of an universal convention to address matter ,**
- 3. An open ended experts Group may be formed, if necessary,**
- 4. The meeting of the said Group may be held**
- 5. The Group may recommended competent body (UNGA) to prepare universal comprehensive convention**
- 6. An open ended committee may be formed**
- 7. Ad hoc committee starts negotiations on draft Articles of the proposed Convention, from time to time ,**
- 8. After several rounds of negotiations, ad hoc committee finalizes the draft of the Convention.**

UN Convention against Corruption (UNCAC) and its Genesis: Example of Multilateral Treaty negotiations

UNGA, by a Resolution No.55/61 adopted on Dec.4,2000,formed an *ad hoc committee* to prepare drafts articles of an universal convention to address corruption,

Thereafter, an open ended experts Group was formed,

The meeting of the said Group was held in Vienna in 2001,

The Group recommended UNGA to prepare universal comprehensive convention and open ended committee was formed in 2001,

Ad hoc committee started negotiations from Jan.21,2002 in Vienna,

After seven rounds negotiations, ad hoc committee finalized the draft of UN Convention against Corruption on October 31,2003

Multilateral Treaty Negotiations skills

Treaty Negotiation Skills : bargaining skills and tactics for building trust while negotiating among the states

States Groups take their positions and negotiate the draft articles,(EU, OECD, LDC,ASEAN, AU etc.)

Negotiation is a strategic discussion among the states to resolve an issue in a way that find acceptable to all

In case of a multilateral treaty the process of negotiations is a little bit complicated ,

It takes a long process in several round of negotiations

UNCLOS negotiations were held almost 7 years, (Concluded with a comprehensive Convention on Law of the Sea in December,1982)

WTO (9 Rounds of Negotiations since 1947/48 – GATT)

(Doha Round),

WTO was established in 1995.

Adoption the Text of a Multilateral Treaty

Negotiations of a multilateral treaty take comparatively long time and are concluded normally by adopting the text of a treaty by :(known normally as draft of the Convention)

- Consensus ,
- Unanimity,
- Majority,
 - Simple majority,
 - Qualified majority,
- Package - dealing

Signature of a Multilateral Treaty

Text of a multilateral treaty is normally adopted by the diplomatic conference of the states (UN General Assembly),

Conference of States may call states to become a party to the proposed multilateral convention,

A multilateral treaty is opened for signatures by states for a discrete period of time(one or two years and thereafter it shall not be for signature,

Signatory states may ratify the multilateral convention in accordance with their constitutional and legal provisions,

Those States that could not put their signatures because of any reason whatsoever, may accede to the convention,(Accession)

Instrument of ratification or instrument of accession, as the case may be, shall be deposited with the depository,

Normally, a multilateral treaty comes into force to state that is a party after certain days (90)

Reservation to a Multilateral Treaty

A State may declare a required Reservation at the time of signature, Ratification or Accession,

Advisory Opinion of 28 May 1951 by ICJ, Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide

Nepal must declare a reservation, if necessary and possible, to safeguard the national interest.

New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards(1958)

Nepal acceded to the Convention on 4 March,1998,

Nepal shall recognize and enforce the foreign arbitral awards only on the basis of reciprocity, Nepal shall apply the convention only on differences or disputes arising out of legal relationship, whether contractual or not ,which are considered as commercial under the law of Nepal,(Art.1.3, Convention),

Monitoring Mechanism of Treaty Implementation

International Supervision.

Reporting.

Complaint against the state party.

International conference.

Submission of national legislation.

Reference to ICJ/Arbitration.

Reference to Security Council.

Multilateral Financial Institutions and Negotiations with Them

1. The World Bank Group

- IBRD,
- IDA,
- IFC,
- MIGA

2. Asian Development Bank (ADB)

3. International Fund for Agriculture Development (IFAD),

4. Nordic Development Bank,

5. OPEC Fund and many others,

6. Private Investment Bank (City Bank)

Negotiations with Multilateral Financial Institutions: Challenges and Strategies

1. General Conditions applicable Loan and Guarantee Agreements,(Credit Agreement)
2. Rules applicable to Loan and Guarantee Agreements,
3. Boilerplate Clauses in Agreement: Non-negotiable clauses/ non-changeable clause
4. Conditions of the Agreement:
 - Covenant, General conditions ,
 - Particular Conditions, (Use of proceeds, exclusive utilization, maintain separate accounts.)
 - Conditions Precedent, (Marsyandi HPP (NEA),TIA (CAAN)
 - Effective Clauses (Conditions for Effectiveness),

Particular Policy Issues :

- Land Acquisition Policy,
- Environment issue,
- GESI issue,
- Procurement Guidelines,

Negotiations with Multilateral Financial Institutions: Challenges and Strategies

Particular Policy Issues :

- Health and Safety issue,
- Labor Standards,
- Allocation and Withdrawal of Loan :
 - Civil Works,
 - Consulting Service: most controversial ,
 - Capacity Development : most controversial,
 - Equipment and Vehicles to be checked thoroughly.

The End
Thank you very much!