

Q.4

Under Vienna Convention how would you define treaty, its major features and conditions of determination of a treaty?

Write introduction

Treaty:- Treaty is considered the first and foremost source of an International law. For any decision to be made treaty is considered more important than customary laws or general principle. Article 38(1) of International Court of Justice has classified it as a primary source of International Law

1. Definition by Vienna Convention on Law of Treaty 1969:

Article 2 of VCLT 1969

"Treaty is an agreement whereby two or more states establish or seek to establish a relationship between them governed by International Law"

Types Of Treaties:

On the basis of the nature of the treaties and their area of specification treaties are classified as follow.

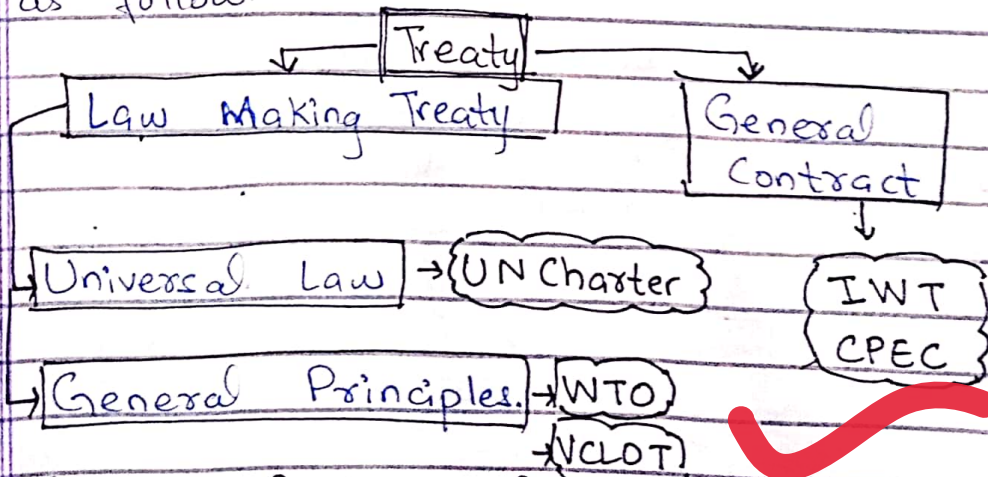


fig: Classification of Treaty

a. Law Making Treaties:

Universal Law: Among law making treaties, which are equal as legislation in the municipal law, Universal law are such treaties that are accepted by a large number of states and these states are bound to apply it as UN Charter.

General Principles: Comparatively limited in its acceptance, these formulate the laws to govern specified area of consideration as Vienna Convention on Law of Treaty 1969.

b. Treaty Contracts: These are generally bilateral or multilateral treaties as Indus Water Treaty between Pakistan and China.

2. Major Features of Treaty:

VCLOT 1969 has defined how treaties are made, amended, accepted, ratified, and are observed. It has also highlighted its basis and other major features as follows:

a) Basis of Treaty:

Naturalists: They gave the general natural principles as basis and provided the Theory of fundamental Rights as basis to generate a treaty.

Positivists: They proposed the consent and Theory of consent and Theory of auto-limitation.

Grotians: Provided Pacta Sunt

Servanda as basis.

VCLOT 1969: has on many instances proved that Pacta Sunt Servanda as a generally accepted basis for the formulation and effectiveness of treaty.

UN Charter: Parties must enforce the treaties in good faith.

b. Compulsion of Consent:

VCLOT does not approve any treaty in which consent of the parties is not involved.

Article 51, Article 52 of VCLOT 1969 disregards any such treaty in which parties are coerced, force is being used and parties are compelled to accept a treaty.

Article 51: Any such treaty in which party is coerced, threat or act of threat is used is considered legally ineffective. Whereas Article 52 terms such treaties as void. This shows that consent is a major feature of any treaty.

c. Process of Treaty Making:

The VCLOT provides all the necessary requirements in order to formulate a treaty until its acceptance, operations and enforcement. All provide articles clear the ambiguity at any stage. Following are the steps of a treaty making process.

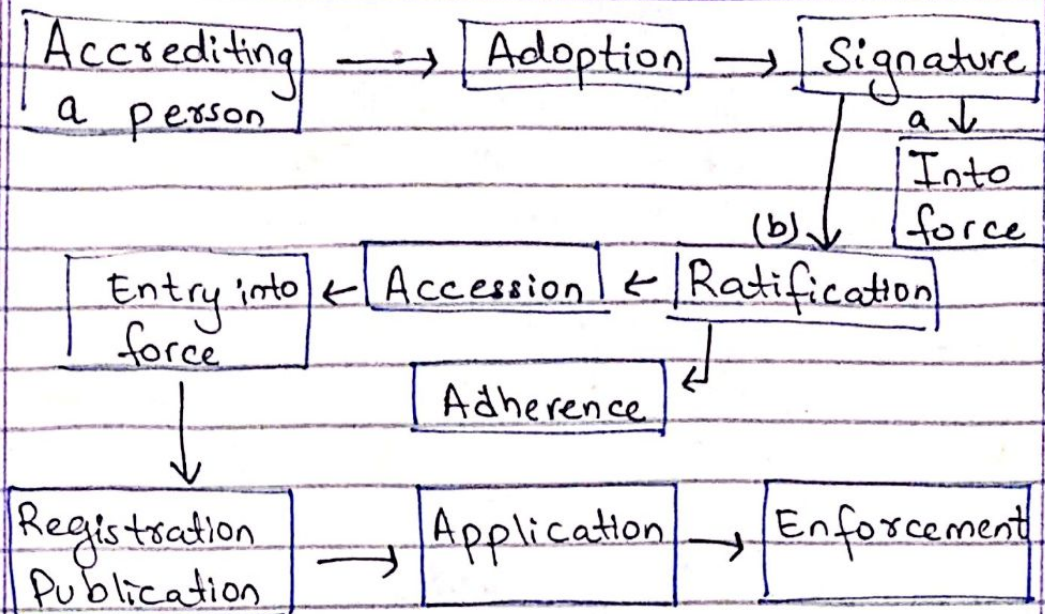


fig: flowchart of Steps of Treaty Formulation

c. Ratification of a Treaty:

After accrediting a person in place of the government and signature process done by the nomination party instead of a government there comes two conditions. One in which treaty is then directly binding upon all parties. The other in which state head or head of gov under specific provision of the constitution signs/signs the treaty.

Article 2: Ratification is a process whereby a state at Intl International site shows its consent to abide by a the treaty.

Where by Article 14 provides with the circumstances in which ratification is required. These are : if

- a) If intended by states.
- b) Provided in Treaty

c) conditioned before signatures.

d) mentioned during negotiations.

d. Reservation of Treaty

States can show reservation upon certain provisions under circumstances.

Article 2(1) Reservation is a unilateral statement whereby a state during signing, accepting or interpreting a treaty asks to exclude or modify certain provisions.

Article 19 provides criteria for formulation of a treaty. Treaty is not Article 20 states conditions for acceptance or rejection of treaties. If treaties are required consent of all then it must address reservations of all.

Article 21 highlights methods of establishment whereas Article 22 provides methods and ways of termination of reservation by party.

e. Interpretation of Treaty

It is stated that treaty must be interpreted in good faith.

Article 31 provides that the ordinary meanings of texts must be considered in reference of context.

If still ambiguity exists then preamble and annexes of the treaty must be consulted. Article 32 states

that further ambiguity to be sorted out by using negotiation drafts and keeping the object of negotiation in mind.

3. Termination of a Treaty:

A treaty can be terminated through legal operations or due to the dealings or acts of the parties.

i) Legal Operations:

a) Expiration of fixed Terms:

Certain treaties are time bound. Where states agree to keep the treaty intact until a specified time or term or condition. Once that period ends then legally due to the provisions of treaty it gets terminated.

b) Extinction of A Party:

After loss of sovereignty, annexation by another state or amalgamation into another state and dividing into two or more states the treaty with the parent state dissolves and evaporates. Only if the descended state ^{does not} accept to stay binding with the treaty.

c) Impossibility of Performance:

If by situation the circumstances change. As the parties bound create some fundamental conditions not according to the required object. Then the treaty is terminated.

Rebus Sic Stantibus: If the time frame surrounding circumstances change then by legal operations the treaty gets terminated.

e) Jus Cogens: Article 51 provides that if peremptory norms contradicts the treaty established then such treaties are bound to be terminated.

ii Acts of States:

a) Breaching of Treaty: If one or the other ^{more} parties continuously breach a multilateral or bilateral treaty then states can terminate the treaty.

b) Outbreak of War: When war outbreaks the relations among parties ~~disrupts~~. So general political and democratic laws gets terminated ~~whereas~~ laws of war and ~~law~~ does not get affected. On the other hand humanitarian laws ~~is~~ reestablishes once the war ends.

Concluding Points:

VCLOT has provided a framework from defining till its operation. It highlights the features of an effective treaty and also provides the ways and circumstances to terminate an ineffective ~~treaty~~. It has smoothen the ~~ways~~ of the treaties ~~the~~ being the foremost important source of international law.