

Lesson 3

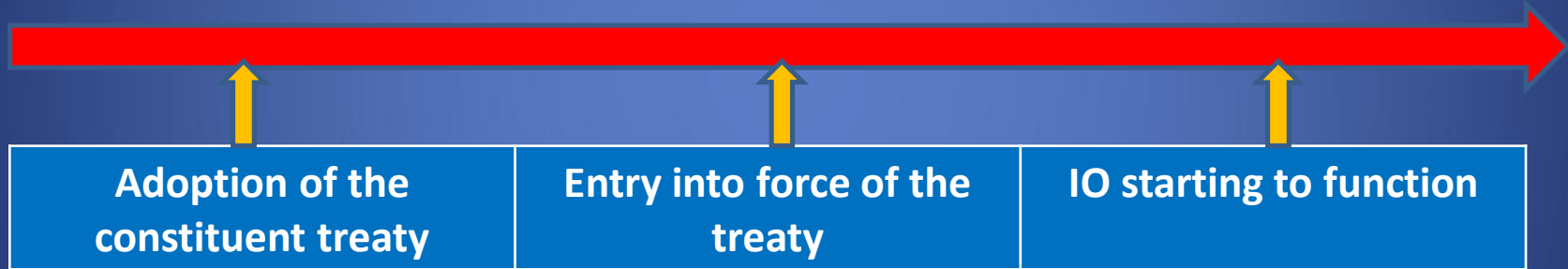
SET UP, EVOLUTION AND SUCCESSION OF IOs

International Institutional Law
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SET UP

Usually requires a constituent treaty (constitution)

Time line:



Role of preparatory Commissions (e.g. ICC)

Constituent treaties and VCLT

Art. 5 VCLT.

The present Convention applies to any treaty which is the constituent instrument of an international organization and to any treaty adopted within an international organization without prejudice to any relevant rules of the organization

Constituent treaties and VCLT

Peculiarities of treaties giving birth to an IO:

1) Reservations

General rules (art. 19 ff. VCLT)

- *Limits*

a reservation cannot be formulated if:

- It is prohibited by the treaty
- It is incompatible with the object and purpose of the treaty

- *Who monitors compliance with these limits?*

The other States Parties, who can formulate qualified objections to reservations they consider to be against the object and purpose of the treaty

Constituent treaties and VCLT

Peculiarities of treaties giving birth to an IO:

1) Reservations

Special rules for constituent Treaties

- Usually constituent treaties provide that **reservations are not allowed** (e.g. art. 120 ICC Statute), or at least not in respect of “institutional provisions”
- **Art. 20(3) VCLT.**

When a treaty is a constituent instrument of an international organization and unless it otherwise provides, a reservation requires the acceptance of the competent organ of that organization.

Constituent treaties and VCLT

Peculiarities of treaties giving birth to an IO:

1) Reservations

N.B. This does not mean that no flexibility is allowed under IOs constituent treaties!

e.g. Opt-out regimes of Ireland, UK and Denmark within the EU

Enhanced cooperation, within the EU

Constituent treaties and VCLT

Peculiarities of treaties giving birth to an IO:

2) Accession

Usually accession to a treaty is a unilateral act.

Accession to a constituent treaty, instead, usually requires a positive decision of an organ of the IO

e.g. Article 4 UN Charter

Membership in the United Nations is open to all other peace-loving states which accept the obligations contained in the present Charter and, in the judgment of the Organization, are able and willing to carry out these obligations.

The admission of any such state to membership in the United Nations will be effected by a decision of the General Assembly upon the recommendation of the Security Council.

Art. 49 TEU

...The applicant State shall address its application to the Council, which shall act unanimously after consulting the Commission and after receiving the consent of the European Parliament, which shall act by a majority of its component members. The conditions of eligibility agreed upon by the European Council shall be taken into account.

Constituent treaties and VCLT

Peculiarities of treaties giving birth to an IO:

3) Withdrawal

General rule (art. 56 VCLT)

If the treaty contains no withdrawal provision, the treaty is not subject to withdrawal unless:

- (a) It is established that the parties intended to admit the possibility of denunciation or withdrawal; or
- (b) A right of denunciation or withdrawal may be implied by the nature of the treaty

Constituent treaties and VCLT

Peculiarities of treaties giving birth to an IO:

3) Withdrawal

Special rules under constituent treaties (e.g. art. 50 TEU)

2. A Member State which decides to withdraw shall notify the European Council of its intention. In the light of the guidelines provided by the European Council, the Union shall negotiate and conclude an **agreement with that State**, setting out the arrangements for its withdrawal, taking account of the framework for its future relationship with the Union. That agreement shall be negotiated in accordance with Article 218(3) of the Treaty on the Functioning of the European Union. It shall be **concluded on behalf of the Union by the Council, acting by a qualified majority, after obtaining the consent of the European Parliament.**

Constituent treaties and VCLT

Peculiarities of treaties giving birth to an IO:

4) Interpretation

ART. 31 VCLT

1. A treaty shall be interpreted in good faith in accordance with the **ordinary meaning** to be given to the terms of the treaty in their **context** and in the light of its object and purpose.

- **Textual interpretation**

- **Systematic or contextual interpretation**

- **Teleological interpretation**

3. There shall be taken into account, together with the context: (a) Any **subsequent agreement** between the parties regarding the interpretation of the treaty or the application of its provisions;

(b) Any **subsequent practice** in the application of the treaty which establishes the agreement of the parties regarding its interpretation;

(c) Any relevant rules of international law applicable in the relations between the parties.

- **Systemic integration**

Constituent treaties and VCLT

4) Interpretation

ICJ, *Certain expenses of the United Nations*, AO 1962

The Court is asked to consider whether expenditures occurred to cover the costs of the UN operations in the Congo (ONUC) and in the Middle East (UNEF) constitute “expenses of the Organization within the meaning of Article 17, para. 2, UN Charter”, according to which:

“The expenses of the Organization shall be borne by the Members as apportioned by the General Assembly”.

- **Textual approach** – p. 158
- **Teleological approach is particularly relevant**: the general purpose of article 17– p- 162
- **Systemic interpretation** – the ICJ looks at respective functions of GA and SC under the Charter: under Art. 24, the SC has primary (but not exclusive) responsibility for the maintenance of international peace and security – p. 163
- **Practice of organs!** “It is a consistent practice of the GA to include in the annual budget resolutions, provision for expences relating to the maintenance of international peace and security” p. 160

Constituent treaties and VCLT

Peculiarities of treaties giving birth to an IO:

4) Interpretation

How to ensure uniformity in interpretation?

- 1) **Policy-making organs**, sometimes assisted by technical bodies, such as Legal Counsels/legal adviser (e.g. UN)
- 2) **Judicial organs of the IO** (e.g. Court of Justice of the EU), or International Court of Justice
 - Advisory Opinions of the ICJ
 - Preliminary rulings of the CJEU

Evolution

1. Formal revision

General rules on revision of treaties (VCLT)

Art. 40

2. Any proposal to amend a multilateral treaty as between all the parties must be **notified to all the contracting States**, each one of which shall have the right to take part in... the negotiation and conclusion of any agreement for the amendment of the treaty
4. **The amending agreement does not bind any State already a party to the treaty which does not become a party to the amending agreement**

Art. 41

1. Two or more of the parties to a multilateral treaty may conclude **an agreement to modify the treaty as between themselves alone** if:
 - (a) The possibility of such a modification is provided for by the treaty or not prohibited by the treaty and
 - (b) Does not affect the enjoyment by the other parties of their rights under the treaty or the performance of their obligations;
 - (c) Does not relate to a provision, derogation from which is incompatible with the effective execution of the object and purpose of the treaty as a whole.

Evolution

1. Formal revision

Special rules that apply to constituent treaties

1. Art. 48 TEU

- amendments must be discussed during *ad hoc* intergovernmental conferences;
- they enter into force only after being ratified by **ALL** States

2. Art. 108-109 UN Charter

- amendments must be discussed during a general conference and must be adopted by a majority vote of 2/3 of the Members
- They must also be ratified by at least 2/3 of the Members
- They then bind **ALL** Member States

Evolution

1. Formal revision

Special rules that apply to constituent treaties

3. Art. 121 ICC Statute - Amendments

- amendments approved by a majority of 2/3 and ratified by a majority of 7/8 MS bind all MS;
- Those MS who do not ratify such amendments may withdraw

Art. 122 ICC Statute - Amendments to provisions of an institutional nature

- amendments must be adopted by a majority vote of 2/3 of the Members
- They then bind **ALL** Member States

Evolution

2. Informal revision

Article 5 North Atlantic Treaty

The Parties agree that an armed attack against one or more of them in Europe or North America shall be considered an attack against them all and consequently they agree that, if such an armed attack occurs, each of them, in exercise of the right of individual or collective **self-defence** recognised by Article 51 of the Charter of the United Nations, will assist the Party or Parties so attacked by taking forthwith, individually and in concert with the other Parties, such action as it deems necessary, including the use of armed force, to restore and maintain the security of the North Atlantic area.

Evolution

2. Informal revision

The Alliance's Strategic Concept (1991)

At their meeting in London in July 1990, NATO's Heads of State and Government agreed on the need to transform the Atlantic Alliance to reflect the new, more promising, era in Europe. While reaffirming the basic principles on which the Alliance has rested since its inception, they recognised that the developments taking place in Europe would have a far-reaching impact on the way in which its aims would be met in future. In particular, they set in hand a fundamental strategic review. The resulting new Strategic Concept is set out below.

12. Any armed attack on the territory of the Allies, from whatever direction, would be covered by Articles 5 and 6 of the Washington Treaty. **However, Alliance security must also take account of the global context. Alliance security interests can be affected by other risks of a wider nature, including proliferation of weapons of mass destruction, disruption of the flow of vital resources and actions of terrorism and sabotage.**

Evolution

2. Informal revision

The Alliance's Strategic Concept (1999)

31. In pursuit of its policy of preserving peace, preventing war, and enhancing security and stability and as set out in the fundamental security tasks, NATO will seek, in cooperation with other organisations, to prevent conflict, or, should a crisis arise, to contribute to its effective management, consistent with international law, including through **the possibility of conducting non-Article 5 crisis response operations**. The Alliance's preparedness to carry out such operations supports the broader objective of reinforcing and extending stability and often involves the participation of NATO's Partners. **NATO recalls its offer, made in Brussels in 1994, to support on a case by-case basis in accordance with its own procedures, peacekeeping and other operations under the authority of the UN Security Council or the responsibility of the OSCE, including by making available Alliance resources and expertise.** In this context NATO recalls its subsequent decisions with respect to crisis response operations in the Balkans. Taking into account the necessity for Alliance solidarity and cohesion, participation in any such operation or mission will remain subject to decisions of member states in accordance with national constitutions.

Events affecting lives of IOs

1- Termination

e.g. Warsaw Pact

2- Succession (tasks taken over by a new IO)

- **Replacement** (e.g. League of Nations ---- UN)
- **Absorption** (e.g. integration of International Bureau of Education in the framework of UNESCO, 1969)
- **Merger** (e.g. European Launcher Development Organization + European Space Research Organization = European Space Agency, 1975)
- **Separation** (e.g. separation of Arab League Educational, Cultural and Scientific Organization from the League of Arab States, 1970)
- **Transfer of specific functions** (e.g. social and cultural functions of Western European Union transferred to the Council of Europe, 1960)

Methods of dissolution

1- Constitutional provisions

- **Expiration date** (e.g. Treaty establishing the European Coal and Steel Community expired on 23 July 2002, as provided under Art. 97)
- **Dissolution if number of MS falls under a certain threshold** (eg. European Space Agency, art. 25, <5)
- **Liquidation by one of the organs** (e.g. Article XXVII, s. 2, of the Articles of Agreement of the International Monetary Fund provides for the liquidation of the IMF by a decision of the Board of Governors)

Methods of dissolution

2- Provisions in other treaties

In principle, all parties of the constituent treaty should also be parties of the new treaty

3- Amending treaty concluded by the MSs

Nerver used

4- Decision of the plenary organ of the IO? Inherent power of an IO, to provide for its own liquidation?

BUT: Which procedure should be followed?

5- Withdrawal of all Members

Requires a previous political agreement between MS (e.g. Western European Union)

6- Disuse

(e.g. River Commissions Elbe and Oder)

Consequences of dissolution

IN ORDER TO AVOID DISPUTES: Usually successor IO and dissolving IO conclude a treaty between themselves regulating all these issues.

1- Functions which have not been transferred to the successor IO

Usually relinquished, but: supervisions of mandates (ICJ, *International Status of South-West Africa*, Advisory opinion, 1950)

Consequences of dissolution

2- Treaties concluded by the IO

- if there is a successor IO, obligations and rights stemming from the treaty will remain with a successor organization
- if there is no successor organization, rights and obligations will remain with the Member States of the dissolved organization

3- Personnel

Successor IO is not obliged to take over personnel of the dissolving organization

4- Assets and debts

- if there is a successor IO, usually taken over by it
- if there is no successor organization, taken over by States