

Document:-
A/CN.4/L.28

Text of articles tentatively adopted by the Commission at its third session

Topic:
Law of Treaties

Extract from the Yearbook of the International Law Commission:-
1951, vol. II

*Downloaded from the web site of the International Law Commission
(<http://www.un.org/law/ilc/index.htm>)*

time, but examples are cited in the Harvard Draft, pp. 796-799, to which it is hardly necessary to add further comment.

OBLIGATION OF A SIGNATORY PRIOR TO THE ENTRY
INTO FORCE OF A TREATY

Article 7

Unless otherwise provided in the treaty itself, a State on behalf of which a treaty has been signed is under no duty to perform the obligations stipulated, prior to the entry into force of the treaty in relation to that State; under some circumstances, however, good faith may require that pending the entry into force of the treaty, the State shall, for a reasonable time after signature, refrain from taking action which would render performance by any party of the obligations stipulated impossible or more difficult.

Comment

This article adopts article 9 of the Harvard Draft. It is included here for the purposes of discussion, although in the opinion of the special Rapporteur it states a moral rather than a legal obligation.

NO OBLIGATION TO RATIFY

Article 8

The signature of a treaty on behalf of a State does not create for that State any obligation to ratify the treaty.

Comment

This article follows verbally article 8 of the Harvard Draft.

ACCESSION TO TREATIES

Article 9

(1) Accession to a treaty is an act by which a State, on whose behalf the treaty has not been signed or ratified, formally, and in accordance with the terms of the treaty, accepts, in a written instrument duly executed, the treaty as binding.

(2) A State may not accede to a treaty unless that treaty contains provisions enabling it to do so or unless invited to do so by all the parties to the treaty.

(3) Unless otherwise provided in the treaty itself a State may only accede to a treaty after it has entered into force.

(4) Where a State accedes to a treaty without making its accession subject to ratification it is deemed to have undertaken a final obligation or, if the treaty has not at that time entered into force, to have acceded to the treaty, subject only to its entry into force.

(5) An instrument of accession shall be deemed to have been duly executed within the meaning of subparagraph (1) if it is executed by such organ of the State as is designated in the treaty, or, if none such is designated, by any organ of the State competent under that State's constitutional law or practice, provided that an instrument of accession shall not, by reason only of the fact that it is made subject to ratification, be deemed not to have been duly executed.

Comment

The rules adopted here are substantially the same as those contained in article 12 of the Harvard Draft but the formulation is somewhat different. Subparagraph (4) does not appear in the Harvard Draft but deals with a point that has raised some controversy in the past which it seems desirable to settle.

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I. On the basis of second report on the law of treaties
(A/CN.4/43)

ESTABLISHMENT OF THE TEXT OF TREATIES

Article 1

The establishment of the text of a treaty may be effected by

(a) The signature or initialling *ne varietur* on behalf of the States which have taken part in the negotiation of that treaty by their duly authorized representatives; or

(b) Incorporation in the Final Act of the conference at which the treaty was negotiated; or

(c) Incorporation in a resolution of an organ of an international organization in accordance with the constitutional practice of that organization; or

(d) Other formal means prescribed by the negotiating States.

ASSUMPTION OF TREATY OBLIGATIONS

Article 2

A treaty becomes binding in relation to a State by signature, ratification, accession or any other means of expressing the will of the State, in accordance with its constitutional law and practice through an organ competent for that purpose.

RATIFICATION OF TREATIES

Article 3

Ratification is an act by which a State, in a written instrument, confirms a treaty as binding on that State.

Article 4

A State is not deemed to have undertaken a final obligation under a treaty until it has ratified that treaty, provided, however, that it is deemed to have undertaken a final obligation by its signature of the treaty

(a) If the treaty so provides; or

(b) If the treaty provides that it shall be ratified but that it shall come into force before ratification; or

(c) If the form of the treaty or the attendant circumstances indicate an intention to dispense with ratification.

Article 5

If a treaty is subject to ratification, signature by a State does not create for that State any obligation to ratify the treaty.

ENTRY INTO FORCE OF TREATIES

Article 6

Unless otherwise provided in the treaty itself,

(a) A treaty not subject to ratification enters into force on signature of all States which have participated in the negotiations;

(b) A treaty which provides for the exchange or deposit of ratifications enters into force on the exchange or deposit of ratifications by all the signatories;

(c) A treaty subject to ratification but containing no provision for exchange or deposit of ratifications enters into force when it is ratified by all the signatories and when each signatory has notified its ratification to all the other signatories.

ACCESSION TO TREATIES

Article 7

(1) Accession to a treaty is an act by which a State, which has not signed or ratified the treaty, formally declares in a written instrument that the treaty is binding on that State.

(2) A State may accede to a treaty only when that treaty contains provisions allowing it to do so, or with the consent of all the parties to the treaty.

(3) Unless otherwise provided in the treaty, a State may accede to a treaty only after it has entered into force.

ACCEPTANCE OF TREATIES

Article 8

Acceptance of a treaty is an act by which a State, in lieu of signature or ratification or accession or all of these procedures, declares itself bound by the treaty.

II. On the basis of first report on the law of treaties (A/CN.4/23), chap. II

CAPACITY TO MAKE TREATIES

Article 3

Capacity to enter into treaties is possessed by all States, but the capacity of a State to enter into certain treaties may be limited.

Article 4

In the absence of provision in its constitutional law and practice (alternatively: in its internal law) to the contrary, the capacity of a State to enter into treaties is deemed to reside in the Head of that State (alternatively: the Head of the State is competent to exercise the State's capacity to enter into treaties). (Decision on phraseology deferred.)