FACT SHEET #5

Understanding International Law

WHAT IS INTERNATIONAL LAW?

International law is the law governing relations between States.

WHAT ARE THE BENEFITS OF INTERNATIONAL LAW?

Without it, there could be chaos. International law sets up a framework based on States as the principal actors in the international legal system, and it defines their legal responsibilities in their conduct with each other, and, within State boundaries, with their treatment of individuals. Its domain encompasses human rights, disarmament, international crime, refugees, migration, problems of nationality, the treatment of prisoners, the use of force, and the conduct of war, among others. It also regulates the global commons, such as the environment, sustainable development, international waters, outer space, global communications and world trade.

WITH SO MUCH CONFLICT IN THE WORLD, HOW CAN THIS REALLY WORK?

International law does work, at times invisibly and yet successfully. World trade and the global economy depend on it, as it regulates the activities required to conduct business across borders, such as financial transactions and transportation of goods. There are treaties for roads, highways, railroads, civil aviation, bodies of water and access to shipping for States that are landlocked. And as new needs arise, whether to prevent or punish terrorist acts or to regulate e-commerce, new treaties are being developed.

DOES INTERNATIONAL TREATY LAW IMPINGE ON A NATION'S SOVEREIGNTY?

To become party to a treaty, a State must express, through a concrete act, its willingness to undertake the legal rights and obligations contained in the treaty – it must *"consent to be bound"* by the treaty. It can do this in various ways, defined by the terms of the relevant treaty.

HOW DOES A STATE EXPRESS ITS "CONSENT TO BE BOUND"?

A State can express its consent to be bound in several ways, in accordance with the final clauses of the relevant treaty. The most common ways are: definitive signature, ratification, acceptance, approval, and accession.

Signing a treaty is one of the most common steps in the process of becoming party to a treaty. But simply signing a treaty does not usually make a State a party, although in some cases, called definitive signature, it might. A State does not take on any positive legal obligations under the treaty upon signature. The State does, however, indicate its intention to take steps to express its consent to be bound by the treaty at a later date. Signature also creates an obligation, in the

period between signature and ratification, acceptance or approval, to refrain in good faith from acts that would defeat the object and purpose of the treaty.

Multilateral treaties contain terms that indicate where the treaty is to be available physically for signing and for what period of time. The treaties also determine the methods available for States to become party to them, i.e. to indicate their consent to be bound – such as by ratification, acceptance, approval, or accession.

The three terms *ratification, acceptance* and *approval* all mean the same thing, particularly when used following "signature subject to…." Member States may use one or another of those words in their documentation, but in international law they mean the same thing – that the State is ready to become a party to the treaty.

Multilateral treaties often provide that they will be "*open for signature"* only until a specified date, after which signature will no longer be possible. Once a treaty is closed for signature, a State generally may become a party to it by means of *accession.* Some multilateral treaties are open for signature indefinitely. Most multilateral treaties on human rights issues fall into this category, such as the *Convention on the Elimination of All Forms of Discrimination against Women, 1979;* the *International Covenant on Civil and Political Rights, 1966;* and the *International Convention on the Elimination of All Forms of Racial Discrimination, 1966.*

HOW ARE TREATIES ENFORCED?

There is no over-arching compulsory judicial system or coercive penal system to address breaches of the provisions set out in treaties or to settle disputes. That is not to say that there are no tribunals in international law. The formation of the United Nations, for example, created the International Court of Justice, a means by which members of the world community may settle their disputes peacefully. The Security Council can also adopt, under Chapter VII, measures to enforce its decisions regarding threats to international peace and security, breaches of the peace or acts of aggression. Such measures may include sanctions or authorizing the use of force.

The International Court of Justice, the principal judicial organ of the United Nations, has a dual role: to settle in accordance with international law the legal disputes submitted to it by States and to give advisory opinions on legal questions referred to it by duly authorized international organs and agencies. Member States of the United Nations, in cases to which they are parties, are obliged to abide by its decisions, but before a case can go before the Court, a State must in some way have accepted the jurisdiction of the Court either in general or in relation to a specific case. No State that has not accepted the Court's jurisdiction can be forced to appear before the International Court of Justice.

Different treaties may create different treaty body regimes to encourage the parties to abide by their obligations and undertake actions required for compliance.