CHAPTER 6

International agreements

We have seen that states work together to achieve at least one of the following three goals: prosperity, peace, and the promotion of values. Some of the resulting organizations are so ambitious that they strive for all three goals, others attempt to achieve just one or two of them. The Church wants to promote peace and certain values related to human life, the African Union wants to achieve peace and prosperity, the United Nations and the European Union want all three. The way to do this is by agreement. Agreements among people are called contracts, among states they are called treaties, conventions, or charters. Treaties date back to the times that people organized themselves in communities and made agreements with other communities. Later, such treaties were signed between cities and states. Today, international treaties have become a new global structure.

A **treaty** is concluded among two or more states. A **convention** is a treaty that states can sign up for (they then become 'member' to the convention). A **charter** is the rules and principles that an international or intergovernmental organization has set up for itself.

Why sign international treaties?

No state is forced to sign any treaty. So why would a state sign any treaty that will somehow limit its sovereignty? Ideally, because they expect that it will serve their interests. A peace treaty, or a treaty on the reduction of import tariffs does that. But in the case of a convention – that is a treaty offered to states in a region or the entire world to sign – there is also another reason: states want to be part of such a treaty because everyone else is. That treaty itself might perhaps not always be entirely beneficial for a state, but being part of the larger group of member states may serve the state's interests in the long run. The idea of an **international community** therefore hinges mostly on the psychology of belonging and peer pressure, which are elements that very few states can resist.

This phenomenon becomes particularly clear in human rights conventions (see also the chapter on 'Human Rights'). Some countries have signed very few, if any, such treaties, and they have become international pariahs, like North Korea. So was Sudan, until it signed most human treaties all at once in 2004 (a move that may be explained by the psychological factor of wanting to be part of the larger world community). Perhaps the most interesting example of those few who refuse

to give up their sovereignty by signing human rights treaties is the United States of America. Its position is primarily motivated by the idea that it already has a functioning legal system that needs no additional treaties, but other considerations play a role as well (see text box).

Specific reasons why America has not signed human rights treaties

America had specific reasons to not sign the following international treaties:

- *International Criminal Court*: no American should be tried before a foreign court, including the embarrassing risk that an American president might be called before the court.
- *Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)*: this would allow the right to abortion which is restricted in most, and fully banned in several American states.
- *Rights of Child*: the provision against child soldiers (under 18) would go against the practice of the American military to recruit soldiers at high school.
- *Optional Protocol to the Convention against Torture*: this treaty allows for inspection to detention facilities which America, with the largest incarcerated population in the world (2.3 million), considered 'overly intrusive'.

Treaties, particularly in the form of conventions, are a typical product of the global trend of multilateralism since the second half of the twentieth century: states were intent on cooperating and creating a world order by agreeing to abide by the same rules. It came therefore as a shock when the United States unilaterally withdrew from international treaties like the 2015 Joint Comprehensive Plan of Action (JCPOA) regarding Iran's nuclear program, the 2016 Paris Climate Accord that, among other points, sets standards for carbon dioxide emission reduction.

How to sign international treaties

When reference is made to states that have signed a treaty, a few legal-technical aspects need to be considered. First, there is a difference between a state 'signing' or 'ratifying' a treaty. **Signing** a treaty means that a government agrees with the treaty but still needs permission from parliament. A signed treaty is therefore not yet binding for that state. Once that permission is granted, the treaty can be **ratified** which means that the state is bound by it.

When a state ratifies a treaty, it can make reservations. A **reservation** means that a state ratifies a treaty but stipulates that some of the articles of the treaty are not applicable or need to be interpreted in a certain way. For example, America has

ratified the International Convention for Cultural and Political Rights but made the reservation that the article prohibiting the death penalty for minors is not applicable. And several Muslim majority countries have ratified human rights treaties with the reservation that they only apply if they do not contradict the 'sharia'.

Has a state signed, ratified or made a reservation to a treaty?
To check the signatory status of states to treaties, one can peruse the online lists provided by the United Nations (https://treaties.un.org under 'Status of Treaties Deposited with the Secretary-General'). There, one can check for each state whether it has signed and/or ratified the treaty and has possibly made any reservations.

Enforcing international treaties

Once certain rules and principles are agreed upon among states through a treaty, the question arises as to how the member states can be held to that treaty. Nationally, when a party breaks a contract, the other party can go to court to obtain a court order to have the contract enforced, and the court order will be enforced by the police. In the international community of states there is no such mechanism of enforcement: there are very few international courts (see next paragraph), and those that exist often have limited mandates. But more importantly: there is no international police. Therefore, a system has been created whereby states can hold each other accountable.

One of the ways to do so is **annual reporting**. During annual meetings, treaty member states assemble to report how they are upholding the treaty and to criticize each other for violations of that treaty. Accusing other states for not upholding the principles that they signed up for has no repercussions other than an international loss of face. This is a subtle way of public shaming and blaming and shows the psychology and diplomacy of international interactions.

A second option of enforcement is the deployment of **military force**. This option has been used in numerous instances by intergovernmental organizations like the United Nations, the African Union and NATO. It must be noted that the United Nations has no army, but the Security Council may decide that military force is permitted in a particular situation. The African Union and NATO, both of which can instruct member states to use their armies, will only do so upon the permission ('mandate') of the United Nations. This international use of military force has marked a change in the use of national armies: their function is now not only to defend their own country but may also be to defend peace elsewhere in the world. However, the deployment of such international defense forces is often questioned

because of the limited mandates that they are given by the intergovernmental organization that deploys them. Usually, their presence merely serves as a buffer between warring parties, and military force is only allowed as a measure of self-defense, which severely limits the options to use force (see chapter 'Security'). Only a few times have international forces been given the mandate to exercise military aggression, like in the case of North-Korea (1950-1953) and Iraq (1990-1991, and 2003).

NATO's Article 5
According to Article 5 of the NATO treaty, all member states are required to come to the defense of another member state if that state is being attacked.

Another way to enforce treaties is through **international courts**. Several of the international and regional organizations have given supranational powers to international courts to adjudicate in matters that are defined by the charters of these same organizations. The first such court is the International Court of Justice, mandated by the United Nations to adjudicate between member states based on **international law** (which is based on the amalgam of treaties, UN resolutions, and international practices). This Court has been mainly used in border conflicts between states, but also in matters of war (Nicaragua-United States in 1984, Congo-Uganda in 1999, Ukraine-Russia in 2014 and 2022), apartheid (South Africa in 1960, Israel in 2024) and genocide (Serbia in 2015, Myanmar in 2020, Israel in 2024). Another international court established by the United Nations is the International Criminal Court, that does not prosecute states but only individuals who are accused of crimes against humanity. Sometimes, the United Nations has set up ad hoc courts, like the Khmer Rouge Tribunal in Cambodia, the International Criminal Tribunal for the Former Yugoslavia, or the Special Tribunal for Lebanon.

Regional organizations may also install courts to adjudicate on matters relating to the charter of the organization. This is the case with the Court of Justice for the European Union, and the Court of Justice for the African Union. Sometimes a regional organization may install a court that only deals with issues of **human rights**, such as the Inter-American Court of Human Rights, the European Court of Human Rights, the African Court on Human and Peoples' Rights. In all these instances the states that established these courts have been willing to submit part of their judicial sovereignty to these courts. Sometimes it was the logical thing to do because the court was meant to adjudicate in conflicts among members of an intergovernmental organization or to explain legal points of its charter. But sometimes it was a principal decision to subject certain domains of law – in particular human rights – to a supranational court.

The thorny issue with international courts is the enforcement of their rulings. If the proceedings involve individuals, as is the case with human rights and international criminal courts, the enforcement of those rulings is undertaken by the countries of the convicted person (except in the case of the International Criminal Court in The Hague which has the use of its own prison). In court rulings among states, which is the mandate of the International Court of Justice, there is no enforcement mechanism, and there are cases known where the convicted state refused to implement the ruling, and the international community did not have the will or means to enforce it.

Further reading

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