THE IMPORTANCE OF GENERALITY IN LAW-MAKING
INTERNATIONAL AGREEMENTS

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The emergence of treaty regimes to regulate parts of international relations has become a common theme in the past half century. Multilateral treaties establish rules for the signatories, but often do so with an expectation of eventual universal acceptance or gradual incorporation into the body of customary international law, binding on all. Treaty systems may stand a greater chance of achieving that level of ratification and acceptance if they are in a form that articulates rules in generalized terms, rather than in specific commands for specific states.

The form in which they are written may make a difference. As treaties increasingly perform statute-like functions in the international legal system, it may be desirable to formulate them in statute-like terms.

Treaties are a special kind of legal instrument. Some treaties reflect simple bargains between state parties. When they do so, they may do no more than record that bargain, and omit the rationale that led to the conclusion. These include instruments like the recent New START treaty between Russia and the United States.1 Among other things, it limits the number of deployed nuclear warheads for each of those states to 1,550 and provides an inspection regime. There is no effort to explain the basis of the number 1,550—it is just an agreed number. Other bargained treaties include trade agreements, in which one side seeks a concession on one item of trade and the other seeks a different concession; each party is satisfied with the bargain or “deal” although each has received something different. These treaties represent bargains or “deals” that the parties have concluded. In some ways they can be compared to a contract between private parties.

Other treaties reflect an effort to create more general international legal norms which, their authors hope, will eventually become the basic

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standards for all nations either from universal acceptance of the treaty instrument or through gradual incorporation of its principles into the body of customary international law. Instruments like the United Nations Convention on the Law of the Sea,2 many of the human rights treaties3 and many of the codification treaties4 are examples. It would be much more difficult to determine what actual tangible benefit was reaped by each of the participant states; the ultimate benefit is a better ordered world, not a simple exchange between the parties to the convention. They represent an agreement that standards should apply to certain conduct in the international community, and can be compared to legislation.

If one is seeking to establish a set of international norms, the use of the more abstract approach may improve the chances of success of the instrument. In the negotiating phase, it may require states to articulate their positions in normative terms, rather than on the basis of claimed exemptions or rights. In the ratification phase, it may assist the ratifying body by explaining why a particular burden was allocated to that state. In the implementation phase, it may reinforce the legal obligation to follow through on the treaty commitment. It may also aid in public acceptance of the underlying purpose of the treaty.

Whatever their form, all treaties create international legal obligations. *Pacta sunt servanda*. Treaties of both types are subject to the same international standards concerning their validity, interpretation, and application. In large part this is now provided by the Vienna Convention on the Law of Treaties,5 although customary international law still plays a significant role, especially in the case of older agreements.

The way in which domestic audiences respond to such treaties may, nevertheless, differ greatly. This may be important in all phases of the

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4 The Vienna Convention on Diplomatic Relations, 500 UNTS 95, the Vienna Convention on Consular Relations, 596 UNTS 261, the Vienna Convention on the Law of Treaties, 1155 UNTS 331, and the Vienna Convention on the Succession of States in Respect of Treaties, 1946 UNTS 3, are examples.
5 See supra note 4.