

***Addis Ababa University  
School of Graduate Studies, Faculty of Law***



**Ratification of International Treaties:  
*The Ethiopian Experience***

***By: Sena Tilahun***

***June 2011***

# **Ratification of International Treaties:**

## ***The Ethiopian Experience***

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***09 June 2011***  
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***DECLARATION***

***I hereby certify that this is my original work. The works of others included in this dissertation are properly cited.***

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A handwritten signature in blue ink, appearing to read 'Sena Tilahun', is written over a horizontal line.

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***09 June 2011***

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**Dedication**

***This work is dedicated to the Federal Court Judge***

***Abeba Alemu!***

## **INTRODUCTION**

Whenever a State, as one subject of international law, tends to make dealings with other subjects of same, a treaty is usually employed as an instrument within which the wills of the parties to the agreement are contained. Once such a treaty is concluded as between the parties, therefore, it would become binding upon them and any subsequent disagreements between such parties would be dealt with, among other things, by the provisions of the treaty as if they were laws. Before reaching this stage, however, international agreements pass through various phases in each of which a different and sophisticated task is performed.

One of the issues seeking close considerations in relation to a negotiated treaty is the expression of consent to be bound by it. Nations of the world have already developed various forms of means of expressing consent. Sometimes a mere signature by the plenipotentiaries of the respective States parties would suffice just to cause the entry into force of the treaty in question. At other times, the signature of the parties may take a 'simple' nature and, hence, a further confirmation of the treaty by the pertinent organ of the respective countries would be required.

The latter of the above two ways of expressing a State's consent is what we call ratification. The act of ratification is undertaken basically to meet expectations of powers or entities of the outside world. That is, though the fact of confirming an international treaty would obviously bring about the applicability of the treaty domestically (has domestic legal effects), the act of ratifying an international agreement is an obligation that a party to a certain treaty needs to discharge to every other parties of the treaty in question. On the other hand, as ratification is virtually the last act required to be performed in the process of treaty making, it has become important, in order to provide a fully-fledged picture of what it looks like, to inquire into the general process of treaty making of the country as a whole.

In the course of doing this, therefore, elucidations would be made on the general treaty making process of not only of the current government (the principal focus of the research) but also of the past ones. Accordingly, it has been tried to shed light on the making and ratification procedures of international agreements in Ethiopia beginning from the time as far back as possible. The

author of the research would therefore like to bring to the attention of the reader in advance that this is done deliberately for the sake of providing a work which is, as much as possible, representative of the total treaty making trends of the country as a whole; hence, ratification is discussed both in its general (the complete process of making international agreements) and specific (a State's act of expressing its consent to be bound by a treaty) meanings.

Having this in mind, therefore, let us now see how the entire body of the work has been classified. All in all, it contained four Chapters. The first highlights on the general framework of the study. In this part, the reader would be able to find, to mention some, the impelling cause urging the researcher to focus on this particular field of study, the contribution the work is expected to add to the literature of the current legal regime and the impediments the researcher encountered throughout the whole process of doing the study.

The second Chapter is devoted to the discussion of the literature part. Consequently, after making a reading on this part, one would be able to understand such concepts as the general notion of treaty making and some basic issues relating to the idea of ratifying international agreements. What is ratification all about; what would be the effect of a State's failure to confirm a treaty which it has already signed through its duly authorized plenipotentiary; is there an already established rule of international law regarding the kind of treaties requiring ratification; does an act of ratification have a special form? The deliberations made in this Chapter will address these queries.

The treaty making and ratification trends of the country in the pre 1991 period would be dealt with in the third Chapter. For the sake of convenience, this part is further classified into three sections. The first limb of the Chapter deliberates on the pre-1931 period where treaty making powers and ratification issues were not treated through laws promulgated to that effect. Thus, the section is believed to bring to light the way the foreign affairs of the country were handled, during those times, in terms of the making and ratification of international treaties. The discussion would also disclose the lesson we now may learn from the practical experiences of that time.

The issue under review during the imperial period is discussed in the second section of Chapter three. This part, however, is presented only in a brief manner as there have been found previously conducted researches on the notions of the making and ratification of international agreements. This fact would be disclosed in that same section together with detailed information of the works already done before. The last section of the Chapter would discuss the subject-matter in the light of the PDRE regime.

The fourth Chapter is totally allocated to the deliberations of the current practical experiences of the country. Generally, it deals with the treaty making procedures of the country as a whole, and the ratification process followed in the House of Peoples' Representatives. These issues would particularly be analyzed in terms of the challenges indicated in the "statement of the problem" section of Chapter one.

In the conclusion and recommendations part of the research, keynotes would be discoursed, findings of the work would be disclosed and some suggestions which the author deems significant would be forwarded. This finalizes the work.

**CHAPTER ONE**  
**FRAMEWORK OF THE STUDY**

**1. BACKGROUND**

International Treaties, as legal instruments creating obligations to States parties, become binding only after they have entered into force in accordance with, *inter alia*, the specific provisions of the agreement dealing with that aspect. The instrument achieves this binding status but having passed through the different stages of treaty making process.

The agreement, in brief, must be negotiated by the parties involved; a final text must be authenticated and signed; and then, before its entry into force, the text of the treaty must be *ratified* by the concerned authority provided that this final act is sought to be undertaken by the States parties.

The process of ratification usually requires, in most legal systems, the involvement of national parliaments as treaties are potential instruments yielding both international and domestic legal effects. This of course gives the legislative organ of the concerned State, among other things, the opportunity to check on whether the treaty in question is in line with the policy aspects of the country. The act of ratifying the instrument by this organ, therefore, is an indication of that State party's consent to be bound by the treaty.<sup>1</sup>

Ever since Ethiopia had its first written Constitution in 1931, the country has so far witnessed four of such instruments including the present supreme law of the Federal Democratic Republic of Ethiopia (FDRE). According to the 1931 Constitution, it was the mandate of the Emperor to ratify international treaties. The same happened in the case of the Revised 1955 Constitution with a little room being reserved to the then Parliamentary Houses. As to the 1987 Constitution of the People's Democratic Republic of Ethiopia, international treaties were ratified by the Council of State.

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<sup>1</sup> See J. G. Starke QC, *An Introduction to International Law*, 8th ed., 1977, LONDON. BUTTERWORTHS.; PP. 478-9.

In both of the regimes prior to the present one, the country used to lead a unitary form of life in which case every section of the country is represented, as far as the ratification of treaties is concerned, by the central government. As per the 1995 FDRE Constitution, however, a federal and democratic State structure is established with a constituting regional States of nine. Owing to this and other related issues, therefore, the ratification process the country employs at present is supposed to be different from what it used to be during the predecessor regimes.

With all the efforts the writer exerted to find a work done on the current trend of the country's ratification procedures, it is discovered that, to the extent the knowledge of the researcher goes, no research has been conducted so far. On the other hand, as getting involved in treaty agreements is almost a 'day-to-day' activity of States in today's world, it is of crucial importance that the current ratification procedures of the country together with its past experiences shall be studied properly.

## **2. STATEMENT OF THE PROBLEM**

Having been negotiated and duly signed by the States parties, an international treaty would be referred back to the respective governments of the States for ratification provided that such further act of confirmation is expressly or impliedly required.<sup>2</sup> Ratification, therefore, is "the international act . . . whereby a State establishes on the international plane its consent to be bound by a treaty".<sup>3</sup> It, in other words, is an act through which the formal acceptance of a treaty in question is proclaimed or announced.

The organ entrusted with the power of ratifying international instruments in a specific State undertakes that act by adhering to the constitutional or national legal requirements. In this regard, almost every State has developed detailed domestic laws spelling out the process of ratifying international treaties. Until such a process is complied with, therefore, the treaty does not create

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<sup>2</sup> Id., P. 479.

<sup>3</sup> *Vienna Convention on the Law of Treaties (VCLT)*, Signed on 23 May 1969, Entered into force on 1980 (Effective condition: Ratification by 35 States), UN Secretary General (Depositary), Art. 2. See also STARKE QC, supra note at 1, p. 479.

obligations on the State in question – except in the incongruous instances where the agreement is to enter into force on signature alone.<sup>4</sup>

Consequently, it would definitely be the interest of every State party to a certain treaty to examine and understand, even before commencing the negotiation, the process of ratification in the other State party or parties. The study of national constitutions or other applicable laws to that effect becomes important, for example, to see whether the ratification procedure is rather a lengthy one; in which case a State may even lose its interest to negotiate at all. This may call for a careful planning or formulation of one's ratification procedures.

What does the practice of ratifying international treaties in Ethiopia look like? The FDRE Constitution<sup>5</sup> under Article 55 (12) provides that the House of Peoples' Representatives shall ratify international agreements concluded by the Executive. But there may be treaties which stipulate that the instrument in question shall enter into force only upon signature. What would happen if Ethiopia wants to become a party to international agreements of such type - which are deemed to have effect once they are signed – just without ratification?

It is provided for under Article 71 (2) of the Constitution that the president of the Republic shall proclaim in the *Negarit Gazeta* international agreements approved by the House of Peoples' Representatives. However, we cannot observe such international instruments being published in the said *Gazeta*. Rather what we witness is the promulgation of a ratification proclamation stating that the agreement signed at a particular place and time between Ethiopia and a named State is hereby ratified. Is this what is envisaged by the said provision of the Constitution? Would this practice, according to the laws of the country, have the effect of rendering the ratification process incomplete or “not fully-fledged”?

Article 9 (4) of the FDRE Constitution also provides that international agreements ratified by Ethiopia form an integral part of the laws of the land. However, it is in an insignificant number

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<sup>4</sup> Starke QC, *supra* note at 1, PP. 479-84.

<sup>5</sup> *Constitution of the Federal Democratic Republic of Ethiopia*, Proclamation No. 1/1995, 1<sup>st</sup> Year – No. 1, Federal *Negarit Gazeta*.

of cases (if at all) that Courts of law in the country cite (as law of the land) such instruments in the course of rendering judgments. Is the practical ratification trend of the country a cause for such a routine?

What is the possible retroactive effect of ratifying international instruments in Ethiopia? In other words, should the act of ratification be assumed to possess a definite retroactive force so that the treaty would be binding beginning from the day of signature?

The FDRE Constitution through its first Article establishes a federal and democratic State structure. Accordingly, the country has nine constituting Member States having their own legislative, executive and judiciary powers.<sup>6</sup> On the other hand, international treaties to which Ethiopia would be a party are negotiated and ratified (as per Article 51 (8) of the Constitution) by the Federal Government; and, in particular, unless such power is specifically given by law to other organs, the task is accomplished through the Ministry of Foreign Affairs.<sup>7</sup>

This being the fact, therefore, it may happen that the content of the international agreement that the country intends to conclude may involve an issue concerning the interests of any one of the Member States. In such cases, is there any special way through which the concerned Member State or States may participate in the conclusion of the treaty, in general, and the act of ratifying the instrument, in particular?

These above mentioned and other related issues are problems, as far as the ratification of international treaties is concerned, seeking proper considerations. The fact that there has been virtually no research conducted on the current ratification practices of the country necessitates the need for an intensive study on the particular subject in question.

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<sup>6</sup> See *Id.*, Arts. 1, 47 (1) & 50 (2).

<sup>7</sup> *Definition of Powers and Duties of the Executive Organs of the Federal Democratic Republic of Ethiopia*, Proclamation No. 691/2010, 17<sup>th</sup> Year – No. 1, *Negarit Gazeta*, Art. 15 (3).

### **3. GENERAL OBJECTIVE OF THE STUDY**

The general objective of the study is simply to explore the treaty ratification procedures of the country in terms of its practical experiences. In addition to this, however, it would also be attempted to give highlight on the treaty making process through which international agreements pass.

### **4. SPECIFIC OBJECTIVE OF THE STUDY**

As a specific objective of the study, the writer would endeavor to examine or analyze the nature of the country's ratification process – whether it involves protracted procedures or simple ones. Moreover, the various issues and problems frequently posed in relation to the act of ratifying international treaties would be dealt with in a detailed manner.

In other words, the queries mentioned in section 2 above and any other possible puzzles that may arise concerning the issue at hand would be appraised from the angle of the Ethiopian current (and, whenever appropriate, past) practical experiences.

### **5. METHODOLOGY**

Principally, in undertaking the work, the researcher relies on the relevant available national or international laws which are directly or indirectly related to the issue of ratifying international treaties. These may include the FDRE Constitution, Proclamations, the Vienna Convention on the Law of Treaties, etc.

On the other hand, in order to properly appreciate the treaty making practices and ratification processes of the country, interview sessions with concerned authorities relevant to the issue at stake are conducted. Here the selection of the authorities to be interviewed is managed very circumspectly to obtain a reliable feedback. Accordingly, the interviewees are chosen based on merit in terms of, *inter alia*, their experiences, position, good reputation and commitments.

Additionally, the researcher would also rely on books, unpublished senior theses and the internet as alternative founts from which relevant inputs to the work would be procured.

## **6. SCOPE OF THE STUDY**

The research principally deals with the country's *present ratification procedures of international treaties* and goes to the extent of disclosing its treaty making processes as a whole. In order to provide a vivid picture of Ethiopia's long standing culture in communicating with the outside world, however, the work is also arranged to include and touch upon, though in brief, the practical past experiences of the country in terms of its trend to enter into treaty relations. In this regard, an attempt is made to go as far back in time as possible so as to come up with a work representative of the country's total experiences.

## **7. SIGNIFICANCE OF THE STUDY**

Basically, interactions of a State with other countries of the world are managed through treaty agreements. Regardless of the nature of the treaty, whether it is for a general cooperation purposes or specific investment issues or cease-fire, etc, the intentions of the countries to get involved in any of such commitments and their willingness to be bound by them could be expressed in the form of international treaties.

However, though not always, such international treaties would enter into force only upon ratification by the concerned authority or organ in each of the State parties. Accordingly, observing, studying and analyzing, *inter alia*, the *ratification procedures* of a partner State in advance is one of the tasks a country needs to perform, at least for two reasons, even before commencing the negotiation process of an international treaty. First, there is no international rule enjoining a State to ratify a treaty for a reason that it has already signed it<sup>8</sup> (in which case a State may refuse to ratify an agreement which has already been negotiated and signed with a huge amount of efforts being exerted on it).

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<sup>8</sup> Starke QC, *supra* note at 1, P. 482.

Second, no country would like to see its efforts remaining in vain due to the refusal of the other partner to ratify the treaty. This is so because the negotiation process may consume and require the State party to pay much of its time, money, skilled man power, etc. Undertaking the prior study, therefore, would help the country to calculate and determine in advance the pros and cons of getting involved in treaty relations with the other partner or partners.

And one of the sources from which information about the ratification procedures of a country, in particular, and the treaty making processes of same, in general, can be found is a research material conducted on such specific topics. Therefore, this work is expected to be an invaluable contribution to meet such interests of States seeking to enter into treaty relations with Ethiopia.

From another perspective, we can see that a legislative organ of a country promulgates new laws or makes amendments to existing ones or repeals same through, *among other things*, the making of necessary studies on the specific area in question. In this regard, researches conducted on existing laws by persons or organs other than the legislature itself are also certainly important to give way to or indicate areas seeking such necessary promulgations or amendments or repeal of laws.

Accordingly, as this is virtually a new work done on the country's present ratification process of international treaties, it would definitely serve as one significant material to which reference can be made in undertaking any of the above arrangements to the existing laws in force. The contribution in this respect is particularly important as the country is currently on its way to come up with a new proclamation to provide for Treaty Making Procedures by repealing or amending the one already in force which was enacted by the PDRE regime.

Moreover, anyone interested in conducting further research on this specific area is believed not to face the problems this researcher has already experienced. Striving for the accomplishment of a research work on an area where there is no or almost no reference material may render the researcher pathless and force him to even quit what he already commenced.

The materialization of this research work, therefore, is supposed to be a cardinal addition to the literatures of the country in this particular field of study; and hence helps to, at least to some extent, clear-out the problems caused by the dearth of reference materials.

### **8. LIMITATIONS OF THE STUDY**

Ethiopia's present trend of entering into treaty relations with other countries and particularly its ratification procedures of such international instruments is a new area of study in the sense that there has been almost no research made on it so far. This has caused difficulties to the researcher as it has made it impossible for him to, *inter alia*, articulate what issues to include and not to include in the work taking the scope of the study into consideration.

Consequently, in the course of trying to be as exhaustive as possible, the researcher found himself on the edge of an abyss while searching, buying and photocopying materials which are deemed to have relevance, in one way or another, to the work in progress.

One category of major sources from which relevant information to the research might be obtained is authorities in the House of Peoples' Representatives (particularly the Legal and Foreign Affairs Standing Committees) and the Ministry of Foreign Affairs. However, as these authorities are in most cases high-ranking officials, it has been hardly possible to get an easy access to them.

Sometimes, even in cases where it was possible to get the access, it becomes very difficult for them, perhaps due to their highly overloaded official occupations, to keep the appointments – in most cases; the appointments could be cancelled or postponed to a future fixed date or even to an unknown period of time. It was only after a repeated and continuous phone calls and perseverance that the interview could be conducted as sought.

The other serious problem, especially in the Ministry of Foreign Affairs, was that I was denied to get any written material as a source under the pretext of confidentiality. It was totally unconvincing to regard confidential and deny access to such materials as those containing the

negotiation terms of Ethiopia and a certain State partner over a specific international treaty which of course had already entered into force. Though all of my efforts finally remained in vain, the attempt to convince them otherwise (so as to get the materials) cost me dear.

However, it is important to bring to the attention of the reader that the researcher has done whatever was possible to make sure that such scarcity of sources of data and the impediments in the way would not reduce the quality of the research findings.

**CHAPTER TWO**  
**GENERAL OVERVIEW**

**2.1. INTRODUCTORY REMARKS**

A treaty, as defined under Article 2 (1) of the Vienna Convention on the Law of Treaties, is an “international agreement concluded between States in written form and governed by international law, ...”. This, however, does not mean that treaties need always be concluded in a written form and that the parties are only States; rather, this definition was provided but for the purpose of limiting the scope of application of the Convention.<sup>9</sup>

As dealing with the nature or classification of international treaties is not within the bounds of this work, it would suffice for our purpose to simply understand treaties as international agreements concluded between subjects of international law and governed by same.

Moreover, the term ‘treaty’, in this research work, as is observed in many literatures, is used to mean international agreements in general regardless of their denomination as Charters, Conventions, Covenants, Protocols, etc. For the sake of avoidance of confusion, nevertheless, the word ‘treaty’ is employed consistently throughout the treatise.

Under this chapter, the issues of treaty making, in general, and ratification, in particular, are discussed in the forthcoming two sections separately. As one may easily identify it, however, ratification, in its narrower sense, is an undertaking which makes part and parcel of the whole treaty making process. It is in spite of this fact that we are about to discuss it alone detaching it from the whole process. This happened for the following two reasons.

First, ratification is the particular subject for the extensive deliberations of which this piece of writing is devoted. Second, though it is one part of a treaty making process, it is an act (which a party to a treaty needs to perform) containing various legal issues worth separate considerations. The same form of arrangements (and reasoning, in fact) would be used in the subsequent Chapters too.

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<sup>9</sup> VCLT, *supra* note at 3, Art. 3.

## 2.2. THE MAKING OF INTERNATIONAL TREATIES

International treaties are important legal instruments through which States accomplish varieties of functions in the international plane. Treaties, usually with the denomination of ‘Charters’, serve as Constitutions of international organizations; they can be cited as principal sources of international law; the transfer of territory from one State to another may be prompted through them; they are used as tools for the regulation of commercial relations, settlement of disputes, protection of human rights, etc.<sup>10</sup>

These multipurpose instruments are basically the results of negotiations between, *inter alia*, sovereign States. Common interests and issues of conflict are the two key elements to foster enthusiasm in States to negotiate and, consequently, get their terms of agreements in a form of international treaties.<sup>11</sup>

When a State intends to enter into treaty relations with another State, therefore, appointing a representative for the accomplishment of the negotiations is the first step to undertake. A formal instrument is usually accorded to the representative of the State being issued by the head of the State or the Minister of Foreign Affairs. The instrument shows the representative’s authority to negotiate the treaty; and this instrument is called the “full powers”.<sup>12</sup>

On the other hand, the production of such instrument is not required if the person assuming the task of negotiation of a treaty is the Head of the State or government himself.<sup>13</sup> According to Article 7, paragraph 2 (a) and (b) of the Vienna Convention, moreover, Ministers of Foreign Affairs also fall within this category.<sup>14</sup> There are also some other plenipotentiaries who do not need to demonstrate the full-powers whenever they take part in the process of treaty negotiations. For instance, according to Article 7, paragraph 2 (c) of the Vienna Convention, a representative

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<sup>10</sup> Thomas Buergenthal and Sean D. Murphy, *Public International Law in a Nutshell*, 3<sup>rd</sup> ed., 2002, WEST GROUP, P. 102.

<sup>11</sup> Fred C. Iklé, *How Nations Negotiate*, 1985, KRAUS REPRINT, Millwood, N. Y.; P. 2.

<sup>12</sup> Hungdah Chiu, *The People’s Republic of China and the Law of Treaties*, Harvard University Press, Cambridge, Massachusetts, 1972, P. 31.

<sup>13</sup> *Id.*

<sup>14</sup> Cf. Chiu, *supra* note at 12, P. 32.

accredited to attend an international conference for the purpose of adopting a treaty text in that conference is considered as representing his sending State, without the necessity of producing full powers.<sup>15</sup>

Generally, if a person, on behalf of his State, performs acts relating to the conclusion of a treaty without having full powers; or, in the absence of such instrument, has not been considered as representing his own sending State, then all his acts are considered to have no legal effects unless they are subsequently confirmed by his State (Article 8 of the Vienna Convention).<sup>16</sup>

The next step in the making process of international treaties, once the issue of 'full powers' is settled, is the task of negotiating the treaty. The manner by which the negotiation of a bilateral treaty would be undertaken is somehow different from that of a multilateral treaty. In both cases, however, the delegates are required to constantly make communications to or remain in touch with their governments from whom they may even obtain fresh instructions.<sup>17</sup>

In the case of bilateral treaties, negotiations are conducted by the plenipotentiaries of the State parties. On the other hand, in multilateral agreements, negotiations of treaties are usually performed by diplomatic Conference. However, in this latter case, the adoption of multilateral instruments, at least in respect of certain subjects, is nowadays conducted by the organs of international institutions instead of being undertaken by diplomatic conferences.<sup>18</sup>

Having passed through constant revisions and deliberations, therefore, the treaty document would finally be found in a refined manner being ready for signature. Depending on the circumstances in which it is performed, the process of signature may have various legal effects. At one end, it may take the nature of "simple signature" in which case it would farther be subject to ratification, approval or acceptance. At another end, it may take the form of "definitive

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<sup>15</sup> See Starke QC, *supra* note at 1, P. 472.

<sup>16</sup> See *id.*, P. 473.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*, P. 474.

signature”; in which case, the treaty would not be subject to ratification and it simply enters into force only upon signature.<sup>19</sup>

In most cases, the “simple signature” applies to multilateral treaties. Accordingly, a State which has signed a treaty with the intention to farther ratify it would not be bound by it unless this precondition of ratification or approval or acceptance is performed. In the mean time, however, such a State is ‘obliged to refrain, in good faith, from acts that would defeat the object and purpose of the treaty’.<sup>20</sup>

If the signature chosen is that of a simple type, the negotiated, authenticated and duly signed treaty would be presented before the concerned organ (usually parliament) of the respective States parties for the act of ratification. Essentially, ratification is intended to provide opportunities to the national parliament, and therefore the citizens, to have a direct involvement in the affairs of the nation.<sup>21</sup>

Though ratification is usually, in the treaty making process, the final act to be performed by the State parties, the mere fact of ratifying the treaty instrument does not necessarily bring about the effect of establishing consent to be bound by the treaty. Unless it is clearly stipulated otherwise in the treaty itself, ratification would have this effect only after the exchange or deposit, as the case may be, of ratification is performed between or by the parties. As an alternative to the exchange or deposit, however, notice of ratification to the other State or States concerned or to the depository of the treaty, if any, may also be given.<sup>22</sup>

When the treaty concluded is a bilateral one, ratifications are exchanged between the concerned States parties and the ratification instrument of one State party is deposited in the archives of the Treaty Department of the other’s Foreign Office.<sup>23</sup>

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<sup>19</sup> *Signing and Ratifying a Treaty*, Available online on <<http://www.europatientrights.eu/countries/sign>>; (Accessed on 30 April 2011; 07: 49 am).

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> Starke QC, *supra* note at 1, PP. 483-4.

<sup>23</sup> *Id.*, P. 484.

In the case of multilateral treaties, on the other hand, undertaking the exchange of ratification between the States parties is not convenient especially when the parties are numerous in number. In such type of treaties, the appropriate way of accomplishing that objective is usually the depositions of all ratifications in a central headquarter. For instance, nowadays, the Secretariat of the United Nations is serving as a depository organ in many of the multilateral treaties adopted by nations of the world.<sup>24</sup>

Another important topic worth consideration is the issue of accession and adhesion. It is only through an act of accession or adhesion that a State which has not participated in the signing of a treaty becomes a party to such treaty. Though some legal scholars try to make some distinctions between accession and adhesion, the practical experiences of States do not generally support the suggested differences.<sup>25</sup>

There is no precise rule under international law prescribing the form of an instrument of accession, though the same form as an instrument of ratification is generally used. It may also suffice that a State intending to participate in the treaty shall communicate its intentions by simple notification.<sup>26</sup>

International treaties would finally enter into force depending on the provisions of the treaty dealing particularly with that aspect or upon what the States parties have otherwise agreed.<sup>27</sup> For instance, treaties intended to enter into force upon 'signature' may become operative on the date they are signed.

On the other hand, if ratification, acceptance or approval is put as a precondition to entry into force, then the treaty becomes effective, as indicated earlier, only upon such condition is met and finalized by the exchange of the instrument to that effect. This basically is true for bilateral

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<sup>24</sup> Id.

<sup>25</sup> Id., PP. 484-485.

<sup>26</sup> Id., P. 485.

<sup>27</sup> See VCLT, *supra* note at 3, Art. 24 paragraph 1.

treaties; a multilateral treaty, on the other hand, may enter into force after a certain number of ratifications are secured or upon a date set by the treaty.<sup>28</sup>

A final point worth mentioning in relation to treaty making process is the issue of registration and publication. It is provided for by Article 102 of the UN Charter that “every treaty and every international agreement entered into by any Member of the United Nations after the ... Charter comes into force shall as soon as possible be registered with the Secretariat and published by it.”

The effect of not registering a treaty with the Secretariat of the United Nations is put in clear words under the second paragraph of the same Article. Any State party to a treaty or international agreement “may [not] invoke that treaty or agreement before any organ of the United Nations [ ]” unless it is a registered one with the Secretariat.

This, however, does not have the effect of rendering the treaty in question invalid. Rather it means that the concerned State party cannot invoke it before any of the UN organs such as the International Court of Justice or the General Assembly or the Security Council. The State party may still invoke that treaty before bodies other than the UN organs.<sup>29</sup>

### **2.3. RATIFICATION OF INTERNATIONAL TREATIES**

#### **2.3.1. DEFINITION**

Before looking into the meaning of ratification (of international treaties), let us first analyze it from the perspective of its origin as a derivative of private law. Under the branch of private law, in an agency relationship, any act performed by the agent is deemed to have been done by the principal himself provided that the former acted within the scope of his power. This is automatic in the sense that so long as the agent acted within the limits of his authority, the principal would

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<sup>28</sup> *What Convention.org*, Available online on <[http://www.whatconvention.org/en/intro\\_il](http://www.whatconvention.org/en/intro_il)>; (Accessed on 07 May 2011; 07: 02 AM).

<sup>29</sup> Starke QC, *supra* note at 1, P. 487.

be bound by the act without the need to ratify it. In other words, there is no necessity to ratify an act which has been done within the agent's authority.<sup>30</sup>

As an implication of this, therefore, ratification in contract law is needed to approve the act of an agent where the agent lacked the authority to legally bind the principal.<sup>31</sup> The other way of saying this is that “[ ] the term [ratification] is generally used in private law, in connection with those cases where the agent has done something which would be legally ineffective without such ratification, i.e. where the agent has acted in excess of his authority.”<sup>32</sup>

On the other hand, ratification, in the law of nations, is a customary practice in the case of all treaties, even those signed in pursuance of express authority. Though the general view today is that the need of ratification is dependent upon, *inter alia*, the agreements of the States parties, it was not so in the early times (during the days of the seventeenth century). ‘[T]he relation of a diplomatic envoy to his monarch was conceived in terms of the relation between principal and agent’. As a result, unless the envoy was found to have exceeded his authority, ratification could not be refused.<sup>33</sup>

In this regard, however, we may notice that in the case of relations between nation States, unlike that of private parties, ratification is formally necessary even in situations where the representative of the State concerned has acted within the authority accorded to him. This means that, under the law of nations, acts of an envoy performed in pursuance of an express authority should not only be ‘held good’ by the sending nation but also need to be ‘acknowledged by a written document – an act of ratification’.<sup>34</sup>

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<sup>30</sup> J. Mervyn Jones, M.A., LL.B., *Full Powers and Ratification: A study in the development of treaty-making procedure*, 1949, CAMBRIDGE, AT THE UNIVERSITY PRESS, P. 66; See also, as an example, the Civil Code of the Empire of Ethiopia Proclamation No. 165 of 1960, Arts. 2189 & 2192.

<sup>31</sup> *Ratificaton*, Available online on <<http://www.en.wikipedia.org/wiki/Ratification>>; (Accessed on 02 May 2011; 07: 08 PM).

<sup>32</sup> Mervyn Jones, *supra* note at 30, P. 66.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*, P. 67.

Consequently, as opposed to today's practices of States whereby they carry no obligation to ratify a treaty even if duly signed<sup>35</sup>, States used to be condemned in those early days whenever they tried not to ratify the acts of their envoys which were performed as per the powers given to them.<sup>36</sup>

Having said all this, therefore, let us now see what ratification means as regards relations between subjects of international law particularly States.

'Ratification refers to the act undertaken in the international plane, whereby a state establishes its consent to be bound by a treaty.' It, as virtually a final act in the treaty making process, usually involves two distinct procedural acts. The first relates to the constitutional or internal laws of the States parties. Accordingly, a State party to a certain treaty is expected to undergo internal procedural acts or perform what is required by its laws before assuming any international obligations arising from the treaty in question. This usually involves an act of confirmation of the treaty by the national parliament.<sup>37</sup>

The second procedural act relates to the obligation of the State party which it needs to discharge in the external or international plane. This is the process through which the State party expresses its consent to be bound, in accordance with the terms of the treaty, to the other State party.<sup>38</sup> This usually involves the exchange of treaty ratification instruments as between the concerned parties to the treaty; it, however, may also be done through the giving of notice of ratification either to the State party or the depository of the treaty, as the case may be.<sup>39</sup>

The accomplishment of these two procedural acts, therefore, can be said to constitute what is generally pronounced as *ratification of international treaties*.

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<sup>35</sup> Starke QC, *supra* note at 1, P. 482.

<sup>36</sup> Mervyn Jones, *supra* note at 30, PP. 67-73.

<sup>37</sup> *Signing and Ratifying a Treaty*, *supra* note at 19.

<sup>38</sup> *Id.*

<sup>39</sup> Starke QC, *supra* note at 1, P. 484.

### 2.3.2. FAILURE TO RATIFY A DULY SIGNED TREATY

As it has been indicated in section 2.2 above, the making of international treaties short of an act of ratification involves a lengthy process. There is no doubt that a country determined to enter into a treaty relation with another country would incur expenses in the course of negotiating the treaty. Though the outcome of the treaty may be of a great benefit to the State in question, it would not be obtained for free. The undertaking of the process at least costs time, energy and money.

If a treaty instrument is denied ratification once it is negotiated and duly signed by the States parties, therefore, all the efforts of the contracting parties would simply remain in vain. It may not only make all the expenses incurred and the efforts exerted a dead loss, but also render the refusing party guilty of violation of its engagements and duties, and hence breach of faith in the eyes of the other State party which is insisting that the treaty shall be ratified.<sup>40</sup>

Consequently, according to the traditional view, a duly signed treaty stipulated to be ratified ought to be so and if ratification was about to be refused, then the refusal should be accompanied by a statement of good reasons.<sup>41</sup>

In other words, this traditional rule of *obligatory ratification* states that ratification must not be lightly refused. Understanding the concept of ratification in the same sense as ratification of civil law, some writers even propounded that because the sole purpose of ratification is to check the errors of the plenipotentiary, it shall be refused only where there has been an excess of instructions.<sup>42</sup>

The doctrine of obligatory ratification, however, became obsolete that it no longer reflected the practice of States as expressed by the nineteenth-century writers. As an implication to this,

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<sup>40</sup> See Mervyn Jones, *supra* note at 30, PP. 66-73 & 79-80.

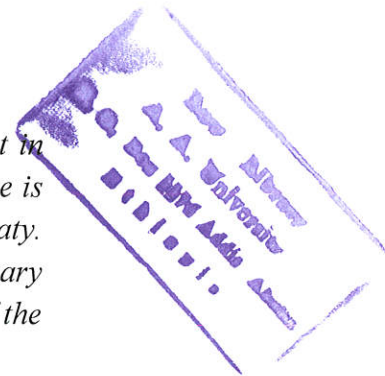
<sup>41</sup> *Id.*, P. 77; as taken from the work of Manning, *Diplomatic Correspondence of the United States concerning the imprudence of the Latin American Nations*, (1925), I, PP. 119-20.

<sup>42</sup> *Id.*, P. 79; as taken from the work of Genet, *R.G.D.I.P.* (1931), XXXVIII, P. 749. This latter author is said to rely chiefly on another writer called Fiore.

therefore, a merely signed treaty is considered to be an imperfect, but in some sense binding, agreement. Thus it would be unto the discretion of the State party concerned whether or not to ratify a treaty already signed by a duly authorized representative its own.<sup>43</sup>

In this regard, it is enlightening to quote on J. G. Starke QC, from what he wrote in his book “An Introduction to International Law”.<sup>44</sup>

*The power of refusing ratification is deemed to be inherent in State sovereignty, and accordingly at international law there is neither a legal nor a moral duty to ratify a treaty. Furthermore, there is no obligation other than one of ordinary courtesy to convey to other States concerned a statement of the reasons for refusing to ratify.*



Though it is propounded that ratification is discretionary and that no State shall be obliged to ratify a treaty against its will, even in cases where the treaty is signed by the properly authorized plenipotentiary, this does not mean that no consequences can ever arise from a signed but unratified treaty. Rather, in between signature and ratification, a State party to a certain treaty must not do anything that would render ratification superfluous or useless. In other words, the State is morally obliged to abstain from any act that would defeat the object and purpose of the treaty in between these days.<sup>45</sup>

### **2.3.3. WHICH TREATIES REQUIRE RATIFICATION?**

As it has been frequently indicated in the aforementioned sections, ratification is a final act of confirmation in the treaty making process. But this is so only in situations where ratification as a final act is required to be undertaken as per the agreements of the States parties. The agreements to this effect may appear in the treaty in a form of express stipulations or tacit intentions.

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<sup>43</sup> Id., P. 78.

<sup>44</sup> Starke QC, *supra* note at 1, PP. 482-3.

<sup>45</sup> See VCLT, *supra* note at 3, Art. 18.; See also Mervyn Jones, *supra* note at 30, PP. 81-85; and *What Convention.org*, *supra* note at 28.

Basically, practically speaking, it is very difficult for an organ of a country, responsible for the ratification of treaties, to properly discharge its task if it were to ratify all the international agreements which the country concludes every year. Obviously, a certain nation may enter into agreement relations with other countries of the world and may conclude a number of such treaties annually. And if all of them are to be submitted to the organ for confirmation, that organ would be overwhelmed with such a flood of agreements to consider. This may in effect hinder the ratifying body from operating properly; or we can at least say that such a practice would appear to be an obstruction to its effective functioning.<sup>46</sup>

If the States parties do agree that ratification is not required or that the need of ratification cannot be inferred from the circumstances, the treaty would simply enter into force upon signature.<sup>47</sup> This shows that depending on the wills of the contracting States on whether or not ratification is sought, international treaties concluded between different nations may be classified into two categories. In the first group may lie those agreements requiring ratification for their effectiveness; and in the second may fall those treaties for the entry into force of which no act of confirmation other than a mere signature is sought.

The question here would then be ‘which types of treaties require ratification and which ones do not seek such act of confirmation’. In this regard, it is said that ‘there is no general rule of international law prescribing what kinds of treaties or agreements require ratification’. Such issues are rather determined by the domestic laws of the respective States parties or by the provisions of the treaty or agreement itself.<sup>48</sup>

Generally, Article 14 of the Vienna Convention on the Law of Treaties (1969) provides for the instances where a State’s intention to be bound by a treaty is expressed through ratification. Accordingly, this happens if the treaty so expressly provides; or States parties otherwise agree

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<sup>46</sup> See Elbert M. Byrd, JR., *Treaties and Executive Agreements in the United States: Their separate roles and limitations*, 1960, MARTINUS NIJHOFF / THE HAGUE /; PP. 133-135.

<sup>47</sup> See I. M. Sinclair, C.M.G., *The Vienna Convention on the Law of Treaties*, 1973, MANCHESTER UNIVERSITY PRESS, U.S.A.: OCEANA PUBLICATIONS INC; PP. 36-8.; See also VCLT, *supra* note at 3, Art. 14.

<sup>48</sup> Chiu, *supra* note at 12, PP. 35-6.

that ratification is necessary; or the treaty has been signed subject to ratification; or an intention to sign subject to ratification appears from the Full Powers or was expressed during negotiations.

All of these above mentioned preconditions (on the basis of which ratification is sought to be undertaken), as we may observe, totally relate to the consents of the States parties. In other words, depending on the will of the States taking part in the agreement, international treaties may or may not be subject to ratification regardless of their nature or contents thereof.

An issue worth considering at this point relates to the determination, by the domestic laws of contracting States, of the need for ratification. The kind of treaties falling in the group seeking ratification in one country may differ from those treaties falling in the same group in another country. In other words, it is usual that Constitutions establish one or several categories of international agreements which need parliamentary approval. These may include treaties modifying national legislation, treaties of alliance, treaties regarding territorial secessions and treaties by which a State undertakes financial obligations.<sup>49</sup>

Owing to this fact, therefore, the following situation may arise. If a certain issue over which two nations are negotiating happens to be a kind seeking ratification in one of the two countries but otherwise in the other, then it seems that these States would not come to a final agreement, as far as the issue of ratification is concerned, unless they reached a compromise, in which case the law of either country would seem to be transgressed.

However, though, depending on the requirements of its internal rules, there may be a case where ‘a negotiating State has to resort to ratification, while for others signature is sufficient to express consent to be bound’ – a potential point of disagreement, the practice of States (though not a consistent one so as to establish custom) offers a solution which may be applied to eliminate such feared tragedy of cleavage.<sup>50</sup>

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<sup>49</sup> Alexandru Bolintineanu, *Expression of Consent to be Bound by a Treaty in the Light of the 1969 Vienna Convention*, American Journal of International Law, Vol. 68, No. 4 (October 1974), American Society of International Law; P. 679; See also Chiu, *supra* note at 12, P. 36 and Starke QC, *supra* note at 1, P. 482.

<sup>50</sup> *Id.*, PP. 80-1.

For example, in such situations, the State parties may frame their terms of agreements in such a way that the treaty shall provide for a one-sided ratification. In a treaty of 1883 concluded between France and Tunis, there was a provision stipulated in the treaty to the effect that ratification was required to be undertaken by the former but not by the latter. This therefore is a clear indication that there is no general rule of international law dictating which treaties to ratify and which others not to.<sup>51</sup>

Generally, as we can observe from what has been said so far, though there is no international rule classifying treaties into those which require ratification and those which do not, there is virtually an established trend that this issue is determined either by the wills of the States involved in the negotiations or by the domestic enactments they promulgate.

#### **2.3.4. FORM OF RATIFICATION**

Ratification is one means through which a State may express its consent to be bound by an international treaty to which it is a party. However, despite the fact that the VCLT incorporates ratification as one way of expressing consent, it does not say anything about the form through which a State's act of ratification may be communicated to other States parties of an international treaty.<sup>52</sup>

Nevertheless, though sometimes, for instance, “[m]inisterial ratifications [ ] take the form of simple declarations in writing or of a clause attached to the treaty such as “*vue et approuvé*” [“seen and approved” (*translation inserted and emphasis added*)] signed by the Foreign Minister”, acts of ratifications by any of the concerned body or organ of governments are usually undertaken in solemn form.<sup>53</sup> To elaborate this fact further, it would be worthwhile to look at

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<sup>51</sup> Mervyn Jones, *supra* note at 30, P. 119.

<sup>52</sup> See VCLT, *supra* note at 3, Art. 16 & ff.

<sup>53</sup> Mervyn Jones, *supra* note at 30, P. 111; See also citation no. 3 in this same Book and page of the author.

what J. Mervyn Jones wrote concerning the practical experiences of States; it was meant to represent the time before 1949 (the year of publication of the Book) though.<sup>54</sup>

*No writer on practice gives examples of tacit or verbal ratification of which theoretical exponents of treaty law sometimes speak. The constant practice of States for centuries confirms the view that ratification must take the written form. Indeed it might be agreed that there is a customary rule of the law of nations to this effect.<sup>[1]</sup> A 'tacit ratification' is practically unknown.*

Therefore, in the instances where ratification is preferred to be the means of expressing consent, it appears that an act of ratification is deemed to be accomplished or communicated legitimately, in point of form, when it is done in writing.<sup>55</sup>

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<sup>54</sup> Id.; See citation no. 4 in this same Book and page of the author.

<sup>55</sup> Id., P. 112; See also citation no. 4 in this same Book and page of the author.

**CHAPTER THREE**  
**TREATY MAKING AND RATIFICATION OF INTERNATIONAL TREATIES IN ETHIOPIA**  
**(PRE – 1991 EXPERIENCE)**

### **3.1. INTRODUCTION**

In this Chapter, the treaty making and ratification trends of the country in light of its pre 1991 experiences would be discussed in a brief manner. In doing this, for the sake of convenience, the Chapter is classified into three sections. In the first, the interactions of the Kings or Rulers of Ethiopia with the outside world during the times before the country adopted its first written Constitution (of 1931) is dealt with. The analysis of this issue would be conducted in terms of some selected treaty instruments.

In the second section, certain topics relating to the issue of ratification during the Era of Emperor Haileselassie I would be analyzed from the angle of the 1955 Revised Constitution.<sup>56</sup> The third section will consider the nature of treaty making and ratification trend during the Regime of the first president of Ethiopia, Col. Mengistu H/Mariam, in light of the 1987 Constitution<sup>57</sup> of the People's Democratic Republic of Ethiopia.

### **3.2. THE PRE-IMPERIAL ERA**

On the international plane, a variety of undertakings are performed by different nations of the world, as per the agreements between them, and usually such commitments are contained in treaty instruments. Treaties are concluded between States with a view to protect human rights, establish and regulate commercial relations, transfer territories, settle disputes, etc.<sup>58</sup>

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<sup>56</sup> *The 1955 Revised Constitution of Ethiopia*, As promulgated by His Imperial Majesty Haile Sellassie I, 15<sup>th</sup> Year - No. 2, Negarit Gazeta.

<sup>57</sup> *The Constitution of the People's Democratic Republic of Ethiopia*, Proclamation No. 1/ 1987, 47<sup>th</sup> Year – No. 1, Negarit Gazeta.

<sup>58</sup> See Buergenthal ET AL., *Supra* note at 10, P. 102.

Beginning from time immemorial, the different Kings or rulers of Ethiopia had been interacting well with the outside world. This was performed usually with the help of couriers principally playing the role of delivering letters to and negotiating treaty agreements with countries taking part in the interactions. Through such letters and treaty instruments, they used to settle disagreements, establish commercial relations, fight human rights violations, and transfer territories.<sup>59</sup>

The Kings (or regional rulers) of Ethiopia are usually characterized by their determination to protect the territorial integrity of the country (or the region under their governance) principally through warfare. However, a close look into and understanding of the contents of these letters and treaties would render this perception a cliché. The study of these instruments reveals the idea that a great deal of effort was employed to settle disputes and avoid confrontations through peaceful ways using letters and treaties as principal tools.<sup>60</sup>

Now let us analyze the treaty making and ratification trends of the country during this period in light of some selected treaty instruments.

### **3.2.1. TREATY MAKING**

As international treaties are instruments containing the agreements of *legal personalities* like States, it is obvious that all the undertakings involved in a treaty making process are taken over by physical persons acting on behalf of the States parties they represent. Accordingly, all the plenipotentiaries of States, save some exceptions<sup>61</sup>, involved in negotiations need to produce the instrument of Full Powers if they have to take part in the treaty making process. During those olden days, envoys from Ethiopia were sent to other countries with which negotiations were intended to be made (and vice versa), being vested with full powers enabling them, *inter alia*, to formalize and conclude treaties.<sup>62</sup>

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<sup>59</sup> See Acta Æthiopica series, *infra* notes at 72, 63 & 65; volumes I, II & III, respectively.

<sup>60</sup> *Id.*

<sup>61</sup> See Chiu, *supra* note at 12, P. 31; and also VCLT, *supra* note at 3, Art. 7 (2 (a) & (b)).

<sup>62</sup> See Acta Æthiopica, *supra* note at 59.

For example, Nigusé Welde Mika’el, who appeared to conclude treaties with France in the name of the whole of Ethiopia (“though Nigusé [ ] styles himself or is styled “king of Ethiopia” [ ], both he and the French must have been fully aware that he was not in a position to negotiate for all Ethiopia”<sup>63</sup>), had given full power to his representative, *Abba Imnetu*, with the view to allow him to formulate and conclude treaties; this ‘full powers’ was actually given to the envoy so far as the relations the King wanted to establish with Rome (Italy) and Paris (France) were concerned; (the following has been the contents of the full power).<sup>64</sup>

*I, Nigusé, King of Ethiopia.*

*Abba Imnetu, my trusted advisor and envoy, has been sent by me to Rome and Paris this year, to His Holiness Pius (Piyus) and His Majesty (Lit. Highness), King of Kings Napoleon (Napoliyon) III.*

*I have given him, Abba Imnetu, full powers to formalize (lit. put straight) treaty and procedural documents; to add to or deduct from the matters [involved] as he pleases; and after sealing them with my royal seal to hand them over to the envoy of His Majesty Napoleon. I have placed my royal seal in the hands of Abba Imnetu so that he shall, after consulting with the envoy, formalize and conclude treaty and procedural documents in order that this protocol and treaty be valid and firm forever.*

*This document is written at Hawzén on Meskerem 30, 1851 years after the birth of our lord.*

*Seal [Nigusé king of] Ethiopia ...*<sup>65</sup>

*I am Abba Imnete Maryam of Abba Gerima.*

*Seen S. Russel*

As the establishment of the full powers is the first step in a treaty making process, the envoy would start undertaking the negotiation once he secured it in this above manner. The negotiation on the terms of the treaty is then performed through the respective envoys of the countries involved at a place they chose. For instance, on the basis of the full powers mentioned above,

<sup>63</sup> Acta Æthiopica, *Tewodros and his Contemporaries 1855 - 1868*, Volume II, 1994, Edited by Sven Rubenson (Co-editors: Amsalu Aklilu, Merid Wolde Aregay and Samuel Rubenson), ADDIS ABABA UNIVERSITY PRESS. LUND UNIVERSITY PRESS., P. 95.

<sup>64</sup> Id., PP. 86-7.

<sup>65</sup> For additional form of Full Powers, claimed to had been granted by Minilik II - King of Shewa - to Mr. Pierre Arnoux, see Acta Æthiopica, *Internal Rivalries and Foreign Threats 1869 – 1879*, Volume III, 2000, Edited by Sven Rubenson (Co-editors: Amsalu Aklilu, Merid Wolde Aregay and Samuel Rubenson), ADDIS ABABA UNIVERSITY PRESS. Transaction Publishers/Rutgers University, P. 242.

*Abba Imnete Mariam* had negotiated and signed two treaties (conclude with France) at two different places.

The first was the one made at Halay (a town in present day Eritrea) on 1 Tir 1852 E.C. which was termed as ‘Convention between Simén-Tigray and France, 9 Jan. 1860’. On the other hand, the second agreement, which was termed as ‘treaty between Simén-Tigray and France, 29 Dec. 1859’, was written on board a ship called Yemen, in the sea of Zula, on 20 Tahsas 1852 E.C.<sup>66</sup>

Usually, the treaties were drafted by either party unilaterally, and their entrance into force used to be effected (particularly as regards Ethiopian Kings) by the time their signature was secured. Thus, despite the fact that signature, as a means of expressing consent to be bound by the treaty, could not explicitly be indicated in the instrument itself, it can be observed that in almost all the treaties, Ethiopia’s consent (or the consent of any negotiating King in Ethiopia) used to be expressed by the signature of the negotiating King.<sup>67</sup>

On the other hand, though true that ratification had also been used (at least unilaterally by the foreign powers) as a means of expressing consent to be bound by a treaty, still there has never been, virtually in all of the treaty instruments contained in the Acta Æthiopica series, a provision included in the treaties themselves which requires ratification as a means of expressing consent.<sup>68</sup> In fact, J Mervyn Jones, in his book ‘*Full Powers and Ratification*’, mentioned that in a treaty concluded between Ethiopia and Great Britain in 1898, “there was a proviso for ratification by Great Britain but not by Ethiopia”.<sup>69</sup> (Such instances and related issues would be deliberated in the immediately forthcoming section, which deals with the issue of ratification).

Another point worth mentioning here is that during this period, unlike the present day experience of Ethiopia whereby international treaties are drafted in and finally ratified with English language, the international treaties that the different kings used to conclude with foreign powers

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<sup>66</sup> See *id.*, **Note**: read the explanations of the editors written in a form of foot note on pp. 95 & 97.

<sup>67</sup> See Acta Æthiopica series, *supra* note at 59.

<sup>68</sup> *Id.*

<sup>69</sup> Mervyn Jones, *supra* note at 30, P. 119. You would also find the full quotation of the author on this issue in this very thesis of page 31.

were prepared at least in two languages, i.e. in Amharic and in the language of the other party. For example, in the case of the above two treaties concluded between Nigusé Welde Mika'el and France, both of them were written in *Amharic and French* languages.<sup>70</sup>

Moreover, a concept we may need to take notice of is that during this era, as the country was divided into various provinces under the rules of different Kings (particularly during the age of *Zemene Mesafint* which ended in 1855 with the coronation of Kassa as Emperor Tewodros II [excepting puppet warlords]<sup>71</sup>), the Kings or Rulers of such provinces used to communicate with foreign powers directly, by their own envoys, through letters and treaty agreements; some of them even used to do this acting as if they were in a position to negotiate an international treaty in the name of the whole of Ethiopia.<sup>72</sup>

### 3.2.2. RATIFICATION OF TREATIES

Ratification, being one of the modes of expressing consent to be bound by a treaty, may take different forms. As it has been mentioned in Chapter two, section 2.3.3 of this work, intention to ratify a treaty could be communicated with a simple declaration in writing or with a clause attached to the treaty and signed by the duly authorized person. This, therefore, is a clear indication that every State may opt for a ratification form of its preference (except in cases where the mode is predetermined by the terms of the agreement) on the basis of which it may express its consent.

In this regard, it would be very enlightening to refer to the Books of the *Acta Æthiopica series*<sup>73</sup> in order to understand the practices of the Ethiopian Kings and Rulers as far as the issues of ratifications and their forms are concerned. In a treaty of friendship and commerce concluded

<sup>70</sup> See *Acta Æthiopica*, *supra* note at 63, PP. 95 & 97 – read the explanations of the editors written as foot note.

<sup>71</sup> Bahru Zewde (Professor of History), *History of Modern Ethiopia 1855 – 1991*, 2<sup>nd</sup> edition, 2002, James Curran. OXFORD.; Ohio University Press. ATHENS., Addis Ababa University Press. ADDIS ABABA.; P. 11.

<sup>72</sup> *Acta Æthiopica, correspondence and Treaties 1800 – 1854*, Volume I, 1987, Edited by Sven Rubenson, (Co-editors: Getachew Haile – Ethiopian languages, John Hunwick - Arabic), NORTHWESTERN UNIVERSITY PRESS. ADDIS ABABA UNIVERSITY PRESS., Document no. 66, P. 83; See also *Acta Æthiopica*, *supra* note at 63, Documents no. 53 & 54, PP. 94-7; *Acta Æthiopica*, *supra* note at 65, Documents no. 167 & 168, PP. 240-1.

<sup>73</sup> See *Acta Æthiopica series*, *supra* note at 59.

between Shewa (King Sahle Sellasé) and Great Britain (Queen Victoria) on 18 Nov. 1841, consent to be bound by the treaty was expressed (on the part of the latter) through ratification; accordingly, “[a] copy of the treaty was forwarded in January 1842. The original was carried by Harris [ ] [envoy of Great Britain] via Bombay to London the following year [ ]. The treaty was ratified in August 1843 and printed in the *Correspondence* laid before parliament [of Great Britain] in 1844 and in the *State Papers*, vol. 29”.<sup>74</sup> On the other hand, the consent of Shewa [of Ethiopia] to be bound by the treaty was expressed by the signature of the King (King Sahle Sellasé of Shewa).<sup>75</sup>

This above treaty is claimed to be “The First Anglo-Ethiopian Treaty”<sup>76</sup> as well as ‘the first international treaty of modern Ethiopia’<sup>77</sup>. However, though the two parties, as per the terms of this treaty of friendship and commerce, agreed, *inter alia*, to receive and befriend each other’s representatives and envoys in their respective provinces, the treaty was not implemented due to the fact that the King closed his door to all foreigners as soon as he signed this first international treaty of modern Ethiopia.<sup>78</sup>

Getting back to the issue at hand, there also seemed to appear an instance where Ethiopia’s consent to be bound by a treaty was established through ratification simply by declaring, in writing, the fact that the ratified treaty instrument sent by the other State party was received. The treaty was concluded between Ethiopia (Ras Ali) and Great Britain (Queen Victoria) on the second of November 1849<sup>79</sup>; the full content of the declaration reads as follows.<sup>80</sup>

<sup>74</sup> Acta Æthiopica, *supra* note at 72, PP. 59-60. Read also the commentaries of the editors written as a foot note in this same volume on page 60.

<sup>75</sup> Sven Rubenson (Professor of History), *The Survival of Ethiopian Independence*, (First Published 1976; Reprinted with Corrections 1978), HEINEMAN LONDON. IBADAN. NAIROBI. LUSAKA, in association with ESSELTE STUDIUM & ADDIS ABABA UNIVERSITY PRESS, P. 145. [Though this is what can be understood from the sources I was able to access, no provision in the treaty has been included stipulating that ratification is required by Great Britain and not by Ethiopia. See the document of the treaty on Acta Æthiopica, *supra* note at 72, PP. 59-60.]

<sup>76</sup> Acta Æthiopica, *supra* note at 72, P. 60, commentary of the editors written as a foot note, fourth paragraph - citing the article “The First Anglo-Ethiopian Treaty” by Ullendorff and Beckingham.

<sup>77</sup> Rubenson, *supra* note at 75.

<sup>78</sup> Id.

<sup>79</sup> Acta Æthiopica, *supra* note at 72, PP. 178-87 (Document no. 135).

<sup>80</sup> Id., P. 193.

*The king of Abyssinia has said: I have received from Mr. Plowden (Plawdin), the British consul in Abyssinia, the treaty of friendship between the queen [of] England and the king of Abyssinia which was concluded on the second of November according to the British calendar, on the 24<sup>th</sup> of Tiqimt according to the Abyssinian calendar, and ratified by (lit. the validity of which was [sic] sealed with the seal of) the queen [of] England.*

*In witness of this, the seal of the king of Abyssinian has been affixed on this day, the first of March in the Year of Grace 1852, the 22<sup>nd</sup> of Yekkattit in the Year of Grace 1844 according to the Abyssinian calendar.*

*Seal [of Ali]*

*Seal [of the Emperor]*

[Note: "Whether Ras Ali is referring to the puppet emperor or to himself with the phrase "the king of Abyssinia" is impossible to say with certainty. Both seals appear here as in the treaty itself, and there, Ali signs himself "king of Abyssinia" [ ]"<sup>81</sup>].

Technically speaking, however, this above document, when analyzed in light of its contents, is not a ratification instrument *per se* as it does not make a confirmation of the treaty (by the King) in an *express* and *unqualified* manner - requirements for the ratification to be satisfactory in point of form.<sup>82</sup> It simply states that the King has received the treaty document concluded between them (which was ratified by the Queen of England), but remains silent about the King's intention whether to ratify (or not) the treaty in question; on the other hand, it does not indicate if the King had already ratified it (or sent a ratification instrument of his own) either.

The treaty, to which this above ratification relates to, was, as mentioned above, concluded on the 2<sup>nd</sup> of November 1849 at a place called *Innawga*. It was a treaty of Friendship and Commerce, and contained nineteen articles. None of these articles, however, mentioned anything about the means through which consent of the parties to be bound by the treaty could be expressed.<sup>83</sup>

As regards the issue of consent expressed by ratification, the reader is sought to recall the discussion made in Chapter two, section 2.3.3. There, we have seen a case where in a treaty concluded between two countries, ratification of the instrument was required to be undertaken

<sup>81</sup> Id., read the commentaries of the editors written as a foot note.

<sup>82</sup> See Mervyn Jones, *supra* note at 30, P. 112.

<sup>83</sup> Acta Æthiopica, *supra* note at 72, PP. 178-87 (Document no. 135).

only by one of them; we cited the French-Tunis treaty of 1883 as a case in point. The same agreement had been made in a treaty, concluded in 1998, between Ethiopia and Great Britain.<sup>84</sup>

The situation was expressed by *J. Mervyn Jones*, author of the book entitled “*Full Powers and Ratification*”, in a marvelous and precise way as follows.<sup>85</sup>

*In a treaty of 1998 there was a proviso for ratification by Great Britain but not by Ethiopia. The treaty was to take effect when Great Britain had notified her ratification to Ethiopia. Only the Amharic version was signed; the English version was sealed with the seals of the parties. Both texts were to be ‘official’, but in case of any difference a third text in French was to be authoritative.<sup>[1]</sup> the same devise is used in treaties with Italy<sup>[1]</sup> and the United States<sup>[1]</sup>.*

From this above excerpt, we can behold that Ethiopia had been one of the countries of the day which have experienced such ratification style of a rarity.<sup>86</sup> One possible reason for such experience could be this: as it is understood, during those days, Kings or Rulers in Ethiopia had absolute power in the sense that the present day three organs of government (and their powers) totally vested in them. What they said were the laws; they represent the executive; and they were the ultimate authorities from whom justice is sought.<sup>87</sup>

This being the fact, therefore, as no one could have had the authority to check on the conducts of the King, it could be unnecessary for him to once again confirm (ratify) a treaty which he himself had already signed at first. Even in some of the instances where a treaty was negotiated and concluded through the envoy or representative of the King (as in the treaty between Simén-Tigray and France), no room was reserved to the effect that the conducts of the envoy shall be confirmed by the King. In this “Simén-Tigray and France” case, the envoy, Abba Imnetu, was given the full powers with these words: “...he shall, after consulting with the envoy [of France],

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<sup>84</sup> Id., P. 119.

<sup>85</sup> Id.

<sup>86</sup> See Id., PP. 119 & ff.

<sup>87</sup> See, for instance, Rubenson, *supra* note at 75, P. 145.

*formalize and conclude treaty and procedural documents in order that this protocol and treaty be valid and firm forever.*"<sup>88</sup>

This, however, should not disregard the existence of situations, during the period under review, where ratification of a treaty concluded between Ethiopia and a certain foreign power was undertaken by both of the State parties. For example, the treaty of General Relations between Ethiopia and Italy concluded on 1 October 1889 (signed at Naples), was ratified by both parties: while it was ratified by Italy at Rome on 13 November 1889, Ethiopia's ratification was performed at Makalle [Mekele] on 25 February 1890. In fact, the treaty was not finally implemented; it rather was suspended.<sup>89</sup>

### 3.3. THE IMPERIAL ERA



Though this was one of the periods in which the country, under the rule of his imperial majesty, had entered into treaty relations with many other countries of the world, dealing with the treaty making process of the time or discussing the issue of ratification here in detail is skipped. This is done so deliberately because these subjects are already discussed extensively in the works of, *inter alia*, Aberra Jembere<sup>90</sup> and Shimelis Metaferia.<sup>91</sup>

The former author, under the title of *Treaty-Making Power and Supremacy of Treaty in Ethiopia*, deliberated, in a detailed manner, on where the treaty making power lies in Ethiopia and on issues relating to the Supremacy of international treaties in same. On the other hand, the latter has discussed the treaty making process and related issues, under the title of *"Treaty – Making Power in Ethiopia"* virtually in an exhaustive manner. Accordingly, trying to discourse

<sup>88</sup> See Acta Æthiopica, *supra* note at 63, PP. 86-7.

<sup>89</sup> Annemarie Jacomy-Millette (docteur en droit, visiting professor, Faculty of Law, H.S.I.U., Addis Ababa, 1971–72), *Treaties in Force 1889 – 1972 (Draft List of Treaties and other International Agreements of Ethiopia)*, 1974, Section I, Historical Background (1889 - 1918), P. 1, No. 2.

<sup>90</sup> Abbera Jembere, *Treaty-Making Power and Supremacy of Treaty in Ethiopia*, 1967, H.S.I.U., (Addis Ababa University, Law Library), [This study was initially submitted as one of the LL.B. theses, with the title *"Treaties as the Supreme Law of the Empire"*, to the Faculty of Law, H.S.I.U. in 1967. Later on, it has been expanded and was published on the *Journal of Ethiopian Law*].

<sup>91</sup> Shimelis Metaferia, *Treaty – Making Power in Ethiopia*, 1967, H.S.I.U., Unpublished, (Addis Ababa University, Law Library).

on the treaty making and ratification trends of the country during this era is deemed to bring about nothing but superfluosity. Therefore, the author of this study would simply try to shed light on some vital issues in a general manner.

The foreign relations of the Empire of Ethiopia, part of which is the conclusion of international treaties with other countries, was directed by the Emperor as per the power vested in him by Article 30 of the 1955 Revised Constitution. Accordingly, the processes involved in the making of treaties would be undertaken by persons authorized to do so by him provide that he himself performs either the final deeds or, in cases where the whole task is deemed to be accomplished by the envoys, the ratification of the treaties. In any manner, however, on the basis of this same provision, ratification of international treaties was a power given exclusively to the Emperor.<sup>92</sup>

During this period, according to Article 30 of the Constitution, international treaties were classified into two general groups based on the requirement of ratification by the Emperor. In the first group, we find those treaties and ‘other international agreements’ for the entry into force of which ratification by the Emperor was not needed. Such instruments, therefore, were those types which might enter into force upon signature.

The second group contains treaties and ‘international agreements’ which could enter into force only when they were ratified by the Emperor. They, however, were of two types. In one unit, there were treaties and ‘international instruments’ which could not need to be presented before the parliament for approval. Once they were concluded and duly signed by the proper plenipotentiary, their entrance into force was effected only by the ratification of the Emperor. In the other unit, on the other hand, there were such treaties and ‘international agreements’ which were required to be laid before the parliament for approval before they were ratified by the Emperor and become binding on the Empire.

Regarding the international instruments falling within the category of the second unit in the second group, the Constitution has clearly provided for the list of the subject-matters of the

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<sup>92</sup> See *id.*, PP. 9-11.

treaties and 'international agreements' which require the approval of the parliament prior to ratification. Nevertheless, the above mentioned provision of the Constitution does not say anything about the kind of treaties and 'international agreements' which require only signature, on the one hand, and ratification, in addition to signature, on the other, to become binding upon the Empire. Rather, the discretion to determine the mode of expression of the Empire's consent to be bound by such treaties and 'international agreements', i.e. either through ratification or only by signature, was left to the Emperor.

The question that may come to one's mind right here at this moment could be whether the Emperor had set forth in advance any criteria on the bases of which he might have made the decision of which treaties and 'international agreements' shall be subject to ratification before becoming binding upon the Empire. However, it was found out that neither the laws of the Empire nor the Practice showed that there were any set of standards put forward so as to be used as grounds to classify the instruments as such.<sup>93</sup>

Basically, like what has been said in Chapter two, under Sub-section 2.3.3, 'there is no general rule of international law prescribing what kinds of treaties or agreements require ratification'. Such issues are determined either by the States parties through their domestic laws or by a stipulation in the instrument itself. In the case under review, we have seen that the privilege to determine which treaties or international agreements shall be subject to ratification has been granted to the Emperor by Article 30 of the Constitution. On the other hand, the Empire had neither consistent practical experience nor any domestic laws prescribing the criteria to, as said above, enable us to draw a particular routine. Thus, it would be very convincing if we just say that the issue of which instruments shall be subject to ratification was determined only case by case.<sup>94</sup>

When treaties were approved by the parliament, they used to pass through the general processes applicable to the making of ordinary laws. The difference, however, is that unlike proposals of

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<sup>93</sup> See *id.*, and the Revised Constitution of 1955, *supra* note at 56, Art. 30.

<sup>94</sup> *In order to properly appreciate the subject-matter of the treaties which came to be binding on the Empire only upon signature and those which required ratification to become binding, the reader is advised to refer to the publication of Jacomy-Millette, supra note at 89.*

draft legislations, which may even be subject to amendment, treaty instruments, once submitted to the parliament for approval, should either be accepted in whole as submitted, or rejected as such, i.e. there is no such thing as approval with amendment. In the course of approving a treaty, the parliament could also accept a proclamation, submitted to it together with the treaty instrument, announcing that the treaty is duly approved. The proclamation then could be published in the *Negarit Gazeta* but without the text of the treaty or international agreement being included. That is, with the exception of the Charter of the O. A. U., where the full text of the treaty was published with Amharic translation, all the other instruments were announced only through the publication of the fact that they were approved.<sup>95</sup>

### **3.4. THE PDRE REGIME**

The treaty making process during this period is discussed in light of the 1987 Constitution and on the basis of the Proclamation to provide for Treaty Making Procedures.<sup>96</sup> The discussion focuses particularly on where the treaty making power lies, a special emphasis being given to central issues relating to the act of ratification.

#### **3.4.1. TREATY MAKING POWER**

The power of concluding international treaties at the time of the PDRE government was vested in the President of the republic.<sup>97</sup> This general provision of the then Constitution was further developed by the Proclamation promulgated to provide for Treaty Making Procedures. Accordingly, Article 3 (1) of Proc. No. 25/1988 specifies that the President of the Republic shall have the power to negotiate and conclude any treaty on behalf of the People's Democratic Republic of Ethiopia. This power as provided for by the Proclamation, in fact, was not exclusive in the sense that there were certain treaties for the negotiation and conclusion of which

<sup>95</sup> See Abbera, *supra* note at 90, P. 9; the Revised Constitution of 1955, *supra* note at 56, Art. 30; *Charter of the Organization of African Unity Approval Proclamation*, Proclamation No. 202 of 1963, 22<sup>nd</sup> year – No. 16, Addis Ababa, *Negarit Gazeta*.

<sup>96</sup> Proclamation to Provide for Treaty Making Procedures, Proclamation No. 25/1980, 48<sup>th</sup> Year - No. 5, Addis Ababa, *Negarit Gazeta*.

<sup>97</sup> The PDRE Constitution, *supra* note at 57, Art. 86 (2) (a).

authorization by the Council of Ministers was required (these would be discussed down here in this same section).

Furthermore, the President could delegate this power to other government authorities and officials in which case they might take over this responsibility of making international treaties on behalf of the Republic. If the representative to whom this prerogative would be delegated had been the Prime Minister or the Minister of Foreign Affairs, he could have undertaken the task without the need to produce full powers. Other government officials, on the other hand, could have the authority to negotiate and conclude treaties when bestowed with this power (by the President) only upon the production of full powers.<sup>98</sup> This proviso goes in line with what has been laid down under Article 7 (2) (a) of the Vienna Convention on the Law of Treaties (VCLT).<sup>99</sup>

Likewise, the right of issuing full powers had also been reserved, albeit exclusively, to the President as per Article 5 of the above mentioned Proclamation. However, this power could also be exercised by high government officials through delegation when granted, whenever it was deemed necessary, by the President. Thus, once 'full powers' is issued by the president or any of the officials authorized to do so, the delegate would commence the negotiation of the treaty sought to be concluded.

However, there are certain international treaties specified by the Proclamation for the negotiation and conclusion of which authorization by the Council of Ministers should be secured first. These are, as enumerated under Article 6, 'treaties to be concluded by ministers and other government officials with their counterparts involving mutual cooperation on matters of technical nature falling within the competence of government officials', on the one hand, and 'treaties whose sole purpose is to implement prior basic treaties', on the other.

The next issue worth deliberations at this point is 'who initiates ideas of or identifies and proposes areas seeking the making of treaties with other countries'. According to Article 4 of the

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<sup>98</sup> Proclamation to Provide for Treaty Making Procedures, *supra* note at 96, Art. 3.

<sup>99</sup> See VCLT, *supra* note at 3.

Proclamation, proposals concerning the negotiation and conclusion of, and accession to, treaties might be initiated by any of the Ministries or other government offices to which the issue requiring the making of such international treaty relates. However, such of the competent organ would be expected, in preparing the proposal, to consult with the Ministry of Foreign Affairs. After the proposal was put in order in this routine, therefore, it would be submitted to the Council of Ministers.

At this juncture, it would be enlightening to note that, as an exception to the above mode, if the proposal was concerned with economic treaties, the competent Ministry or other government office should make the consultation, not with the Ministry of Foreign Affairs, but with the National Committee for Foreign Economic Relations. On the basis of what has been provided for under Article 4 (1) of the Proclamation on Treaty Making Procedures, therefore, it was after the consultation with this organ that the proposal prepared by the competent organ could be submitted to the Council of Ministers.

Then, if the Council of Ministers could accept the proposal, it would submit the matter to the President of the Republic together with its recommendations (Article 4 (2) (a) of the Proclamation). This, however, could be done only when the treaties desired to be concluded relate to basic political and economic matters. In such other cases as where the treaty intended to be concluded relates to one of those affairs enumerated under Article 6 (as mentioned hereinabove i.e. treaties involving mutual cooperation on matters of technical nature and treaties the sole purpose of which is the implementation of prior basic treaties), the Council of Ministers itself authorizes, instead of submitting it to the President, the negotiation and conclusion of, or accession to, such treaties.

#### **3.4.2. RATIFICATION OF TREATIES**

The task of ratifying international treaties under the government of the PDRE was undertaken by the standing body of the National Shengo. This organ called the Council of State was vested with

such powers as, *inter alia*, ensuring the implementation of the Constitution and other laws, interpreting these same laws and *ratifying* and denouncing international treaties.<sup>100</sup>

In the preceding sections and Chapters, we have been mentioning that, as there is no rule of international law prescribing for the kind of treaties which need and need not be ratified, it is the task of every concerned State, whenever it deems it necessary, to provide for the list of such treaty-categories in its own domestic laws. In line with this norm, the Proclamation on Treaty Making Procedures of the PDRE government specifies, under Article 7, that treaties falling in one of the two categories under this provision require ratification before entry into force.

The first class contains those international treaties dealing with basic political and economic matters. This requirement is set forth in such a way that it shall be complied with regardless of the will of the State parties. So long as the contents of the treaty appeared to be of a basic political or economic concern, that treaty had to be ratified and period. In short, with reference to this category, what matters had been the subject-matter of the treaties and not the agreement of the State parties as regards the expression of consent to be bound by the treaty.

The second group of treaties requiring ratification before entry into force had been composed of those types containing a provision of ratification as a precondition for effectiveness. Here, as opposed to the above classification, the criterion could not have anything to do with the contents of the treaty to be ratified. Regardless of its substance (it had to be other than basic political and economic matters indeed), the treaty was required to be ratified before enter into force only when there is a provision contained in the treaty itself to that effect. Actually, it seems odd to put this standard as a yardstick to form the category as it feels preposterous to expect such treaties, which already put ratification as a precondition, to enter into force without the requirement being met.

Once the international treaties falling within the above categories are ratified, the instrument of ratification would be prepared and shall be signed by the President of the Republic (Article 7 of the Proclamation). On the other hand, the task of issuing the decree of ratification, upon ratifying

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<sup>100</sup> Constitution of the PDRE, *supra* note at 57, Article 82 (1) (d).

such treaties, had been vested in the Council of State provided that this task was not entrusted to another body. The “*unless decided otherwise*” clause of Article 8 of the Proclamation discloses that the act of ratification could also be undertaken by an organ other than the Council of State whenever it could be provided for by law. Finally, according to Article 9 of the Proclamation, the exchange and deposit of instruments of ratification was determined to be carried out by the Ministry of Foreign Affairs.

The approval (*with similar meaning to ratification*) of international treaties before the enactment of the PDRE Constitution used to be issued through Proclamations by the Provisional Military Administration Council (the Derg). For instance, the agreement between the Provisional Military Government of Socialist Ethiopia and the Government of the Republic of Djibouti on the Djibouti – Addis Ababa Railway was approved (*tsedqual* – the Amharic term employed as equivalent to *approved*) by Proclamation No. 251 of 1983.<sup>101</sup>

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<sup>101</sup>See “A Proclamation to Approve the Djibouti – Addis Ababa Railway between the Provisional Military Government of Socialist Ethiopia and the Government of the Republic of Djibouti, Proclamation No. 251 of 1983, 43<sup>rd</sup> Year – No. 4, Negarit Gazeta”.

**CHAPTER FOUR**  
**RATIFICATION OF INTERNATIONAL TREATIES:**  
**THE CURRENT ETHIOPIAN EXPERIENCE**

**4.1. INTRODUCTION**

As it has been indicated in the first Chapter of this dissertation, the main objective of the work is to explore and uncover the process undertaken in the current government of Ethiopia in the course of ratifying international treaties. The practical experiences of the country in this regard would therefore be discoursed in light of the vital issues mentioned in the “*Framework of the study*” part of this thesis.

Before going deep into the analysis of the subject-matter, however, the author of this work has found it important to shed light on the whole treaty making process of the country. The course of action through which international treaties are negotiated, the real organ responsible for the undertaking of treaty negotiations, the possible modes by which the country’s consent to be bound by treaties would be expressed, and any related issues required to be performed before the supposed treaty gets ready for the act of ratification would be deliberated very fastidiously.

This is believed to bring about, among other things, straightforwardness in understanding the discussions made in the upcoming section – the issue of ratification. Accordingly, the treaty making process up to the stage of ratification would be dealt with in the immediately following section. The subsequent section would contain a thorough talk over on the topic of ratification.

One last point the reader needs to be notified at this leg is that as regards the procedures the country adheres to in making international treaties, no comprehensive law under this government has been promulgated so far; in fact, the Proclamation to provide for Treaty Making procedures<sup>102</sup> enacted by the PDRE government has not yet been repealed, either. Consequently, this law is still applying so long as the provisions contained in it do not contradict with any of the

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<sup>102</sup> See Proclamation to Provide for Treaty Making Procedures, *supra* note at 96.

currently applicable basic laws. The practice also reveals that, sometimes, the articles of the Proclamation are put into operation, *mutatis mutandis*.<sup>103</sup>

Therefore, in dealing with the issue under consideration, this Proclamation together with the other relevant laws of the country in force would be referred to. Hence, the provisions of the Proclamation are employed as inputs to the work, whenever indispensable, all the necessary changes or modifications being made to them as signposted above. Furthermore, in cases where there occurs an undertaking (in the Proclamation) for which a different procedure or rule is set forth by a current legislation, some analysis would be made on it, when the topic is worth such commentaries though.

## **4.2. THE PROCESS**

### **4.2.1. ISSUANCE OF FULL POWERS**

In a treaty making process, the first step that needs to be undertaken is the issuance of the full powers.<sup>104</sup> This is the document that the representative of a State involved in treaty negotiations should produce to ascertain that he is the right person authorized to perform the task. In this respect, the entitlement to issue the full powers is presently vested in the Prime Minister.<sup>105</sup> However, there is currently no law to this effect which clearly provides for the application of such practices.

The powers and functions of the Prime Minister are lucidly enumerated under Article 74 of the FDRE Constitution.<sup>106</sup> One of these is to exercise overall supervision over the implementation of the country's foreign policy (Art. 74 (6)). This discernibly insinuates that the country's activity

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<sup>103</sup>Interview with Ambassador Fisseha Yimmer, Special Advisor to the Ministry of Foreign Affairs, [has also been a Permanent Representative of FDRE to the United Nations in Geneva, and Permanent Representative of Ethiopia to the UN and other International Organizations], conducted in Addis Ababa, Ethiopia, in his office in the Ministry of Foreign Affairs, April 2011. This fact had also been further strengthened by Ato Muhammad Ahmed, *Infra* note at 154. *I have talked to different employees working in the various departments of the Ministry of Foreign Affairs, though informally, about this issue; and they told me that they have already commenced preparing draft legislation on Treaty Making Procedures so as to propose it to the HPR for its promulgation.*

<sup>104</sup> See deliberations made under section 2.2 of Chapter two.

<sup>105</sup> Interview with the Ambassador, *supra* note at 103.

<sup>106</sup> FDRE Constitution, *supra* note at 5.

to negotiate and conclude international treaties is over sighted by the guidance of the Prime Minister. However, as the powers and functions of government organs or high ranking officials are laid down in the Constitution usually in a very general manner, it is imperative, at least in some instances, that their fine points are spelt out in subsidiary laws.

Certainly, for instance, this was the norm which has been observed during the regime of the PDRE. The duty to ensure the implementation of the country's foreign policy was entrusted to<sup>107</sup> and the power of issuing the full powers was vested in<sup>108</sup> the then President of the Republic. However, the President used to exercise the latter not on the basis of an inference from the general provision of the Constitution but by virtue of the specific article of the Proclamation enacted to provide for Treaty-Making Procedures [hereinafter: the PRDE Proclamation].

Therefore, as the function of supervising the implementation of the country's foreign policy is entrusted to the Prime Minister, as opposed to the President of the Republic as in the case of the PRDE regime, the provision of the PDRE Proclamation should be read accordingly, i.e. *mutatis mutandis*. Consequently, Article 5 should be understood as impliedly stating "*Full powers to negotiate and conclude treaties shall be issued only by the Prime Minister*".<sup>109</sup> The power to issue full powers currently exercised by the Prime Minister therefore can be constructed in this manner.

Moreover, on account of sub article 2 of the Proclamation's same provision, it is provided that the Prime Minister (*Mutatis Mutandis*) can delegate this prerogative of issuing the full powers, when it is considered to be necessary, to high government officials. As to the practical experiences of the country witnessed so far, however, it has been realized that there were no instances whereby the Prime Minister has delegated this power to any government official.<sup>110</sup>

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<sup>107</sup> The PDRE Constitution, *supra* note at 57, Art. 86 (1) (a).

<sup>108</sup> Proclamation to Provide for Treaty Making Procedures, *supra* note at 96, Art. 5.

<sup>109</sup> The original Article of the PDRE Constitution reads as follows: "*Full powers to negotiate and conclude treaties shall be issued only by the President of the Republic*".

<sup>110</sup> Ambassador Fisseha Yimer, *supra* note at 103.

#### 4.2.2. PREROGATIVE TO INITIATE DRAFT PROPOSALS

Any document adopted as a final treaty instrument, at one time, has to appear in a form of a mere “draft proposal”. It is only after passing through constant revisions and deliberations in a form of negotiations that it achieves the status of a final and refined Instrument having binding effects on the states parties. The task would then be the identification of bodies having the privilege to initiate treaty proposals.

Basically, the idea of negotiating on a particular subject and concluding a treaty on such issue may be initiated by either of the State parties to the treaty. However, in this respect, as discussing the practical experiences of the other State parties is not of significant importance to the issue at hand, we simply stick to the situation in Ethiopia.

Generally, proposals concerning the negotiation and conclusion of, and accession to, treaties shall be initiated by any competent Ministry or other government office. This is clearly provided for under Article 4 (1) of the PDRE Proclamation. When the practice is assessed in light of this provision, it appears to be true today too that the different Ministries and other government offices can play the role of initiating proposals.<sup>111</sup>

The various departmental organs operating in the Ministry of Foreign Affairs are one of the sources from which draft treaty proposals may originate. The departments include the African Affairs Directorate General, Asian Affairs Directorate General, Middle East Countries Affairs Directorate General, European Affairs Directorate General, American Affairs Directorate General, etc. therefore, each of them would assume the responsibility of preparing the proposal, when necessary, depending on the location of the other State party with which the treaty agreement is intended to be concluded. This means, therefore, that if the negotiation were to take place between Ethiopia and another African country, then the task of preparing the proposal would be undertaken by the department of African Affairs Directorate General.<sup>112</sup>

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<sup>111</sup> Ambassador Fisseha Yimer, *supra* note at 103.

<sup>112</sup> *Id.*

These various above mentioned departments of the Ministry of foreign Affairs, including such other departments as Business Diplomacy Directorate General, Public Diplomacy and Communication Directorate General, etc, play the role of not only initiating proposals but also receiving and entertaining the case, on the basis of their jurisdiction as to geographical location or subject matter, whenever a treaty proposal is submitted to them being initiated by a State seeking to conclude treaty agreements with Ethiopia.<sup>113</sup>

### **4.2.3. THE NEGOTIATION STAGE**

Under this section, we will generally be looking into two major issues. First, whose power is it to negotiate and conclude international treaties on behalf of the country? And, second, how is the negotiation process undertaken (what does the process look like)? These two topics will be dealt with in the light of the practical experiences of the country.

#### **4.2.3.1. POWER TO NEGOTIATE**

The provisions of the PDRE Proclamation relating to the power to negotiate and conclude international treaties seem to be repealed impliedly as this power today has expressly been granted to an organ of the government. As opposed to the case of the PDRE Proclamation, where this prerogative was given to the President of the Republic, the Proclamation of the FDRE enacted to define the Powers and Duties of the Executive Organs [hereinafter: the Proclamation]<sup>114</sup>, under Article 15 (3), grants the power to negotiate and sign international treaties to the Ministry of Foreign Affairs [hereinafter: the Ministry, unless the context suggests otherwise].

On account of this same provision, the Ministry is expected to do the job in consultation with the concerned organs. If, for instance, the subject matter of the agreement relates to the issue of trade cooperation, it shall consult the Ministry of Trade; if it relates to judicial assistance, the Ministry of Justice would be the proper organ to discuss the issue with. Moreover, on the basis of the

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<sup>113</sup> Id.

<sup>114</sup> Definition of Powers & ..., *supra* note at 7.

additional precondition set forth by this article, the Ministry would be in a position to commence the act of negotiation only after it has secured the approval of the government.

What is important to take notice of here is that the power to negotiate and sign international treaties is given to the Ministry of Foreign Affairs not in an exclusive manner. In other words, the Ministry exercises this prerogative only in so far as such power is not specifically given by law to other organs.<sup>115</sup> The question would then be ‘what other organs are there being vested with the power of treaty negotiations’?

According to Article 10 (1) (f) of the Proclamation, the authority to enter into international treaties is entrusted to every Ministry as one of the common powers and duties of the Ministries. In fact, though the Proclamation provides that each Ministry shall “enter into . . . international agreements in accordance with the law”, it further specifies under Article 15 (8) that all the relations that these Ministries and other government organs would establish with foreign States and international organizations are supposed to be performed under the supervision of the Ministry of Foreign Affairs.

Indeed, it is in compliance with this proviso that the practice does not reveal instances where any Ministry has directly engaged in undertaking treaty negotiations with the other party to the agreement and independently of the involvement of the Ministry of Foreign Affairs. The practical experiences of the country rather divulge that even in cases where the subject matter of the treaty concerns one of the other Ministries, it is the Ministry of Foreign Affairs which assumes the responsibility of leading negotiations as a supervisory organ.<sup>116</sup>

Generally, the process through which international treaties of a bilateral nature pass differs from that through the undertaking of which multilateral treaties are adopted. Thus, for the sake of convenience, we will be looking into each of them separately.

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<sup>115</sup> Id., Art. 15 (3)

<sup>116</sup> Ambassador Fisseha Yimer, *supra* note at 103.

#### 4.2.3.2. BILATERAL TREATIES

Once a draft proposal is initiated by the concerned organ, it would be forwarded to the department which principally deals with negotiations going on with a country located in the region or continent it represents. For example, if one of the Ministries initiates a treaty proposal on a certain subject matter to be negotiated with China, the Asian Affairs Directorate General would take care of the process; if the treaty were intended to be concluded with Gabon, the African Affairs Directorate General would undertake the negotiation.<sup>117</sup>

Upon reception of the proposal, the competent Directorate would then consult all the organs concerned with the particular issue at hand and carefully considers any suggestions recommended to it by them. Here, it shall be noted that when the subject matter of the agreement involves the interest of any of the constituting Member States, there is an arrangement whereby the concerned State would be notified about the situation and, consequently, may participate in the negotiation by way of forwarding recommendations it considers important.<sup>118</sup>

Then the Directorate which took over the task would request legal advices mainly from the International Law Affairs Directorate General, one of the offices of the Ministry. When the proposal does not appear in a form of draft legislation composed of a set of provisions (which is the usual practice), the latter Directorate prepares the draft treaty proposal in a comprehensive form of Articles. Having prepared the treaty proposal in this way, the international Affairs Directorate General would send it back to the competent Directorate (from which it received the request).<sup>119</sup>

After this, the Directorate would pass on the treaty proposal prepared in such a refined manner to the country with which the negotiation is intended to be carried out. This party would then make suggestions and recommendations of its own which it deems necessary and forwards it back to Ethiopia with all the corrections (if any, in fact) it wanted to be made on the draft treaty. Then after, that Directorate will take delivery of the draft with the suggested corrections; proposes the

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<sup>117</sup> Id.

<sup>118</sup> Id.

<sup>119</sup> Id.

rectifications which it needs to be made on the recommended adjustments of the other State party; and resubmits it to the International Law Affairs Directorate General, together with modifications of its own, for further refinement.<sup>120</sup>

By and large, the general framework of the path looks like the above one. This process therefore will carry on until the State parties would finally reach either on an agreement as to the contents or terms of the draft treaty, in which case they move a phase forward to undertake the next step in the treaty making process, or on a disagreement, in which case all their perseverances would remain in vain. In any case, the organ who initiated the proposal would be notified of the final outcome of the negotiation.<sup>121</sup>

#### **4.2.3.3. MULTILATERAL TREATIES**

In the above section, we have seen the sequence followed in the course of concluding international treaties of a bilateral nature. When the agreement is a multilateral one, the negotiation process takes a somewhat different form. Usually, such treaties are negotiated in diplomatic conferences; however, as discussed in section 2.2 of Chapter two, organs of international organizations often times also supervise the adoption of international agreements in the form of Conventions.

Generally, draft proposals of multilateral agreements pass through constant revisions and scrutinies performed in successive conferences, workshops or meetings until they ultimately achieve the status of a final and refined instrument ready for signature. For it is difficult to provide a rule of international law or a uniform negotiation schedule which need to be followed in adopting a multilateral treaty, the process employed to adopt one such instrument or Convention (even within a single international organization like the African Union) differs from that used to produce another multilateral instrument.

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<sup>120</sup> Id.

<sup>121</sup> Id.

In other words, some issues appear to be so sophisticated that they may require repeated and intensive deliberations by personnel of high proficiency thereby making the adoption process protracted. Moreover, due to the fact that the draft proposal needs to be examined by experts of different specializations, there may become a need to arrange as many separate meetings and workshops as possible. Owing to such unpredictable circumstances, hence, it is hardly possible to set the number and type of meetings in advance which should be organized to produce a well filtered instrument.

Therefore, it becomes clear that we may witness various procedures being followed and passed-through when adopting multilateral treaty instruments on account of a variation in their subject-matters (and even number of members). However, as there would be a relatively well-arranged route of adopting a multilateral agreement when the task is taken over by an international organization or an organ of same, it would be very enlightening to look into the practical experiences of a sample international institution in its act of supervising such accomplishments.

Let us then see in brief the adoption process carried out by the African Union [hereinafter: AU or the Union] in producing one international multilateral treaty (to which Ethiopia has been a signatory) called the IDP Convention (or the Kampala Convention).<sup>122</sup> In general, the process of adopting a convention in the African Union can be classified into the following phases: (1) *Zero-Draft* – (2) *Validation Workshop* – (3) *Experts' Meeting* – (4) *Sectoral Ministers* – (5) *Ministers of Justice* – (6) *Executive Council* – (7) *Assembly*.<sup>123</sup>

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<sup>122</sup>African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa; adopted in Kampala, Uganda, 22-23 October 2009.

<sup>123</sup>Interview with Mr. Adewale E. Iyanda, An Officer in the Office of Legal Council of the African Union Commission, conducted in Addis Ababa, Ethiopia, in his office in the African Union Commission, February 2011. *Elucidations of the interviewee in the words of the author of this thesis*: However, this does not mean that every Convention adopted by the Union passes through each of these stages. For instance, sometimes the final draft of a Convention may be adopted without the need to organize a *Validation Workshop* for its review or deliberations. At other times, it may not be necessary to conduct a meeting of *Ministers of Justice* for the purpose of refining the draft. The reasons for skipping such procedures could be different. For example, the AUC may be convinced that the area being studied is not sophisticated that reviewing the draft by a *Meeting of Experts on the particular field* would be sufficient; consequently, the Commission may find it unnecessary to organize a Validation Workshop.

The first stage, zero draft, is the level in which a draft proposal of a Convention is prepared by the entity having the privilege to come up with one. The AU Commission [hereinafter: the Commission] plays a significant role in, for example, identifying areas for the regulation of which a Legislation or Convention is sought. On the other hand, it is also possible that any organ of the Union may call for the establishment of a Legal Framework or a Draft Legislation on areas where there is a need to adopt a Convention.<sup>124</sup>

In the case of the Kampala Convention, the idea of producing an Instrument for the Protection and Assistance of IDPs was initiated by the decision of the Executive Council of the Union through Ex. CL/Dec.127 (V) and Ex. CL/Dec. 129(V).<sup>125</sup>

In the second phase, the Commission brings together experts, various stakeholders, etc to review the Draft Legislation prepared by the concerned department. The experts here may not necessarily be personalities who have specialized in the particular issue under review. For instance, they may be legal experts whose main objectives would be reviewing the Draft with a view to establishing consistency between its different provisions or sections.<sup>126</sup>

In the course of adopting the IDP Convention, however, one can easily observe from the Explanatory Note on the AU Convention for the Protection and Assistance of IDPs in Africa that neither the Commission nor any of its departments had organized a Validation Workshop throughout the adoption process of the Convention.<sup>127</sup>

The third stage is a meeting of experts from member States of the African Union, representatives of different International Organizations and various African NGOs, etc convened

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<sup>124</sup>Id.

<sup>125</sup>Explanatory Note on the African Union Commission for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention), AU Archives, Unpublished, P. 1.

<sup>126</sup>Mr Adewale E. Eyanda, *supra* note at 123; See also \*the Narrative on the Validation Workshop to review the International Study Group's (ISG) Draft Framework report on Africa's Mineral Regimes, organized by Department of Trade & Industry of the AUC in collaboration with Infrastructure and Natural Resources Development (INRD) section of the United Nations Economic Commission for Africa (UNECA) on 20<sup>th</sup> to 22<sup>nd</sup> October 2010, AU Archives, Unpublished.

<sup>127</sup>Explanatory Note, *Supra* note at 125, PP. 1 & 2; See the elucidation of Mr. Adewale E Eyanda, written under foot note no. 123.

for the purpose of making discussions and forwarding recommendations on the Draft document with the aim of making it more refined than it was in the previous stages. The attendants here are experts on the particular field of area being considered.<sup>128</sup>

When an assembly was organized to deliberate on the Draft Convention of the IDPs, Experts in-charge of forced displacement matters from thirty eight African member countries, in addition to other experts from different organs like ECOWAS, IGAD, SADC, etc, attended the meeting. However, though the conference took place here in the capital city - Addis Ababa, no Expert representative from Ethiopia was sent to take part in the meeting.<sup>129</sup>

The meeting of Sectoral Ministers is usually the fourth stage where deliberations are made on the Draft Convention and the recommendations forwarded by the Experts' Meeting in the previous phase. Moreover, the meeting may also adopt recommendations of its own which it considers necessary for the refinement of the draft. The attendants of this meeting are principally African Ministers who are in charge of the specific sector (being studied) in their respective countries. In addition to this, however, representatives from regional organizations like IGAD, SADC, the UN Agencies, etc may also attend the meeting.<sup>130</sup>

The meeting of Ministers in-charge of forced displacement issues, with the view to address the challenge of forced displacement in Africa and discuss on the Draft IDP Convention, was convened in Addis Ababa (10 to 11 November 2008). Forty eight African countries from among member States of the Union were claimed to have been represented in the meeting by their respective Ministers in-charge of the matter in question. This time, Ethiopia did participate in the meeting through the State Minister for Agriculture and Rural Development of the FDRE, Honorable Minister Dr. Abera Deressa.<sup>131</sup>

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<sup>128</sup>Report on the Meeting of Member States' Experts on Forced Displacement Issues, Special Summit on Refugees Returnees and Displaced Persons in Africa; Addis Ababa, Ethiopia, 5-7 November 2008, AU Archives, Unpublished, p. 1.

<sup>129</sup> Id.

<sup>130</sup> Mr. Adewale E. Iyanda, *Supra* note at 123.

<sup>131</sup> Draft Report of the Meeting of Ministers in Charge of Forced Displacement Issues, Special Summit on Refugees, Returnees and Displaced Persons in Africa; Addis Ababa, Ethiopia, 10-11 November 2008, AU Archives, Unpublished; pp. 1-4.

In the draft report on the meeting of Ministers in charge of forced displacement issues, the Minister's participation was presented in the following manner.<sup>132</sup>

*In his keynote address, Honorable Minister Dr. Abera Deressa acknowledged the need to deal with durable solutions to the conflicts and natural disasters in Africa. He called for the rule of law and good governance that central in addressing the root causes of the problem of displacement in Africa and called for a protection and solutions based regime to deal with the problems on the continent. He pointed out that Africa's efforts are indeed underway and are of crucial importance to the Draft AU Convention on the protection and assistance of Internally Displaced Persons in Africa, which is going to be a much needed instrument to deal with the plight and suffering of Internally Displaced Persons in Africa. It is therefore upon Member States to put together joint efforts to effectively establish the necessary institutional framework, at the national and continental level, that will ensure that durable solutions to the problem of forced displacement in Africa. He concluded by thanking the African Union for organizing these meetings and wished the meeting a fruitful deliberation.*

Thus the country's involvement in and contribution to the adoption of the multilateral treaty on IDPs was carried out in this manner.

The fifth stage is a meeting of Ministers of Justice of member States. In addition to reviewing the works of the previous meetings and making possible recommendations to the Draft Convention, the Ministers play important roles in critically analyzing that the provisions of the Draft would not contradict any basic legislation of their respective countries which, otherwise, would prevent the smooth application and implementation of the Convention.<sup>133</sup>

In the process of adopting the IDP Convention, no meeting of Ministers of Justice was arranged to take place for the purposes mentioned above.<sup>134</sup> This can be taken as a *bona fide* example to toughen the keynote indicated under foot note no. 125 - that the Union does not have a consistent procedure uniformly applicable to the adoption of Conventions.

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<sup>132</sup>Id., PP. 2-3.

<sup>133</sup>Mr. Adewale E. Iyanda, *Supra* note at 123.

<sup>134</sup>Explanatory Note, *Supra* note at 125.

In the sixth stage, the Draft Convention is presented before the Executive Council. This organ is one of the decision making bodies within the African Union which is composed of Ministers of Foreign Affairs (or Ministers or Authorities as are designated by the Governments) of member states.<sup>135</sup> As a major organ of the Union, the council plays an important role throughout the whole process of adopting a particular Convention. The Council also reviews the works of the previous meetings and makes its own recommendations in order to shape the Draft in a more polished manner.<sup>136</sup>

In the case of the IDP Convention, for instance, the Council of Ministers has convened in an extraordinary session on 19-20 October 2009. Accordingly, it made extensive deliberations on the Draft Convention; commented on it; and finally, having suggested possible recommendations it deemed appropriate, it completed its works by preparing its final decisions in a form of a report. As the Executive Council is composed of Ministers of Foreign Affairs (or other representatives as are designated by their Government) of member States, Ethiopia also took part in the deliberations of the Council through its representative in there.<sup>137</sup>

Finally, the Draft Proposal would be submitted to the Assembly of the Union. The Assembly, as a supreme organ, is composed of Heads of State and Government or their duly accredited representatives; in ordinary session, the Assembly meets at least once in a year. However, it may also convene in an extraordinary session upon the request of any member State provided that it is approved by a two thirds majority of the member States.<sup>138</sup>

One of the tasks required to be accomplished by the Assembly, so far as the adoption of a Draft Convention is concerned, is the consideration of the outcomes of the Executive Council. The Council would submit its works in a form of a report to the Assembly. Then this later organ will

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<sup>135</sup> Constitutive Act of the African Union, Adopted at Lomé, Togo, on the 11<sup>th</sup> day of July, 2000, Art. 10 (1).

<sup>136</sup> Mr. Adewale E. Iyanda, *Supra* note at 123.

<sup>137</sup> Draft Report of the Meeting of the Assembly of Heads of State and Government, Special Summit on Refugees, Returnees and Displaced Persons in Africa; Kampala, Uganda, 22-23 October 2009; AU Archives, Unpublished, PP. 1 & 10.

<sup>138</sup> Constitutive Act, *supra* note at 135, Art. 6.

make discussions on the report; and, consequently, it may approve or amend or reject the recommendations of the Council.<sup>139</sup>

On the other hand, the Assembly will discuss and review the Draft Convention presented before it. Accordingly, it may suggest that a particular provision of the Draft shall be rewritten; propose that the provision be in conformity with a definition contained in an International Instrument, etc. Having made its comments in such a way that the Draft Instrument would find itself to be a more refined one, the Assembly will finalize its work by deciding on what shall be done next.<sup>140</sup>

In the case of the IDP Convention, after making considerable deliberations and scrutiny on the Draft, the Assembly endorsed or validated the Instrument and decided that it shall be submitted for signature immediately.<sup>141</sup>

Then and there, a procedure of signing the Convention was arranged and the Assembly was guided by the Legal Council of the Union in such a way that the Instrument would be signed first by Heads of State or Government; followed by Ministers of Foreign Affairs (without the need to produce full powers); and finally by other Ministers (Who were required to present full powers in order to sign). Accordingly, the document was signed by seventeen member States of the Union during the closing ceremony of the Special Summit. Ethiopia, as one of the seventeen countries, signed the Convention through the then Foreign Minister.<sup>142</sup>

The Convention is claimed to be the first ever instrument intended to deal with the challenge of forced displacement on the Continent of Africa. For its coming into force, the Convention needs 15 ratifications. So far, it has been reported that only seven Member States of the Union, namely Uganda, Sierra Leone, Chad, Zambia, Central African Republic, Somalia and Gabon have ratified the Convention.<sup>143</sup>

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<sup>139</sup>Draft Report, *supra* note at 137, P. 10.

<sup>140</sup>See *id.*

<sup>141</sup>*Id.*; P. 11.

<sup>142</sup>*Id.*; PP. 11-12.

<sup>143</sup>AU calls on member states to ratify IDPs Convention, Available online on <http://www.afriqueavenir.org/en2011/03/15> > (Accessed on 27 May 2011; 3:00 pm).

#### 4.2.4. MODES OF EXPRESSION OF CONSENT

After an international treaty is negotiated in the manner mentioned above and the instrument has reached the stage of its final refinement, the States parties are expected to approve its binding status through the means they chose to be the mode of expression of consent to that effect. The consent of a State party to be bound by a treaty may be conveyed, *inter alia*, through signature or signature followed by an act of ratification, as the case may be. Ratification as method of expressing consent would be discussed in an elaborated manner in the forthcoming section.

Generally, the practical experience of Ethiopia reveals that there are instances where the consent of the country to be bound by a negotiated treaty could be expressed by a “definitive signature”<sup>144</sup> – a signature which marks the entry into force of the treaty without further qualifications like approval or ratification.

Consequently, when such kind of signature is chosen as a mode of expressing consent by the mutual agreements of the States-parties involved in the negotiation, this being indicated in the instrument itself, the treaty would be signed by the respective plenipotentiaries (of the States parties) duly empowered to do so, and that would mark the entry into force of the treaty in question (save exceptions where a further condition other than ratification is set forth for the treaty to take effect<sup>145</sup>).

To give a down to earth example for the above situation where a “definitive” signature was agreed upon, we can cite the agreement between the Federal Democratic Republic of Ethiopia and the African Union on the Headquarters of the latter.<sup>146</sup> Here the signature of the parties was regarded to be a definitive one denoting the entry into force of the treaty without being subject to ratification. This was expressly stipulated under Article 27 (1) of the instrument. The Article reads as follows: “*This agreement shall enter into force upon its signature by the duly authorized representatives of the Government and the African Union*”.

<sup>144</sup>See the discussion made under section 2.2 of Chapter two.

<sup>145</sup>For instance, the entry into force of the treaty may be agreed to be at a fixed future date after signature.

<sup>146</sup>Agreement between the Federal Democratic Republic of Ethiopia and the African Union on the Headquarters of the African Union, Adopted on 25 April 2008, Addis Ababa.

Concerning the issue of what treaties shall enter into force upon signature and what types should be subject to ratification, the Ambassador answered, upon my query, that though there is no clear law providing for such classifications, the kind of agreements or treaties which usually enter into force upon signature relate to the establishment of offices of International organizations, formation of diplomatic interactions and making of friendly relations.<sup>147</sup>

The ceremony of signing the negotiated treaty usually occurs at a place where and in a time when both parties are present. Signing of an international treaty may be performed either by the Prime Minister or the Minister of Foreign Affairs or by any other high ranking government official; in the latter case, upon the production of full powers.<sup>148</sup>



### **4.3. RATIFICATION OF INTERNATIONAL TREATIES IN ETHIOPIA TODAY**

This section is divided into three general sub sections. The first segment discusses instances in which international treaties concluded by Ethiopia would be subject to ratification. The second part discourses on the process through which such agreements are ratified. In the last subdivision, different issues put forward in relation to the ratification trend of the country would be analyzed in light of the laws of the country.

#### **4.3.1. RATIFICATION AS A MODE OF EXPRESSING CONSENT**

Ratification is one means through which a State may express its consent to be bound by international treaties. As it basically implies an act of confirming the deeds of the executive in handling the affairs of the State in relation to foreign powers, it is not always the case that international treaties shall be subject to ratification. In other words, depending on, among other things, the weight given to the subject matter of the treaty in question or its sophistication, the need for ratification may be rescinded, and the treaty may enter into force only upon signature without the need to confirm the accomplishments of the Executive.

<sup>147</sup> Ambassador Fisseha Yimer, *supra* note at 103.

<sup>148</sup> *Id.*

In Ethiopian case, it has been tried to classify those categories of international treaties requiring ratification before entry into force. The PDRE Proclamation<sup>149</sup>, under Article 7, provides that basic political and economic treaties, on the one hand, and treaties containing provisions on ratification for entry into force, on the other, need to be ratified by the Council of State before they become effective.

It has already been brought to the attention of the reader under section 4.1 of this Chapter that the PDRE Proclamation is still in force, as regards treaty making procedures, so long as the provisions contained in it are not in contradiction with currently applicable laws. Accordingly, what is practically observed concerning the classification of treaties entering into force upon signature and those requiring ratification for entry into force seems to be in compliance with the provisions of this Proclamation. Generally, it is only those treaties which particularly deal with subjects the benefit of which is inherently obvious and understandable that signature of a 'definitive' type is applied for their entry into force.<sup>150</sup>

Indeed, the genuine appraisal deep into the possible contents or objectives of treaties focusing on the establishment of offices of International organizations or formation of diplomatic and friendly relations with other sovereign States reveals that the entry into force of such treaties without confirmation by the legislative is justified. Such international treaties are explanatory *per se* so long as their significance and usefulness to the country's reputation in the international forum and peaceful relations with foreign powers is concerned. Therefore, as the legislature simply focuses on the merits of the treaties in deciding whether or not to ratify them, it would be superfluousness to make such international agreements subject to ratification.

Conversely, the entry into force of virtually all other treaties in the country today is unveiled only after their ratification by the House of People's Representatives is secured. Thus, in short, as regards international treaties to which Ethiopia is a party, the trend is that their entry into force is pronounced either through a 'definitive' signature, in which case no further act of approval is

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<sup>149</sup> See Proclamation to Provide for Treaty Making Procedures, *supra* note at 96.

<sup>150</sup> Ambassador Fisseha Yimer, *supra* note at 103.

required, or a 'simple' one, in which case a subsequent act of confirmation by the legislative is sought.<sup>151</sup>

#### 4.3.2. THE RATIFICATION PROCESS IN THE HPR

When international treaties are brought before the House of Peoples' Representatives for ratification, the procedure the House follows in confirming them is the same as the *modus operandi* it employs in making or unmaking the other laws of the country.<sup>152</sup> This notion can also be inferred from the Directive<sup>153</sup> issued by the HPR on the law making process. Accordingly, under Article 7(C) of the Directive, the request for the promulgation of a Proclamation to ratify international agreements would be considered as one of the draft laws which could be laid before the House, i.e. just like any draft bill presented to the House for the enactment of a new law.

Consequently, the request for the ratification of international agreements is submitted to the House by the Council of Ministers through the party-whips having a seat there in the HPR. These party-whips are representatives of the Prime Minister in the legislative organ elected by the PM himself. They would submit to the House the document of the duly signed treaty together with the Instrument of Ratification and brief elucidations on the objective and merits of the treaty in question. However, it is important here to note that the treaty document is presented before the House in its English version (as written during negotiations) and without any Amharic translation being prepared for it; and no work of rendition is performed in the House either.<sup>154</sup>

The Directive under Article 9 provides for the structural components which draft legislations should contain when presented to the House. Accordingly, ratification instruments brought before the HPR are usually composed of a long title signifying the 'objective' and contents of the draft Legislation, a short title by which the draft may be cited, the organ to which power to issue

<sup>151</sup> Ambassador Fisseha Yimer, *supra* note at 103.

<sup>152</sup> Directive on Law Making, *infra* note at 153, Art. 1 (c).

<sup>153</sup> Directive on Law Making (*Sle Hig Awetat Memeria*) No. 11/2000, House of Peoples' Representatives, Printed in the Printing Division of the HPR.

<sup>154</sup> Interview with Ato Muhammad Ahmed, Former parliamentarian, currently working as a Senior Legal Advisor in the Legal and Administrative Affairs Standing Committee of the House of Peoples' Representatives; conducted in Addis Ababa, Ethiopia, in his office in the HPR, April 2011.

regulations or directives for the implementation of the would-be law (in our case the treaty to be ratified), the effective date of the draft and the person authorized to sign the draft in question.<sup>155</sup>

Once the instrument of ratification is prepared and submitted to the HPR (through the Speaker of the House) in this manner, it would be made ready for first reading. Thus, the person delegated by the initiator of the draft bill (or representatives from the Ministry of Foreign Affairs who are very acquainted with the negotiation) shall, upon the permission given by the Speaker, openly read out the bill itemized in the agenda, to the House. After the completion of the first reading, the House would then make deliberations on the spirit of the treaty (in question) in general. Where, subsequent to the discussion, the Speaker of the House deems such to be sufficient, the instrument of ratification would be numbered and referred to the concerned Standing Committee by the Speaker himself.<sup>156</sup>

At this point, we need to bear in mind that though the instrument of ratification passes through the same path as all other draft bills do, there are basic differences between the two especially concerning the privilege of the House to make alterations on the bills. For instance, unlike other draft legislations, the House cannot make any amendments to the international treaty the ratification of which is under consideration. The only thing the House would do is that it either ratifies the agreement as it is, or else, rejects it.<sup>157</sup>

Indeed, this is so for a justified reason. The international agreement brought before the House for ratification contains not only the wills of the executive organ of the country but also a vested interest of a third State party which of course is a foreign power. It is plain that the treaty gets ready for ratification after having passed through arduous and protracted negotiations between the parties to the agreement. Where further confirmation of the signed treaty is put as a precondition for its entry into force, therefore, the treaty would be sent to the pertinent organs of the respective States-parties on condition that nothing more than confirming the treaty would be

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<sup>155</sup>You may observe all this in any of the Ratification Proclamations promulgated by the HPR to confirm that a treaty concluded by the executive organ of the government is approved; See also Directive on Law Making, *supra* note at 153, Art. 9.

<sup>156</sup>Directive on Law Making, *supra* note at 153, Art. 9.

<sup>157</sup>Ato Muhammad Ahmed, *supra* note at 154.

performed. Making any corrections or modifications to the treaty would simply render the Executive's work ineffective and would open door for a new and unforeseeable negotiation.

Let us now get back to the tasks of the committee to which the bill and the treaty instrument are referred [in fact, these documents may even be passed on to two or more Committees if the issue under consideration necessitates such action<sup>158</sup>]. Having received the documents referred to it by the Speaker of the House, the Committee will then discuss the matter with a group of personnel called or invited from the Executive organ, particularly the initiator, or anybody from any organ whom it deems is concerned with the issue at hand. Generally, the committee may exploit almost all sources from which it would procure relevant comments on or inputs to the matter under discussion, including the collection of public opinions through a method it considers appropriate. Afterwards, it would prepare a report containing the outcomes of its deliberations together with its own recommendations and suggestions; and then, it shall submit it to the House for a second reading.<sup>159</sup>

At this juncture, we may see that in cases where the treaty under scrutiny contains issues involving the interests of any of the constituting regional States, as an implication of what has been said right above here, the Committee may find it important to cause the pertinent regional State to take part in the deliberations it makes on the draft bill, though this is an implication of what the law provides for.

In the second reading, the deliberations of the House would totally concentrate on the reports and recommendations of the Committee. The discussion at this stage is led in this manner: first, the Speaker shall cause the standing Committee read the report and the recommendations (it prepared) to the House; then, based on the recommendations proposed by the Committee, the House makes detailed deliberations; and finally, it will pass its decision as to what shall be done about the instrument of ratification (whether or not to ratify it).<sup>160</sup>

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<sup>158</sup>Directive on Law Making, *supra* note at 153, Art. 17 (5).

<sup>159</sup>*Id.*, Arts. 17 & 32.

<sup>160</sup>*Id.*, Arts. 19 & 20.

Here lies another procedural difference between the undertakings of the House as regards instruments of ratification, on the one hand, and other draft bills, on the other. As is has been tried to indicate above, in ratifying international agreements concluded by the Executive organ, the power of the House is either to confirm them as they are presented to it, or else, if it has any reservations on the treaty instruments, it simply rejects them. In other words, there is no such thing as ratification with amendments.

On the other hand, there are instances by which draft bills might still be open, even after the second reading, for further inquiry.<sup>161</sup> Consequently, the bill might be presented before the House for a third reading after its return from the Committee to which it was referred for a second time. However, deliberations by the House are allowed to be made, at the stage of the third reading, only on those issues which the House has previously ordered, when referring the bill to the concerned Committee for a second time, to be included in or subtracted from the said bill. Nevertheless, as the House cannot make any alterations on the international treaties<sup>162</sup> brought before it for ratification, one can plainly observe that there would obviously be no stage of a third reading as regards such draft bills of ratification instruments.

Therefore, the completion of deliberations after the second reading is technically the last stage for the House to make its final decision on the fate of instruments of ratification laid before it. With reference to the decisions of the House on the promulgation of ratification instruments, the interviewee Ato Muhammad Ahmed highlighted that he has virtually never witnessed a case whereby the House declined the request of the Executive for the ratification of international treaties. He further explained that this could be due to the reason that there is a strong sense of solidarity, tolerance and understanding between the two organs of the government as it is almost always the case in any parliamentary form of governments.<sup>163</sup>

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<sup>161</sup>Id., Art. 21.

<sup>162</sup>*The House may, in fact, do any kind of amendments to the instrument of ratification [but not to the contents of the international treaty the instrument represents] presented to it and is preparing to be published in the Negarit Gazeta. However, it would be ridiculous to expect the House to do so basically because such ratification instrument simply contains nothing but the title of the proclamation, a statement pronouncing that the treaty in question is ratified, the date on which the ratification proclamation enters into force and the person authorized to sign such instrument.*

<sup>163</sup>Ato Muhammad Ahmed, *supra* note at 154.

Lastly, once the House confirms the international treaty in question, the instrument of ratification pronouncing that the agreement is ratified would be published in the Federal Negarit Gazeta. Before publication, however, the bill shall be transmitted to the President of the Federal Government for signature provided, though, that if he would not sign within fifteen days, the law shall take effect without his signature. On the other hand, the law is required to be published both in Amharic and English versions.<sup>164</sup>

Where the House ratifies international treaties, however, the act of confirmation does not have a retroactive effect. In other words, though the day in which the treaty may become operative is a topic which is determined by the parties during negotiation and is found being indicated in the text of the treaty already laid before the parliament, the House ratifies such agreements with a view to effect their entry into force, as regards Ethiopia, on a time after ratification. One can observe this from any of the ratification Proclamations issued to notify that a treaty between Ethiopia and a named Party is confirmed.

#### **4.3.3. RATIFICATION *Vis à Vis* THE LAWS OF THE COUNTRY**

Under this section, the different issues framed as topics (challenges) seeking close deliberations as regards the current ratification trend of the country would be discussed. The trials which are going to be addressed hereinafter have been enumerated virtually in an exhaustive manner in the statement of the problem section of Chapter one. However, some other issues, in addition to those ones, would also be contemplated. Let us get to them now in detail.

##### **4.3.3.1. INQUIRY INTO ARTICLE 55 (12)**

As we have seen hereinbefore, the entry into force of international treaties to which Ethiopia is a party is marked either by a simple signature followed by a subsequent ratification, or a definitive signature without the need to ensuing confirmation. How does this sound when viewed in light of Article 55 (12) of the FDRE Constitution which provides that the House of Peoples'

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<sup>164</sup>Directive on Law Making, *supra* note at 153, Arts. 43 & 45.

Representatives shall ratify international agreements concluded by the Executive body? Does this have the implication that all international agreements concluded by this organ shall be ratified by the House before entry into force?

To begin with, this provision is there simply to list the powers and functions of the House and not to talk about the means through which the country expresses its consent to be bound by international agreements. Accordingly, the fact that the HPR is entrusted with the power of ratifying treaties concluded by the Executive organ should not be understood as implying that all treaties concluded by this latter government body shall be submitted to the former for confirmation. In other words, the framing of the provision does not in any way suggest, first, that whenever Ethiopia enters into international agreements, it shall express its consent only through ratification; and (therefore), second, that whenever a treaty is concluded, it shall be ratified by the House.

It is true that the power to ratify such instruments is vested in the HPR as per that provision of the Constitution. Consequently, the proper interpretation of the Article would be that where the Executive body concludes international agreements and, on the basis of the mutual agreements of the States parties, ratification is set forth as a precondition to the entry into force of the treaty in question, then it must only be the House who shall do the confirmation or ratification task. In other cases, therefore, the concluded treaty would become operative without the involvement of the House and absent any effect of transgressing the said provision of the Constitution. To be precise, this rule of law should not be understood as requiring all treaties to be ratified by the House.

Indeed, this is what the practical experiences of the country reveal. Depending on the “expression-of-consent” clause of the agreements, we could see treaties the entry into force of which has been caused, at one time, by ‘signature alone’, and, at other times, by ‘ratification’ as well, as the case may be. For instance, we can mention, as regards the first kind, the agreement

between Ethiopia and the African Union on the Headquarters of the latter; there is a provision in the agreement to the effect that it would enter into force upon signature.<sup>165</sup>

On the other hand, the Trade Agreement between Ethiopia and South Korea, signed on 03 June 2002, can be an example of the second type. In this agreement, the requirement of ratification was stipulated under Article 6 and reads as follows: “*this agreement shall enter into force on the day when the parties notify each other that all legal requirements for its entry into force have been fulfilled*”.<sup>166</sup>

#### 4.3.3.2. ISSUE OF PUBLICATION

The topic seeking consideration here relates to Article 71 (2) of the Constitution. Proclaiming international agreements (ratified by the House) in the *Negarit Gazeta* is one of the powers and functions of the President. The meaning of this provision is as clear and direct as the ABCs of a subject. It literally means that the full contents of the treaty would be printed in the *Gazeta*. However, no full text of any international agreement (of either a bilateral or multilateral nature) to which the FDRE government is a Party has ever been published in the said *Gazette*.<sup>167</sup>

At this time, before examining the current scenario, it is enlightening to look into what the situation looked like during the Imperial and the PDRE regimes. In the former, though the law concerning the issue of publishing international treaties in the *Negarit Gazeta* was not as clear as today's<sup>168</sup>, Proclamations used to be issued announcing that a treaty to which the country was a party had been ratified. Basically, Article 88 of the 1955 Revised Constitution was the legal ground on the basis of which laws of the country including international agreements (the latter being the supreme laws of the land together with the Constitution<sup>169</sup>) were published in the *Gazeta*.

<sup>165</sup> Agreement between FDRE and the Au, *supra* note at 146.

<sup>166</sup> Trade Agreement between the Federal Democratic Republic of Ethiopia and South Korea, signed in Addis Ababa, on 03 June 2002.

<sup>167</sup> Also Ato Muhammad Ahmed, *supra* note at 154.

<sup>168</sup> Shimelis, *supra* note at 92, PP. 19-20. *It is by implication and not by direct application of Article 88 (of the Revised Constitution) that we can say international agreements concluded by Ethiopia shall be published in the Negarit Gazeta.*

<sup>169</sup> The 1955 Revised Constitution, *supra* note 56, Art. 122.

The framing of this Article, therefore, (though does not directly name international treaties) implies that where international agreements had to be published, the whole contents of the treaty document shall be printed in the *Gazeta*, just like the other laws of the country. Despite this fact, however, the practice was different; only a ratification Proclamation, announcing that the treaty in question is confirmed, could be published (*you may refer back to the discussion made under Chapter 3, section 3.3 of this work*). On the other hand, though might not be strong enough an example to describe the practice “inconsistent” as it was the only one, the Charter of the former OAU (now AU) was published in the *Negarit Gazeta* in its full text.<sup>170</sup>

As opposed to the Imperial period, the law of the PDRE regime was clear in this respect. Promulgating in the *Negarit Gazeta* laws enacted by the National Shengo, the Council of State and the President of the Republic was the prerogative of the President.<sup>171</sup> This power, however, did not include the publishing of international treaties. It was rather the authority of the Council of State, unless decided otherwise, to issue Decrees of ratification (albeit after signed by the President) on the basis of Article 8 of Proclamation No. 25/1988.<sup>172</sup>

Here we may pinpoint three basic facts. First, unlike the case of the former regime, the prerogative to publish ratification instruments in the *Negarit Gazeta* was vested in an organ other than that who had such power as regards the other laws of the country. Second, as a consequence of the first fact, the instruments of ratification were published by Decrees (not by Proclamations). Third, where the country concluded international treaties requiring ratification, the law clearly provided that what would be issued shall simply be an instrument of ratification (avoiding the implication that the full text of a ratified treaty would be published; here, we can observe that, at least in this regard, the practice was the direct reflection of the law).<sup>173</sup>

Now let us get back and look into the current situation. The point the author of this work wants to bring to the attention of the reader is that, as regards the issue at hand, it can be said that the

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<sup>170</sup>Charter of the Organization of African Unity Approval Proclamation, *supra* note at 95.

<sup>171</sup>Constitution of the PDRE, *supra* note at 57, Art. 86 (5) (a).

<sup>172</sup>Proclamation to Provide for Treaty Making Procedures, *supra* note at 97; the reader is also advised to read Article 7 of this Proclamation to identify the type of treaties for which the Council could issue ratification Decrees.

<sup>173</sup>*id.*, Art. 8.

law does not warrant the publication of mere ratification instruments (short of the full text) in declaring the House's confirmation of international agreements concluded by the Executive organ; and no possibly convincing justification can be found for doing it that way either.

Whatever the ground of this practice would be, let us concentrate on the possible undesired consequences which ensue from it. Firstly, as international agreements ratified by the HPR make an integral part of the laws of the land (Article 9 (4) of the Constitution), it is the right of every citizen, as a subject of such laws, to have access to them. It is only when one can get into the laws in detail that he would be able to strive for enforcing his rights and discharging his obligations.

Basically, one reason why a State shall publicize its laws and make it accessible to the subjects of the law is to discharge its obligations demanded by the principle "*ignorance of the law is no excuse*". The government would not have any legitimate ground (and is unreasonable) to hold someone responsible for violating a law about the contents of which the perpetrator does not have any knowledge. Announcing the existence of the 'law' through a ratification proclamation *per se* does not suffice to meet this requirement of publicizing laws, as what matters is the content of the law and not the mere fact that it exists. In other words, the substance of the law cannot be observed unless it is published, in our case, in the official legal paper of the *Negarit Gazeta*, or is made available to the subjects of the law by any other means possible.

Certainly, the situation may not be as serious in bilateral treaties as it would be in multilateral ones. The former usually have no purpose of providing for specific rights or duties of individual citizens. They commonly contain loan issues, economic or political co-operations, diplomatic and friendly relations, etc. As a result, it may have no difference whether or not individual citizens are aware of the presence of such international treaties. This may not be true in the case of multilateral treaties, however. They, as opposed to bilateral treaties, usually deal with human right issues, criminal responsibility of individual persons, labor affairs, etc. Accordingly, failure to publish the full text of such international Conventions in the *Negarit Gazeta*, when ratifying and thereby incorporating them as integral parts of the law of the land, would have serious consequences.

The other problem relates to the issue of translation. As it has been mentioned earlier in this work, international agreements are laid before the HPR for ratification in their English versions. Their equivalent translation in Amharic is not prepared either in the negotiation stage or in the stage of ratification. The instrument of ratification is finally published in the *Negarit Gazeta* without the formulation of an Amharic version for the text of the treaty. This being the fact, therefore, it would obviously be hard to imagine the House making genuine deliberations on the general spirit of the treaty in question.

On the other hand, this can be taken as a challenge exacerbating the problem already on the ground. While the public at large is deprived of the right to easily access the international treaties (especially of the multilateral ones) ratified by the House and made part of the laws of the country (as they are not published in the *Gazeta* in which all the other laws are printed), it further is going to face another trial as such instruments are found (wherever they are located) being written in a language other than the *lingua franca*.

In this respect, we may sometimes witness such instruments (particularly those Conventions of Human Rights nature) being translated to Amharic, though informally, by various NGOs. But the problem is that there is no governmental organ or any legitimate authority who shall keep them under surveillance to assure consistency and genuineness in their works of rendition. This may paradoxically bring about undesired consequences such as misleading subjects of the law or causing discrepancy and inconsistency in interpretation, etc.

In fact, whether the country, in expressing its consent to be bound by international treaties, published the full text of the agreement in the *Negarit Gazeta* or proclaims its confirmation of the treaty simply by issuing an instrument of ratification, it does not make any difference when viewed from the angle of the other State party to the agreement. What matters to this party is the fact that it shall be notified that the treaty has been ratified in accordance with the terms of the agreement. The discrepancy between the law and the practice in relation to publication of ratification Proclamations in Ethiopia today, therefore, may not render the ratification process of the country incomplete or “not fully-fledged”.

#### 4.3.3.3. **APPLICABILITY OF INTERNATIONAL TREATIES IN THE FEDERAL COURTS**

In connection with the issue of ratification, another point worth discussing is the effect the ratification practice of the country may have on courts of law in the country. Though international treaties ratified by Ethiopia are integral parts of the laws of the land (Article 9 (4) of the Constitution), the courts, especially the First Instance and Higher Courts (of the Federal Government), do not usually use them as bases of judgments they render.<sup>174</sup> The reason for this could be many; but for the purpose of this study, we simply concentrate on those possible causes which in one way or another relate to the ratification trend of the country. In fact, these reasons are those we have just discussed above in this very section. Thus, we shall only try to relate them to what is being observed as the practical experiences of the federal courts.

Firstly, as these international treaties are not found being published in the *Negarit Gazeta* through which all the other laws of the country are proclaimed, it may appear difficult for the courts to consider such international agreements (even when they may access the full text of the treaties elsewhere) as genuinely forming part of the laws of the land. In fact, when viewed from *the legal point of view*, it may sound unreasonable to invoke this assertion as an argument justifying the courts' failure to use such instruments in making decisions. This is so definitely because they are expected to take judicial notice of those laws which are published in the *Negarit Gazeta*; and hence the treaties, as their confirmation by the HPR are proclaimed by the said publication device.

In this regard, we can say that the fact of the House's failure to publish the full text of treaties in the *Negarit Gazeta* should not in any manner be taken as a ground of avoiding courts' responsibilities to take judicial notice of such instruments. In other words, it means that even if the full contents of the treaties do not appear in Proclamations, courts should not be suspicious about the genuineness of such agreements as their confirmation is proclaimed through same device.

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<sup>174</sup>The Author of this very dissertation has been witnessing the situation in the courts of law while working as an Assistant Judge in one of the Federal First Instance Courts, in Addis Ababa, from April 2007 till present.

However, though this assertion sounds convincing, it still remains, a second possible reason, to be a very protracted journey for the courts of law to access the full text of international instruments as they are expected to take two steps to reach where the treaties are located, unlike the case of the other laws where one can find their details at once in the Proclamations themselves. This further exacerbates the problem.

In so many words, even where courts want to use such treaties in discharging their duties of interpreting laws, they are not found being available in places where both courts and subjects of the law can have easy access. The authority to keep all authentic copies of treaties concluded between Ethiopia and other States and international organizations is vested in the Ministry of Foreign Affairs.<sup>175</sup> Surprisingly, however, the writer of this thesis himself has practically witnessed, while repeatedly visiting this Ministry for search of inputs to the work, most officials in there (if not all) telling him in black and white that he cannot get any document, *including, in fact, already in force treaties*, under the pretext of confidentiality. While this is the fact, therefore, would it be astonishing to regard failure to get easy access to treaty instruments as one ground of what is observed in the courts' routine?

As a third cause, we can mention that the international agreements are never translated officially from English to Amharic either by the organ concluding them or by that body ratifying same. On the other hand, it is understandable that the working language of the federal courts, as one of the organs of the federal government, is Amharic.<sup>176</sup> This plainly have the effect of rendering Article 9 (4) of the Constitution inapplicable or remain tokenism as it would be unreasonable to expect courts to apply, when passing judgments, a law written in a language other than the working language of the courts.

Generally, therefore, it is convincing to propound that the ratification trend of the country is at least one, if not the only, cause for the federal courts' failure to use the international agreements (as frequently as it should be) ratified by Ethiopia in rendering judgments in their day to day activities for the prevalence of justice.

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<sup>175</sup>Definition of Powers & ..., *supra* note at 7, Art. 15 (5).

<sup>176</sup>FDRE Constitution, *supra* note at 5, Art. 5 (2).

## **CONCLUSION AND RECOMMENDATIONS**

Treaties are major paraphernalia which States use to establish friendly and diplomatic relations with other States, express their determinations to protect human rights, tackle environmental problems of international nature, etc. They are used to serving one or the other of these purposes beginning from virtually time immemorial.

International agreements are concluded nowadays by and as between subjects of international law, in addition to sovereign States, such as international organizations. However, this work, as focusing primarily on the issue of ratification of treaties, has not been treating such agreements differently based on the nature of their parties. Consequently, it was only States which have been frequently referred to whenever there came a need to talk about parties to treaties.

International treaties are the results of usually long and sophisticated negotiations among parties involved in the agreement. It is only after passing through such protracted procedures that they would get ready for signatures or ratifications, or whatever is the will of the parties, as a form of expressing consent to be bound by the treaty. The negotiation process carried out to conclude bilateral treaties is somewhat different from that undertaken to produce a multilateral one. In both cases, however, the delegates of the States parties are required to constantly make communications to or remain in touch with their respective governments from whom they may obtain even fresh instructions.

In the case of bilateral treaties, negotiations are conducted by the plenipotentiaries of the State parties. The first step to undertake in a treaty making process is the preparation of full powers. This is a document signifying that the person, in the name of whom the paper is issued, is the right personnel to perform the task mentioned in the instrument itself. It could be a paper empowering the representative to negotiate a treaty or to negotiate and sign same, as the case may be. Once this document is secured, therefore, the next step in the treaty making process - negotiation - follows.

Though, in the course of concluding treaties with other subjects, a State may issue a document of full powers to its representative, it does not necessarily mean that the whole negotiation of the treaty is performed by that plenipotentiary. The interaction between the parties to the agreement could even totally be undertaken by the different pertinent sections or departments of the organ responsible for the supervision of the country's foreign relations. Indeed, the nature of relations between sovereign States seeks the involvement of as many organs as possible which are concerned with the issue under review in that particular treaty. For that matter, the exchange of the instrument of full powers may even be managed to take place at the stage of signing the treaty, just after the negotiation is over.

The means to express a State's consent to be bound by an already negotiated treaty, in the case of bilateral treaties, is usually indicated either in the document of the full powers or the text of the treaty itself. When such mode is expressly mentioned in the agreement or can easily be inferred from circumstances, it would be easy to simply identify the time when the treaty in question enters into force. On the other hand, there may appear instances where it becomes difficult or impossible to make inferences about the intentions of the States parties as regards ratification as a means of marking the date of entry into force of the treaty.

In this respect, it is quite common to find two categories of opposing groups arguing for and against the necessity of ratification as a means of expressing consent where the treaty is totally silent on it. The opponents argue that ratification, in such cases, is not needed as the parties would have clearly indicated that fact in the treaty itself had it been their intention to seek for it. On the other hand, the proponents propound that treaties in principle require ratification unless they fall within the category of exceptions where ratification is expressly rendered unnecessary. However, States' practices have shown that whenever the duty to ratify a treaty cannot be expressly or impliedly inferred from the text of the treaty or surrounding circumstances, then ratification shall be disregarded.

In the case of multilateral treaties, on the other hand, negotiations of treaties are usually performed by diplomatic Conferences. However, the adoption of multilateral agreements, at least in respect of certain subjects, is nowadays conducted by the organs of international institutions

instead of being undertaken by diplomatic conferences. Where the adoption of multilateral treaties is supervised by a body of such organizations, deliberations are made on the issue at hand in different workshops and meetings until the text of the agreement finds itself to be a refined one.

In the African Union, for example, when such instrument is to be produced, it generally passes through seven phases beginning from its initiation to its final adoption. A bill is proposed in the first stage of zero draft. As a next step, a validation workshop is organized on the basis of which, *inter alia*, the establishment of consistency on the articles of the draft is made. It would then after be deliberated for further refinement by the meetings of Experts, Sectoral Ministers, Ministers of Justice and Executive Council until it would finally be adopted by the Assembly of the Union.

When it comes to the expression of consent to be bound by a multilateral treaty, it may again demand a somewhat different form. The entry into force of the treaty may take place, among other things, upon the deposit of a certain fixed number of ratification instruments in the organ chosen to be the depository. For instance, the effective condition for the entry into force of the Vienna Convention on the Law of Treaties was determined to be ratification by 35 States, in accordance with which, it became effective in 1980.

Concerning the issue of which types of treaties require ratification and which ones do not seek such act of confirmation, it is said that 'there is no general rule of international law prescribing what kinds of treaties or agreements require ratification'. Such issues are rather determined by the domestic laws of the respective States parties or by the provisions of the treaty or agreement itself. For example, treaties dealing with basic political and economic issues are usually considered by States as agreements requiring confirmation by the pertinent organ (parliament) before entry into force.

The law presently in force with respect to the Making of international treaties is that which has been enacted by the PRDE regime. On the basis of the interviews conducted with authorities in the Ministry of Foreign Affairs and House of Peoples' representatives, this law is still applicable so long as the provisions contained in it do not contradict with currently applicable laws. Though

the practical experiences of the country reveal that some of the provisions of this Proclamation to provide for Treaty Making Procedures (Proclamation No. 25/1988) are still applicable, the rest are rendered obsolete. In general, however, despite the fact that the Proclamation contains only fourteen provisions, it is virtually a comprehensively drafted instrument with highly expressive constructions. It, among other things, provides that basic political and economic treaties require ratification before their entry into force.

In other words, in assessing the current ratification trend of the country, though there is no law promulgated presently, the practice has revealed that only such treaties as focusing on friendly and diplomatic relations, the establishment of offices of regional or international organizations and visa liberation agreements enter into force only upon signature, without the need for further confirmation by the House.

On the other hand, while making publications of the act of confirmation of a treaty, the House of peoples' Representatives simply announces, through a ratification proclamation, that a treaty concluded between Ethiopia and a certain other country is ratified. The Proclamation does not contain the full text of the treaty in question. What is more astonishing is that the treaty is not translated to Amharic (from English) either by the Ministry of Foreign Affairs (the organ responsible to perform the negotiations) or by the House of Peoples' Representatives (the organ in charge of ratifying the treaty). It even finally enters into force without any work of official rendition being made available by any of the two organs.

Having stated all this, therefore, the author of this work would then like to suggest some recommendations deemed to be important in simplifying the treaty making process of the country in general and correcting the ratification practices in particular.

- ✦ A country's relation with foreign powers concerning any subject is a very crucial matter seeking special attentions and considerations. Accordingly, a country's interaction with other States has to be taken care of meticulously. One way of meeting such expectation is the promulgation of comprehensive laws dictating the smooth operations of the organ responsible for handling the foreign affairs of the country. As treaties are major tools to

facilitate communications and dealings between States, therefore, there has to be a guideline regulating the treaty making procedures of a country.

In this regard, however, Ethiopia has not yet enacted laws providing for the procedures for the making of international treaties. The country is currently using the Proclamation issued by the PDRE government to provide for Treaty Making Procedures [Proc. No. 25/88). Most of the provisions of this law, however, are rendered obsolete. As a Ministry found in one of the three government organs (executive branch) which is entrusted with the power of initiating draft bills, thus, the Ministry of Foreign Affairs is highly expected to come up with complete and wide-ranging draft legislation on the treaty making process. In fact, it has been disclosed that the Ministry is currently undertaking the task of preparing such law to submit to the House for Promulgation. If it has already been on progress, though it still is too late, it is good. If it has not yet commenced the task, however, it shall take the initiative without further ado.

- ✦ It is plainly provided for by the FDRE Constitution that international agreements ratified by Ethiopia are integral parts of the law of the land. This suggests that as such international instruments contain legal provisions which individual citizens need to invoke in enforcing their rights and discharging their obligations, they primarily have to have an easy access to the full texts of the treaty instruments. In other words, unless the treaties are made available to the public at large, it would be bizarre to hold anyone accountable for a breach of law the contents of which has not been disclosed to him.

The current practical experiences of the country, on the other hand, revealed that whenever the HPR publishes ratification instruments in the *Negarit Gazeta*, it simply proclaims that the treaty concluded between Ethiopia and a certain named State is ratified. There has never been a situation where the full text of an international agreement is published in the *Gazeta*. The only exception to this was the incongruous instance whereby, during the Imperial Era, the full text of the Charter of the Organization of African Unity (OAU) was published in the said *Gazeta*. Therefore, it is important that the House shall do the same to all other international agreements (at least the multilateral

ones) too. Otherwise, it would amount like paralyzing the treaties which once have been given life (the status of law) by the pronouncement that they make an integral part of the laws of the land once they are ratified.

- ¶ The other point that the author wants to recommend relates to the issue of translation. Whenever international agreements are brought before the HPR for confirmation, they are laid before it only in their English version. No translation of the *Amharic* language (*the lingua franca*) is accorded to the text of the agreements during the stage of negotiation; and no official task of rendition is made in the House either. This has at least two repercussions.

Firstly, when making deliberations on the merits of the international treaty presented to it (in order for it to accept or reject the treaty), the House has to do it with a full understanding of the meaning of each provision contained in the agreement. Otherwise, it would be trivial and unrealistic to claim that the confirmation was accorded to the treaty in question legitimately. The preparation of, at least, an *Amharic* translation to the treaty document is, therefore, helpful and vital to avoid such uncertainty.

Secondly, in a least developed country like Ethiopia where a great number of its population is illiterate, it is difficult to expect such majority group of the society to understand (even when it got access to the instrument) the provisions of the agreement which are found being written in a language it cannot understand. In other words, if the public at large has to understand and respect the international treaties (ratified by Ethiopia) as the laws of the land, then such agreements need to be available to it being translated in Amharic and, at least, in some other languages of the Nations, Nationalities and Peoples of the country to which the treaty in question has a particular importance and concern. This is the second problem we may need to tackle by providing a formal translation for the international agreements the country would ratify.

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