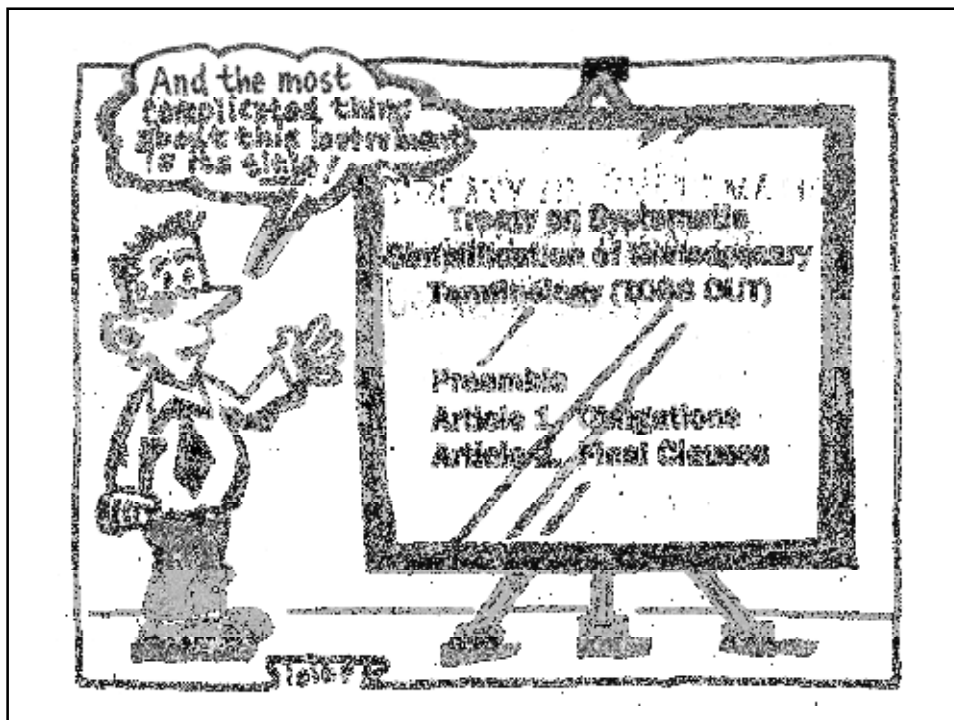


International Legal Instruments --Interpretation and Application--

By Carlton Stoiber

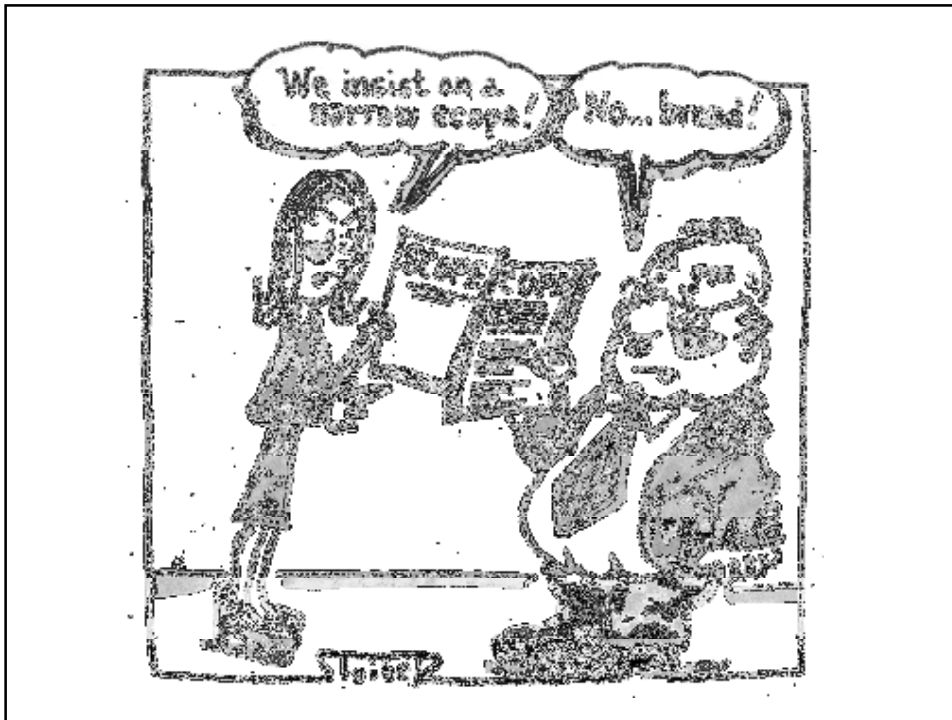


PREAMBULAR PARAGRAPHS

- **NOT LEGALLY BINDING**
- **PROVIDE AN AID TO INTERPRETATION/APPLICATION**
- **MAY SET FORTH GENERAL OBJECTIVES OR PRINCIPLES**
- **CAN RECITE RELEVANT BACKGROUND UNDERLYING AN INSTRUMENT**
- **CAN PROVIDE A CONTEXT REGARDING OTHER INSTRUMENTS, INCLUDING COMMITMENT TO NEGOTIATE SEPARATE INSTRUMENTS TO HANDLE UNRESOLVED ISSUES**
- **A PROVISION THAT CANNOT BE NEGOTIATED AS AN OBLIGATION IN AN INSTRUMENT'S MAIN BODY MIGHT BE ACCEPTABLE IN THE PREAMBLE AS A "POLITICAL" OBJECTIVE**

SCOPE ARTICLE

- **A KEY PROVISION DEFINING COVERAGE OF AN INSTRUMENT**
- **LINKED CLOSELY WITH DEFINITIONS SECTION**
- **MAY IDENTIFY ACTIVITIES/AREAS EXCLUDED FROM COVERAGE**



DEFINITIONS ARTICLE

- **LINKED TO SCOPE ARTICLE**
- **TYPICALLY ONE OF THE LAST ARTICLES NEGOTIATED, FOLLOWING AN ASSESSMENT OF WHAT TERMS MAY BE UNCLEAR OR AMBIGUOUS, UNLESS EXPLICITLY DEFINED**
- **MAY GIVE A SPECIAL MEANING TO TERMS IN GENERAL USAGE**
- **INTERPRETATION PROBLEMS MAY ARISE FROM USE OF INCONSISTENT DEFINITIONS IN RELATED INSTRUMENTS**
- **BECAUSE DEFINITIONS CAN HAVE A MAJOR IMPACT ON SUBSTANTIVE OBLIGATIONS (SOMETIMES UNINTENTIONALLY), GREAT CARE MUST BE TAKEN IN THEIR DRAFTING**

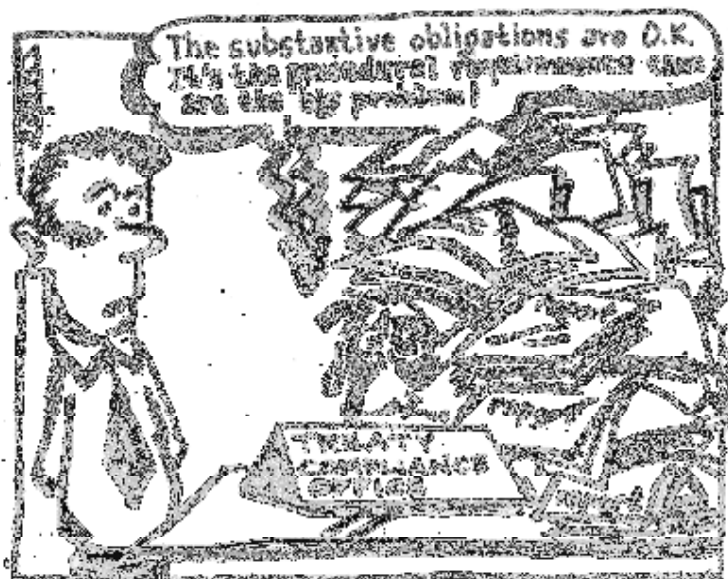


SUBSTANTIVE OBLIGATIONS

- **SUBSTANTIVE ARTICLES IDENTIFY LEGAL RIGHTS AND OBLIGATIONS OF THE PARTIES**
- **EXCEPTIONS, EXEMPTIONS, EXCLUSIONS OR IMMUNITY FROM SUBSTANTIVE OBLIGATIONS MUST BE CLEARLY EXPRESSED**
- **A TYPICAL WEAKNESS OF SUBSTANTIVE ARTICLES IS AMBIGUITY OR LACK OF CLARITY ABOUT THE PRECISE CHARACTER OF RIGHTS AND OBLIGATIONS**

PROCEDURAL OBLIGATIONS

- FOCUS ON METHODS FOR IMPLEMENTING SUBSTANTIVE OBLIGATIONS
- MAY ESTABLISH MONITORING OR VERIFICATION MEASURES TO ENSURE COMPLIANCE (INCLUDING SPECIAL INSTITUTIONAL ARRANGEMENTS)
- REPORTING REQUIREMENTS A TYPICAL MEASURE
- PERIODIC REVIEW CONFERENCES TO ASSESS IMPLEMENTATION HAVE BECOME MORE COMMON
- ROLE OF INTERNATIONAL ORGANIZATIONS VERSUS PARTIES IS OFTEN AN ISSUE
- COSTS OF IMPLEMENTATION AND FINANCING CAN ARISE



RELATIONSHIPS WITH OTHER INSTRUMENTS OR LEGAL REGIMES

- **IN CASE OF CONFLICT OF INTERPRETATION OR APPLICATION THE LATEST INSTRUMENT TYPICALLY PREVAILS**
- **WHERE AN INSTRUMENT CLEARLY IMPACTS OBLIGATIONS UNDER ANOTHER INSTRUMENT(S), THE INSTRUMENT SHOULD SPECIFY HOW CONFLICTS ARE TO BE RESOLVED**

NATIONAL IMPLEMENTATION

- **NATIONAL LEGAL SYSTEMS CAN DIFFER ON WHETHER AN INSTRUMENT IS IMMEDIATELY ON SIGNATURE AND DIRECTLY ENFORCEABLE (“SELF-EXECUTING”) OR REQUIRES FURTHER LEGISLATIVE ACTION BY THE STATE (“NON-SELF-EXECUTING”)**
- **EVEN FOR SELF-EXECUTING INSTRUMENTS, NATIONAL LEGISLATION MAY BE NEEDED FOR FULL IMPLEMENTATION**
- **AN INSTRUMENT MAY INCLUDE A REQUIREMENT THAT PARTIES ADOPT NATIONAL LEGISLATION IN CERTAIN AREAS**
- **AN INSTRUMENT MAY PERMIT A STATE TO EXCLUDE CERTAIN ACTIVITIES FROM COVERAGE**
- **AN INSTRUMENT MAY ESTABLISH DIFFERENT CATEGORIES OF PARTIES, WITH DIFFERENT OBLIGATIONS, BASED ON ECONOMIC, POLITICAL, LEGAL, GEOGRAPHICAL, TECHNOLOGICAL OR OTHER CONSIDERATIONS**

ENFORCEMENT

- **GENERAL WEAKNESS OF INTERNATIONAL ENFORCEMENT MECHANISMS MEANS THAT EFFECTIVE IMPLEMENTATION DEPENDS ON “GOOD FAITH” OBLIGATION OF THE PARTIES—PACTA SUNT SERVANDA**
- **DISPUTE RESOLUTION CLAUSES MAY PROVIDE DIFFERENT MEASURES IN CASE OF ALLEGED VIOLATIONS OR DISAGREEMENT ABOUT APPLICATION (THESE TYPICALLY INCLUDE—IN THEIR USUAL ORDER—DIPLOMATIC CONSULTATION, MEDIATION, ARBITRATION OR REFERRAL TO JUDICIAL BODIES)**
- **SANCTIONS OR PENALTIES FOR VIOLATIONS ARE TYPICALLY UNSPECIFIED OR STATED IN ONLY VERY GENERAL TERMS**

FINAL CLAUSES

FINAL CLAUSES CONTAIN VARIOUS “ADMINISTRATIVE” PROVISIONS ON IMPLEMENTATION OF THE INSTRUMENT:

- **IDENTIFICATION OF DEPOSITARY (MAY BE A STATE OR AN INTERNATIONAL ORGANISATIONS, SUCH AS IAEA)**
- **ROLE OF DEPOSITARY (KEEPS TRACK OF PARTIES, THEIR STATUS, OTHER ADMINISTRATIVE ARRANGEMENTS)**
- **AMENDMENT AND WITHDRAWAL PROCESS**
- **ENTRY INTO FORCE**



ENTRY INTO FORCE

- **DEPENDING ON NUMBER OF ADHERENCES SPECIFIED, ENTRY INTO FORCE MAY BE RAPID OR VERY SLOW**
- **ENTRY INTO FORCE FOR EACH PARTY DEPENDS ON NATIONAL LAW**
- **SIGNATURE, ALONE, DOES NOT BIND THE SIGNATORY STATE TO AN INSTRUMENT'S SPECIFIC LEGAL OBLIGATIONS**
- **HOWEVER, SIGNATURE CREATES AN OBLIGATION UNDER CUSTOMARY INTERNATIONAL LAW TO AVOID ACTIONS THAT WOULD "DEFEAT THE OBJECT AND PURPOSE" OF THE INSTRUMENT**

AMENDMENT

- **AMENDING BROAD MULTILATERAL INSTRUMENTS CAN BE VERY DIFFICULT**
- **AMENDMENT MAY REQUIRE ACCEPTANCE BY A LARGE FRACTION OF PARTIES (2/3 IS A TYPICAL PROVISION)**
- **TO AVOID NEED TO AMEND “TECHNICAL” INSTRUMENTS, SOME MATTERS MAY BE INCLUDED IN ANNEXES OR PROTOCOLS THAT PROVIDE LESS ONEROUS AMENDMENT PROCEDURES (E.G., LISTS OF MATERIALS OR COMMODITIES WHICH MAY CHANGE WITH TECHNOLOGICAL DEVELOPMENT)**

RESOURCES FOR ACCESS TO INTERNATIONAL LEGAL INSTRUMENTS

MANY WEBSITES ARE AVAILABLE ON THE INTERNET FOR LOCATING THE TEXTS AND ANALYSIS OF INTERNATIONAL INSTRUMENTS IN THE NUCLEAR FIELD. THE FOLLOWING ARE SOME OF THE MOST USEFUL:

- www.iaea.org (go to **Publications** and then to **Conventions**)
- www.nea.fr/ (go to **Legal instruments and documents**)
- www.un.org/Depts/dda/ (for **disarmament instruments**)
- www.world-nuclear.org/ (**World Nuclear Association**)
- www.sipri.org (**Stockholm Institute for Peace Research**)