

TREATY IMPLEMENTATION

As international treaties usually say little about how States Parties have to implement their international legal obligations within their domestic realm, the starting point for figuring out how international law is integrated into and applied in the domestic realm is the Constitution.

The Constitution of Saint Lucia, Cap. 1.01 “the Constitution” is the supreme law of the land and the principle of separation of powers apply. Therefore, while the executive arm of government may enter into treaties, the legislative arm of government gives legal effect to the treaty and makes them enforceable in the domestic realm.

In some countries, international law takes immediate effect once the requirements for signing and ratifying the international treaty are satisfied. By contrast, in a dualist jurisdiction, like Saint Lucia, international law and national law are seen as separate realms and a treaty is not effective until enacted into domestic law.

Section 41 of the Constitution (Alteration of Constitution and Supreme Court Order) provides the process for changing the Constitution and the Supreme Court Order. Further, section 41(7) of the Constitution provides that the process for changing the Constitution and the Supreme Court Order does not apply to a Bill to give effect to an agreement between Saint Lucia and the United Kingdom or to an international agreement to which Saint Lucia is a party. Therefore, one can infer that a Bill is required to give legal effect to an international agreement made by the Government with another country.

Article 2 of the Vienna Convention on the Law of Treaties (VCLT) defines a treaty as:

“an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation”.

It is notable that other such agreements have “convention”, “protocol” and “agreement” in their title. However, where the agreement is made without a view to create legal obligations, for example, a Memorandum of Understanding or Letter of Intent, that agreement will be distinguished from a treaty.

One of the most important principles of the law of international treaties, according to Article 26 of the VCLT, requires every international treaty in force to be performed by its parties in “good faith”. This Article obliges States Parties to observe the treaty provisions in their spirit as well as according to their letter and prohibits all State acts calculated to frustrate the object and purpose and thus the proper execution of the treaty.

According to Article 7(2) of the VCLT, a Head of State, Head of Government and a Minister of Foreign Affairs may provide consent of a State to be bound by a treaty. Also, the Head of a diplomatic mission or representatives accredited by a State may adopt the text of a treaty. Article 14 of the VCLT provides the manner in which a State consents to and is bound by a treaty, which involves; ratification, acceptance, approval and accession. Ratification in treaty-making is sometimes necessary to ensure that the ministers and diplomats who had negotiated the treaty had not exceeded their instructions and that the Government was prepared to be bound by the text which they had signed.

Thus, by signing to a treaty, a country is agreeing to undertake the obligations of an international treaty in the international realm and to be bound by its actions. The Government, therefore, must commit itself to carrying out all appropriate legislative and administrative actions and policies necessary to fully protect and ensure the rights guaranteed by the treaty.

The implementation of treaties will have a direct impact on government agencies, whether a Ministry, Department or statutory body. These government agencies should be consulted beforehand on any treaty which may have implications in their area of competence. Parliament retains the powers to legislate the implementation of treaty obligations. Therefore, where treaty provisions require domestic implementation which lies within the remit of government agencies they will retain their legislative and administrative powers to fulfill the obligations.

Many treaties require a change to domestic legislation which will be subject to the usual parliamentary procedures for enacting legislation. For example, Article 52(6) of the CARICOM Treaty provides that Member States should undertake to put in place arrangements for harmonized legislation in relevant areas. Similarly, Article 5.2 of the OECS Treaty provides that Member States should take steps to ensure the enactment of legislation that is necessary to give effect to that Treaty.

By passing legislation at the national level to give the force of law to the treaty in the domestic realm, there are generally two approaches. The first approach is to implement the treaty by substantive provisions in a Bill which may adopt the language used in the treaty. Alternatively, a Bill may provide in the substantive provisions that the treaty has the force of law and the text of the treaty may be inserted in a Schedule to the Bill.

Of these two approaches, the second is preferred to ensure uniformity in other countries that adhere to the treaty and to avoid any chance of ambiguity that may arise in drafting substantive provisions to implement the treaty. Additionally, the text of the treaty itself forms part of the Bill and is readily available in the law for information or reference purposes.

As such, it is important when providing drafting instructions to the Attorney General's Chambers, more particularly, the Legislative Drafting Unit "the Unit" for the preparation of legislation that seeks to implement a treaty, a signed copy of the treaty should accompany those instructions and the signed treaty should be made available via soft copy to enable the Unit to process the legislation.

To provide a synopsis of the provisions that may be contained in a Bill which seeks to give effect to a treaty, the following may be considered:

1. The Bill should specifically identify the treaty to be implemented to provide the legislative purpose of giving effect to an international obligation. As such, the legislative purpose is usually placed in the long title of the Bill.
2. The Bill should contain a substantive provision to give the force of law to the treaty. By this provision the treaty is recognized in the Bill and has legal effect in the domestic realm.
3. The Bill should identify the administrative body to be recognized in the domestic realm that is responsible for implementing the treaty. Alternatively, the Minister responsible for the legislation may be given a power to later designate, by an Order or other statutory instrument published in the *Gazette*, the appropriate authority that will administer the provisions of the Bill, including the provisions of the treaty.
4. The Bill should also contain enabling provisions with respect to subsequent amendments to the treaty by empowering the responsible Minister to amend the treaty provisions, by an Order to be published in the *Gazette*.
5. Lastly, the Bill may require a provision to empower the responsible Minister to make Regulations, Orders, Notices or Rules or other subsidiary legislation in order to give effect to the treaty.

In conclusion, after signing and ratifying a treaty to evidence the consent of the Government to be bound by a treaty in the international realm, the implementation of a treaty at the domestic level usually requires Parliament to pass a Bill at the domestic level to give legal effect in the domestic realm to the treaty obligations enshrined in the treaty.