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COMMITTEE OF LEGAL ADVISERS ON PUBLIC INTERNATIONAL LAW

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CAHDI Questionnaire “Treaties not requiring parliamentary approval”

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Public International Law Division
Directorate of Legal Advice and Public International Law, DLAPIL

Questionnaire

Treaties not requiring parliamentary approval

According to Article 2 para. 1 lit. (a) of the VCLT: *"treaty" means 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.*

In point 2 of the ILC commentary to this article of the VCLT,¹ it is stated that the term "treaty" is used as a generic term covering all forms of international agreements in writing concluded between States. The definition is formulated to be as inclusive as possible with the aim that all agreements covered follow the same principles of international treaty law.

This also includes treaties in simplified form, mentioned in point 3 of the ILC commentary, which are widely used in State practice and are differentiated from full, formal treaties in the method of conclusion and entry into force. This means they also usually do not require national confirmation procedures of the same complexity.

This questionnaire explores national rules on treaties that do not require parliamentary procedure of ratification. Since all treaties are legally binding, the differentiation is more nuanced and needs to be considered in comparison to treaties ratified by the Parliament.

1. SUBSTANTIVE ASPECTS

1.1. Distinction

- 1.1.1. Does your national legislation differentiate between different categories of treaties? If it does, how are they categorised?
- 1.1.2. What are the criteria for their classification into specific category (subject matter, scope, financial effects, etc.)? Does the form of the instrument lead to a different category of treaty?
- 1.1.3. What is the legal status of treaties not requiring parliamentary approval in the internal hierarchy of norms?

1.2. Competence

- 1.2.1. Which authority is responsible for drafting the text of each category of treaty?
- 1.2.2. In the process of drafting a treaty, which authority is responsible for the assessment of the legal character and category of an agreement?
- 1.2.3. Which authority has the general responsibility for ratification/approval/confirmation procedures for treaties (is it generally the responsibility of the Parliament and only certain categories are confirmed by the government or vice versa)?
- 1.2.4. What are the responsibilities of the line ministries and the Ministry of Foreign Affairs throughout the procedure of conclusion and ratification of each category of treaty?

¹ Draft Articles on the Law of Treaties with commentaries, 1966
(https://legal.un.org/ilc/texts/instruments/english/commentaries/1_1_1966.pdf; p. 188)

- 1.2.5. What is the competence of autonomous regions/territories for the conclusion of a treaty?
- 1.2.6. Does the Ministry of Foreign Affairs have delegated competence to conclude less significant treaties on its own, by producing full powers signed by the Minister of Foreign Affairs? If it does, what typically characterises these agreements?

2. PROCEDURAL ASPECTS

2.1. Procedure before conclusion/signature

- 2.1.1. What are the procedures required for the conclusion of different categories of treaties? Can a treaty be concluded through a simplified procedure? If yes, please provide a detailed presentation of the circumstances in which such procedures can be applied and describe the procedures.
- 2.1.2. Do you have a procedure to review the harmonization and compliance of treaties not requiring parliamentary approval with existing national laws? What authority does the review and when?
- 2.1.3. Do these procedures have one or two phases (before and/or after signature)? Can a treaty enter into force upon signature?
- 2.1.4. Are there any differences in the procedures when considering multilateral vs bilateral treaties?
- 2.1.5. Are there certain denominations of treaties, which, according to your domestic law, always imply a treaty in simplified form? (for example, "Memorandum of Understanding", "Minutes" etc.)
- 2.1.6. Is the procedure for obtaining the mandate for negotiations differentiated according to different categories of treaties? If yes, how?
- 2.1.7. Are the signatories of all categories of treaties required to produce full powers upon signature or just some of them?
- 2.1.8. Do you allow for electronic signature of treaties? If so, are there certain requirements concerning what type of electronic signature is acceptable? Do you accept the electronic transmission of treaties instead of the exchange of physical copies? What is the procedure?

2.2. Procedure after conclusion

- 2.2.1. Does the internal procedure for expressing consent to be bound change based on different categories of treaties (i.e., ratification, approval, acceptance, etc.)? If so, please explain.
- 2.2.2. Is entry into force of a treaty possible on the date of the signature? If yes, what are the procedural requirements that enable such entry into force?
- 2.2.3. If entry into force is not possible on the date of the signature, is it possible to use provisional application for an earlier application of such treaty?

2.3. Form

- 2.3.1. Do different categories of treaties require specific form when the text is prepared for signature (i.e., printing on treaty paper, sealing, treaty folder)?
- 2.3.2. Who prepares the text of different categories of treaties for signature?

2.4. Implementation

How are treaties not requiring parliamentary approval implemented in national legislation in order to ensure respect of the principle of *pacta sunt servanda* in accordance with Article 26 of the VCLT?

2.5. Publication, Registration and Depository

- 2.5.1. Do all categories of treaties have to be published?
- 2.5.2. If not, which categories do not need to be published and made available to the general public? Is there room for discretion?
- 2.5.3. Which authority decides whether a treaty should not be published?
- 2.5.4. Where is each category of treaty published (Official Gazette, website, database, etc.)?
- 2.5.5. Which categories of treaties are registered with the UN Secretariat?
- 2.5.6. Where are the originals (or certified true copies) of different categories of treaties kept (e.g., MFA, authority responsible for their implementation, state archives)?