

Ad Hoc Intergovernmental Meeting on a Regional Arrangement for
the Facilitation of Cross-Border Paperless Trade

Introduction to the law of treaties

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Outline

- What is a treaty?
- Procedure for the conclusion of a treaty
- Basic elements of a multilateral treaty
- Final clauses of multilateral treaties

Definition of a “treaty”

Treaty means “an international agreement concluded between States [and/or international organizations] 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”.

[Art. 2(1)(a) 1969 Vienna Convention]

What is a “treaty”?

An international agreement:

- Concluded between States or international organizations
- In written form
- Governed by international law

It does not matter:

- Whether the treaty is embodied in a single instrument or in two or more related instruments
- How the treaty is designated by the Parties

The law that governs treaties

The **law of treaties** governs:

- Conclusion and entry into force of treaties, including reservations to treaties
- Observance, application and interpretation of treaties
- Amendment and modification of treaties
- Invalidity, termination and suspension of operation of treaties
- Role of the depositary of multilateral treaties

The customary rules in this area have been codified in
the Vienna Convention on the Law of Treaties
(23 May 1969)

General principles of the law of treaties

➤ *Pacta sunt servanda*

"Every treaty in force is binding upon the parties to it and must be performed by them in good faith."

➤ Treaties and domestic law

"A party may not invoke the provisions of its internal law as a justification for its failure to perform a treaty."

➤ Contractual freedom of the parties

Most rules of the Vienna Convention apply "unless the treaty otherwise provides".

Procedure for the adoption of a treaty

Negotiation of the treaty



Adoption of the text (vote)



Authentication of the text (signature)



Consent to be bound by the treaty
(ratification, acceptance, approval, accession)



Entry into force

Basic elements of a multilateral treaty

- Title
- Preamble
- Main text (substantive provisions)
- Final clauses
- Testimonium

In witness thereof the undersigned Plenipotentiaries, being duly authorized thereto by their respective Governments, have signed the present Convention. Done at ... this ...th day of ...,

- Signature pages
- Annexes (if any)

The title of a treaty

“... international agreements may take a number of forms and be given a diversity of names” (ICJ).

E.g.: Treaty, agreement, convention, protocol, covenant, charter, statute, exchange of notes, memorandum of understanding, etc.

The name of a treaty does not determine its nature or legal status.

What is a “framework” agreement?

The expression “framework” convention/agreement does not have, in itself, any technical legal meaning.

Usually a multilateral “framework convention” identifies general rules and is followed by “protocols” detailing specific regulations.

- United Nations Framework Convention on Climate Change, followed by the Kyoto Protocol
- WHO Framework Convention on Tobacco Control, followed by the Protocol to Eliminate Illicit Trade in Tobacco Products

The “framework convention” and its “protocols” are separate treaties.

The preamble of a treaty

The preambular parts of a treaty “constitute the moral and political basis for the specific legal provisions thereafter set out”. They “do not, however, in themselves amount to rules of law”. (ICJ)

The terms of a treaty shall be interpreted “in their context”, which includes the preamble of the treaty (art. 31 VCLT).

Final clauses

- Participation
- Signature
- Consent to be bound
- Reservations
- Declarations
- Entry into force
- Provisional application
- Depositary
- Registration and publication
- Relationship to other treaties
- Settlement of disputes
- Amendment
- Status of annexes
- Withdrawal/denunciation
- Duration/Termination
- Authentic texts

Immediate effect of final clauses

Once adopted, a treaty produces certain legal effects. **Final clauses become immediately applicable.**

Article 24, paragraph 4, of the Vienna Convention

"The provisions of a treaty regulating the authentication of its text, the establishment of the consent of States to be bound by the treaty, the manner or date of its entry into force, reservations, the functions of the depositary and other matters arising necessarily before the entry into force of the treaty apply from the time of adoption of its text."

Participation

The provisions on participation specify the categories of States, organizations or other entities that may become parties to the treaty.

- “All States formula”
- “Vienna formula”
- Regional formula
“States that are members of the United Nations Economic and Social Commission for Asia and the Pacific”

Signature, ratification, acceptance, approval and accession

Signature

- Authentication of the text
- A State that signs a treaty does not become a party (unless the treaty provides otherwise)

Consent to be bound

- Signature followed by ratification, acceptance or approval
- Accession

Instruments of ratification, acceptance, approval or accession shall be deposited with the Depositary to produce their legal effects.

Model instrument of full powers

(To be signed by the Head of State, Head of Government or Minister for Foreign Affairs)

I, [name and title of the Head of State, Head of Government or Minister for Foreign Affairs],

HEREBY AUTHORISE [name and title] to sign the [title of treaty] on behalf of the Government of [State].

Done at [place] on [date].

[Signature and title]

Model instrument of ratification, acceptance of approval

*(To be signed by Head of State, Head of Government
or Minister for Foreign Affairs)*

WHEREAS the [title of treaty] was adopted at [place] on [date],

AND WHEREAS the said [treaty] has been signed on behalf of the
Government of [State] on [date],

NOW THEREFORE I, [name and title of the Head of State, Head of
Government or Minister for Foreign Affairs] declare that the
Government of [State], having considered the above [treaty],
[ratifies/accepts/approves] the same and undertakes faithfully to
perform and carry out the stipulations therein contained.

IN WITNESS WHEREOF, I have signed this instrument of
[ratification/acceptance/approval] at [place] on [date].

[Signature]

Entry into force of the treaty

- A multilateral treaty usually enters into force only after a minimum number of States have expressed their consent to be bound by the treaty.
- Subsequently, the treaty enters into force for a State a number of days after it has expressed its consent to be bound by the treaty.

The effective dates depend on the date of deposit of the relevant instruments with the Depositary.

Reservations

Reservation means "a unilateral statement, however phrased or named, made by a State, when signing, ratifying, accepting, approving or acceding to a treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State"

[Article 2(1)(d) of the Vienna Convention]

Reservations

A treaty may:

➤ **Prohibit reservations**

e.g. - United Nations Convention on the Law of the Sea
- Rome Statute of the International Criminal Court

➤ **Provide that only specified reservations may be made**

e.g. - Convention on the Suppression of the Financing of Terrorism
- Intergovernmental Agreement on Dry Ports

➤ **Be silent on reservations**

In which case reservations are allowed, unless they are incompatible with the object and purpose of the treaty.

Amendment procedures

- Should there be different procedures for amendment? [e.g., for certain provisions or for annexes]
- How is the amendment procedure initiated? [State party]
- How is the proposal circulated to all Parties? [Secretariat]
- What is the procedure for the adoption of the amendment? How is the majority calculated (present and voting; abstentions)?
- How is the adopted amendment circulated? [Depositary]
- How does the amendment enter into force?
- Does the amendment enter into force when accepted by a majority of States or for each State upon its acceptance?
- If the amendment enters into force when it is accepted by a majority of States, how is that majority calculated?
- What is the legal effect of an amendment once it has entered into force? It is binding on all States or only those who have accepted it?
- When a State consents to be bound by the treaty after the entry into force of the amendment, under what conditions is that State^{a1} bound by the amendment?

Dispute settlement

- What disputes are subject to the mechanism?
- Is negotiation a pre-requisite for recourse to the mechanism of dispute settlement?
- How is the mechanism triggered?
- How is the dispute settlement body instituted?
- What mechanisms are in place in case of disagreement between the parties on the institution of the mechanism?
- What is the legal effect of the decision reached by the dispute settlement body?
- Is there a mechanism to ensure compliance with the settlement?
- May the parties jointly decide to submit the dispute to other mechanisms?
- May a Party to the treaty make a reservation regarding the dispute settlement mechanism upon its ratification or accession to the treaty?

Withdrawal, suspension of application

The treaty may contain a provision allowing parties to withdraw from the treaty.

- Deposit of the withdrawal with the Depositary
- Notification by the Depositary
- Withdrawal is usually effective after the expiration of a period

The treaty may provide that its application is suspended if the number of parties falls under a certain number

Designation of the Secretary-General as depositary

- A multilateral treaty usually designates a depositary.
- The Secretary-General's acceptance of depositary functions is not automatic.
 - Open multilateral treaties of worldwide interest, adopted by the GA or a plenipotentiary conference convened under the auspices of the UN
 - Treaties negotiated under the auspices of the UN regional commissions
- The functions of the depositary of a treaty are international in character and the depositary is under an obligation to act impartially in their performance.
- The functions of the depositary are different from those of the secretariat.

Functions of the depositary

- Keeping custody of the original text of the treaty and any full powers
- Preparing certified copies of the original text
- Receiving any signatures to the treaty and receiving and keeping custody of any instruments
- Examining whether the signature or any instrument is in due and proper form
- Informing of treaty actions (signatures, ratifications, accessions, adopted amendments, etc.) and the entry into force of the treaty

For further information...

Official website of the Treaty Section
of the United Nations Office of Legal Affairs

<https://treaties.un.org/>

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