

Glossary of Terms and Definition used in WIPO Lex Data Source

Acceptance or Approval

The instruments of "acceptance" or "approval" of a treaty have the same legal effect as ratification and consequently express the consent of a state to be bound by a treaty. In the practice of certain states acceptance and approval have been used instead of ratification when, at a national level, constitutional law does not require the treaty to be ratified by the head of state.

[Arts.2 (1) (b) and 14 (2), Vienna Convention on the Law of Treaties 1969]

Accession

"Accession" is the act whereby a state accepts the offer or the opportunity to become a party to a treaty already negotiated and signed by other states. It has the same legal effect as ratification. Accession usually occurs after the treaty has entered into force. The Secretary-General of the United Nations, in his function as depositary, has also accepted accessions to some conventions before their entry into force. The conditions under which accession may occur and the procedure involved depend on the provisions of the treaty. A treaty might provide for the accession of all other states or for a limited and defined number of states. In the absence of such a provision, accession can only occur where the negotiating states were agreed or subsequently agree on it in the case of the state in question.

[Arts.2 (1) (b) and 15, Vienna Convention on the Law of Treaties 1969]

Act of Formal Confirmation

"Act of formal confirmation" is used as an equivalent for the term "ratification" when an international organization expresses its consent to be bound to a treaty.

[Arts.2 (1) (b bis) and 14, Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations 1986]

Adoption

"Adoption" is the formal act by which the form and content of a proposed treaty text are established. As a general rule, the adoption of the text of a treaty takes place through the expression of the consent of the states participating in the treaty-making process. Treaties that are negotiated within an international organization will usually be adopted by a resolution of a representative organ of the organization whose membership more or less corresponds to the potential participation in the treaty in question. A treaty can also be adopted by an international conference which has specifically been convened for setting up the treaty, by a vote of two thirds of the states present and voting, unless, by the same majority, they have decided to apply a different rule.

[Art.9, Vienna Convention of the Law of Treaties 1969]

Agreements

The term "agreement" can have a generic and a specific meaning. It also has acquired a special meaning in the law of regional economic integration.

- a. Agreement as a generic term: The 1969 Vienna Convention on the Law of Treaties employs the term "international agreement" in its broadest sense. On the one hand, it defines treaties as "international agreements" with certain characteristics. On the other hand, it employs the term "international agreements" for instruments, which do not meet its definition of "treaty". Its Art.3 refers also to "international agreements not in written form". Although such oral agreements may be rare, they can have the same binding force as treaties, depending on the intention of the parties. An example of an oral agreement might be a promise made by the Minister of Foreign Affairs of one State to his counterpart of another State. The term "international agreement" in its generic sense consequently embraces the widest range of international instruments.
- b. Agreement as a particular term: "Agreements" are usually less formal and deal with a narrower range of subject-matter than "treaties". There is a general tendency to apply the term "agreement" to bilateral or restricted multilateral treaties. It is employed especially for instruments of a technical or administrative character, which are signed by the representatives of government departments, but are not subject to ratification. Typical agreements deal with matters of economic, cultural, scientific and technical cooperation. Agreements also frequently deal with financial matters, such as avoidance of double taxation, investment guarantees or financial assistance. The UN and other international organizations regularly conclude agreements with the host country to an international conference or to a session of a representative organ of the Organization. Especially in international economic law, the term "agreement" is also used as a title for broad multilateral agreements (e.g. the commodity agreements). The use of the term "agreement" slowly developed in the first decades of this century. Nowadays by far the majority of international instruments are designated as agreements.
- c. Agreements in regional integration schemes: Regional integration schemes are based on general framework treaties with constitutional character. International instruments which amend this framework at a later stage (e.g. accessions, revisions) are also designated as "treaties". Instruments that are concluded within the framework of the constitutional treaty or by the organs of the regional organization are usually referred to as "agreements", in order to distinguish them from the constitutional treaty. For example, whereas the Treaty of Rome of 1957 serves as a quasi-constitution of the European Community, treaties concluded by the EC with other nations are usually designated as agreements. Also, the Latin American Integration Association (LAIA) was established by the Treaty of Montevideo of 1980, but the subregional instruments entered into under its framework are called agreements.

Amendment

The term "amendment" refers to the formal alteration of treaty provisions affecting all the parties to the particular agreement. Such alterations must be effected with the same formalities that attended the original formation of the treaty. Many multilateral treaties lay

down specific requirements to be satisfied for amendments to be adopted. In the absence of such provisions, amendments require the consent of all the parties.

[Art.40, Vienna Convention of the Law of Treaties 1969]

Authentication

The term "authentication" refers to the procedure whereby the text of a treaty is established as authentic and definitive. Once a treaty has been authenticated, states cannot unilaterally change its provisions. If states which negotiated a given treaty do not agree on specific procedures for authentication, a treaty will usually be authenticated by signature, signature ad referendum or the initialing by the representatives of those states.

[Art.10, Vienna Convention on the Law of Treaties 1969]

Bilateral Treaties

Bilateral treaties are concluded between two states or entities. It is possible however for a bilateral treaty to have more than two parties; consider for instance the bilateral treaties between Switzerland and the European Union (EU) following the Swiss rejection of the European Economic Area agreement. Each of these treaties has seventeen parties. These however are still bilateral, not multilateral, treaties. The parties are divided into two groups, the Swiss ("on the one part") and the EU and its member states ("on the other part"). The treaty establishes rights and obligations between the Swiss and the EU and the member states severally; it does not establish any rights and obligations amongst the EU and its member states.

Conventions

The term "convention" again can have both a generic and a specific meaning.

- a. Convention as a generic term: Art.38 (1) (a) of the Statute of the International Court of Justice refers to "international conventions, whether general or particular" as a source of law, apart from international customary rules and general principles of international law and - as a secondary source - judicial decisions and the teachings of the most highly qualified publicists. This generic use of the term "convention" embraces all international agreements, in the same way as does the generic term "treaty". Black letter law is also regularly referred to as "conventional law", in order to distinguish it from the other sources of international law, such as customary law or the general principles of international law. The generic term "convention" thus is synonymous with the generic term "treaty".
- b. Convention as a specific term: Whereas in the last century the term "convention" was regularly employed for bilateral agreements, it now is generally used for formal multilateral treaties with a broad number of parties. Conventions are normally open for participation by the international community as a whole, or by a large number of states. Usually the instruments negotiated under the auspices of an international organization are entitled conventions (e.g. Convention on Biological Diversity of 1992, United Nations Convention on the Law of the Sea of 1982, Vienna Convention on the Law of Treaties of 1969). The same holds true for instruments adopted by an organ of an international organization (e.g. the 1951 ILO Convention concerning

Equal Remuneration for Men and Women Workers for Work of Equal Value, adopted by the International Labour Conference or the 1989 Convention on the Rights of the Child, adopted by the General Assembly of the UN).

Correction of Errors

If, after the authentication of a text, the signatory and contracting states are agreed that it contains an error, it can be corrected by initialling the corrected treaty text, by executing or exchanging an instrument containing the correction or by executing the corrected text of the whole treaty by the same procedure as in the case of the original text. If there is a depositary, the depositary must communicate the proposed corrections to all signatory and contracting states. In the UN practice, the Secretary-General, in his function as depositary, informs all parties to a treaty of the errors and the proposal to correct it. If, on the expiry of an appropriate time-limit, no objections are raised by the signatory and contracting states, the depositary circulates a proces-verbal of rectification and causes the corrections to be effected in the authentic text(s).

[Art.79, Vienna Convention on the Law of Treaties 1969]

Declarations

The term "declaration" is used for various international instruments. However, declarations are not always legally binding. The term is often deliberately chosen to indicate that the parties do not intend to create binding obligations but merely want to declare certain aspirations. An example is the 1992 Rio Declaration. Declarations can however also be treaties in the generic sense intended to be binding at international law. It is therefore necessary to establish in each individual case whether the parties intended to create binding obligations. Ascertaining the intention of the parties can often be a difficult task. Some instruments entitled "declarations" were not originally intended to have binding force, but their provisions may have reflected customary international law or may have gained binding character as customary law at a later stage. Such was the case with the 1948 Universal Declaration of Human Rights. Declarations that are intended to have binding effects could be classified as follows:

- a. A declaration can be a treaty in the proper sense. A significant example is the Joint Declaration between the United Kingdom and China on the Question of Hong Kong of 1984.
- b. An interpretative declaration is an instrument that is annexed to a treaty with the goal of interpreting or explaining the provisions of the latter.
- c. A declaration can also be an informal agreement with respect to a matter of minor importance.
- d. A series of unilateral declarations can constitute binding agreements. A typical example are declarations under the Optional Clause of the Statute of the International Court of Justice that create legal bonds between the declarants, although not directly addressed to each other. Another example is the unilateral Declaration on the Suez Canal and the arrangements for its operation issued by Egypt in 1957 which was considered to be an engagement of an international character.

Definitive Signature

When the treaty is not subject to ratification, acceptance or approval, "definitive signature" establishes the consent of the state to be bound by the treaty. Most bilateral treaties dealing with more routine and less politicized matters are brought into force by definitive signature, without recourse to the procedure of ratification.

[Art.12, Vienna Convention on the Law of Treaties 1969]

Deposit

After a treaty has been concluded, the written instruments, which provide formal evidence of consent to be bound, and also reservations and declarations, are placed in the custody of a depositary. Unless the treaty provides otherwise, the deposit of the instruments of ratification, acceptance, approval or accession establishes the consent of a state to be bound by the treaty. For treaties with a small number of parties, the depositary will usually be the government of the state on whose territory the treaty was signed. Sometimes various states are chosen as depositaries. Multilateral treaties usually designate an international organization or the Secretary-General of the United Nations as depositaries. The depositary must accept all notifications and documents related to the treaty, examine whether all formal requirements are met, deposit them, register the treaty and notify all relevant acts to the parties concerned.

[Arts.16, 76 and 77, Vienna Convention on the Law of Treaties 1969]

Entry into Force

Typically, the provisions of the treaty determine the date on which the treaty enters into force. Where the treaty does not specify a date, there is a presumption that the treaty is intended to come into force as soon as all the negotiating states have consented to be bound by the treaty. Bilateral treaties may provide for their entry into force on a particular date, upon the day of their last signature, upon exchange of the instruments of ratification or upon the exchange of notifications. In cases where multilateral treaties are involved, it is common to provide for a fixed number of states to express their consent for entry into force. Some treaties provide for additional conditions to be satisfied, e.g., by specifying that a certain category of states must be among the consenters. The treaty may also provide for an additional time period to elapse after the required number of countries have expressed their consent or the conditions have been satisfied. A treaty enters into force for those states which gave the required consent. A treaty may also provide that, upon certain conditions having been met, it shall come into force provisionally.

[Art.24, Vienna Convention on the Law of Treaties 1969]

Exchange of Letters/Notes

States may express their consent to be bound by an "exchange of letters/notes". The basic characteristic of this procedure is that the signatures do appear not on one letter or note but on two separate letters or notes. The agreement therefore lies in the exchange of both letters or notes, each of the parties having in their possession one letter or note signed by the representative of the other party. In practice, the second letter or note, usually the letter or note in response, will typically reproduce the text of the first. In a bilateral treaty, letters or notes may also be exchanged to indicate that all necessary domestic procedures have been completed.

[Art.13, Vienna Convention on the Law of Treaties 1969]

Full Powers

"Full powers" means a document emanating from the competent authority of a state designating a person or persons to represent the state for negotiating, adopting, authenticating the text of a treaty, expressing the consent of a state to be bound by a treaty, or for accomplishing any other act with respect to that treaty. Heads of State, Heads of Government and Ministers for Foreign Affairs are considered as representing their state for the purpose of all acts relating to the conclusion of a treaty and do not need to present full powers. Heads of diplomatic missions do not need to present full powers for the purpose of adopting the text of a treaty between the accrediting state and the state to which they are accredited. Likewise, representatives accredited by states to an international conference or to an international organization or one of its organs do not need to present full powers for the purpose of adopting the text of a treaty in that conference, organization or organ.

[Art.2 (1) (c) and Art.7 Vienna Convention on the Law of Treaties 1969]

Host Organisation

The organization that originally generated the Treaty.

Host Secretariat

Secretariat, which subsequently administers the Treaty

IP Regional Treaties

Agreement specifically concerning Intellectual Property between sovereign states of the same geographical region.

Memoranda of Understanding

A memorandum of understanding is an international instrument of a less formal kind. It often sets out operational arrangements under a framework international agreement. It is also used for the regulation of technical or detailed matters. It is typically in the form of a single instrument and does not require ratification. They are entered into either by States or International Organizations. The United Nations usually concludes memoranda of understanding with Member States in order to organize its peacekeeping operations or to arrange UN Conferences. The United Nations also concludes memoranda of understanding on cooperation with other international organizations.

Modification

The term "modification" refers to the variation of certain treaty provisions only as between particular parties of a treaty, while in their relation to the other parties the original treaty provisions remain applicable. If the treaty is silent on modifications, they are allowed only if the modifications do not affect the rights or obligations of the other parties to the treaty and do not contravene the object and the purpose of the treaty.

[Art.41, Vienna Convention on the Law of Treaties 1969]

Modus Vivendi

A modus vivendi is an instrument recording an international agreement of temporary or provisional nature intended to be replaced by an arrangement of a more permanent and detailed character. It is usually made in an informal way, and never requires ratification.

Multilateral Treaties

Multilateral treaties are agreements between more than two parties. They are often the result of an international conference or a gathering of nations done under the auspices of an international organization.

Notification

The term "notification" refers to a formality through which a state or an international organization communicates certain facts or events of legal importance. Notification is increasingly resorted to as a means of expressing final consent. Instead of opting for the exchange of documents or deposit, states may be content to notify their consent to the other party or to the depositary. However, all other acts and instruments relating to the life of a treaty may also call for notifications.

[Arts.16 (c), 78 etc., Vienna Convention on the Law of Treaties 1969]

Objection

Any signatory or contracting state has the option of objecting to a reservation, inter alia, if, in its opinion, the reservation is incompatible with the object and purpose of the treaty. The objecting state may further declare that its objection has the effect of precluding the entry into force of the treaty as between objecting and reserving states.

[Art.20-23, Vienna Convention on the Law of Treaties 1969]

Parties

The term "Parties", which appears in the header of each treaty, in the publication Multilateral Treaties Deposited with the Secretary-General, includes both "Contracting States" and "Parties". For general reference, the term "Contracting States" refers to States and other entities with treaty-making capacity which have expressed their consent to be bound by a treaty where the treaty has not yet entered into force or where it has not entered into force for such States and entities; the term "Parties" refers to States and other entities with treaty-making capacity which have expressed their consent to be bound by a treaty and where the treaty is in force for such States and entities.

Protocols

The term "protocol" is used for agreements less formal than those entitled "treaty" or "convention". The term could be used to cover the following kinds of instruments:

- a. A Protocol of Signature is an instrument subsidiary to a treaty, and drawn up by the same parties. Such a Protocol deals with ancillary matters such as the interpretation of particular clauses of the treaty, those formal clauses not inserted in the treaty, or the regulation of technical matters. Ratification of the treaty will normally ipso facto involve ratification of such a Protocol.
- b. An Optional Protocol to a Treaty is an instrument that establishes additional rights and obligations to a treaty. It is usually adopted on the same day, but is of independent character and subject to independent ratification. Such protocols enable certain parties of the treaty to establish among themselves a framework of obligations which reach further than the general treaty and to which not all parties of the general treaty consent, creating a "two-tier system". The Optional Protocol to the International Covenant on Civil and Political Rights of 1966 is a well-known example.
- c. A Protocol based on a Framework Treaty is an instrument with specific substantive obligations that implements the general objectives of a previous framework or umbrella convention. Such protocols ensure a more simplified and accelerated treaty-making process and have been used particularly in the field of international environmental law. An example is the 1987 Montreal Protocol on Substances that Deplete the Ozone Layer adopted on the basis of Arts.2 and 8 of the 1985 Vienna Convention for the Protection of the Ozone Layer.
- d. A Protocol to amend is an instrument that contains provisions that amend one or various former treaties, such as the Protocol of 1946 amending the Agreements, Conventions and Protocols on Narcotic Drugs.
- e. A Protocol as a supplementary treaty is an instrument which contains supplementary provisions to a previous treaty, e.g. the 1967 Protocol relating to the Status of Refugees to the 1951 Convention relating to the Status of Refugees.
- f. A Proces-Verbal is an instrument that contains a record of certain understandings arrived at by the contracting parties.

Provisional Application

The growing use of provisional application clauses in treaties is a consequence of the need felt to give effect to treaty obligations prior to a states formal ratification of/accession to a treaty. The obligations relating to provisional application are undertaken by a conscious voluntary act of the state consistent with its domestic legal framework.

Provisional application of a treaty that has entered into force:

The provisional application of a treaty that has entered into force may occur when a state undertakes to give effect to the treaty obligations provisionally although its domestic procedures for ratification/accession have not yet been completed. The intention of the state would be to ratify/accede to the treaty once its domestic legal requirements have been met. Provisional application may be terminated at any time. In contrast, a state which has consented to be bound by a treaty through ratification/accession or definitive signature, is governed by the rules on withdrawal specified in the treaty concerned (Arts. 54, 56, Vienna Convention on the Law of Treaties 1969).

[Art. 25, Vienna Convention on the Law of Treaties 1969]

Provisional application of a treaty that has not entered into force:

Provisional application of a treaty that has not entered into force may occur when a state notifies that it would give effect to the legal obligations specified in that treaty provisionally. These legal obligations are undertaken by a conscious voluntary act of the state consistent with its domestic legal framework. Provisional application may be terminated at any time. In contrast, a state which has consented to be bound by a treaty through ratification/ accession or definitive signature, is governed by the rules on withdrawal specified in the treaty concerned (Arts. 54, 56, Vienna Convention on the Law of Treaties 1969).

Provisional application may continue even after the entry into force of the treaty in relation to a state applying the treaty provisionally until that state has ratified it. Provisional application terminates if a state notifies the other states among which the treaty is being applied provisionally of its intention of not becoming a party to the treaty.

[Art. 25 (2), Vienna Convention on the Law of Treaties 1969]

Ratification

Ratification defines the international act whereby a state indicates its consent to be bound to a treaty if the parties intended to show their consent by such an act. In the case of bilateral treaties, ratification is usually accomplished by exchanging the requisite instruments, while in the case of multilateral treaties the usual procedure is for the depositary to collect the ratifications of all states, keeping all parties informed of the situation. The institution of ratification grants states the necessary time-frame to seek the required approval for the treaty on the domestic level and to enact the necessary legislation to give domestic effect to that treaty.

[Arts.2 (1) (b), 14 (1) and 16, Vienna Convention on the Law of Treaties 1969]

Regional Economic Integration Treaties

Agreement on economic integration between sovereign states of the same geographical region, e.g., Free Trade Agreements.

Registration and Publication

Article 102 of the Charter of the United Nations provides that "every treaty and every international agreement entered into by any Member of the United Nations after the present Charter comes into force shall as soon as possible be registered with the Secretariat and published by it". Treaties or agreements that are not registered cannot be invoked before any organ of the United Nations. Registration promotes transparency and the availability of texts of treaties to the public. Article 102 of the Charter and its predecessor, Article 18 of the Pact of the League of Nations, have their origin in one of Woodrow Wilson's Fourteen Points in which he outlined his idea of the League of Nations: "Open covenants of peace, openly arrived at, after which there shall be no private international understandings of any kind but diplomacy shall proceed always openly and in the public view".

[Art.80, Vienna Convention on the Law of Treaties 1969]

Reservation

A reservation is a declaration made by a state by which it purports to exclude or alter the legal effect of certain provisions of the treaty in their application to that state. A reservation enables a state to accept a multilateral treaty as a whole by giving it the possibility not to apply certain provisions with which it does not want to comply. Reservations can be made when the treaty is signed, ratified, accepted, approved or acceded to. Reservations must not be incompatible with the object and the purpose of the treaty. Furthermore, a treaty might prohibit reservations or only allow for certain reservations to be made.

[Arts.2 (1) (d) and 19-23, Vienna Convention of the Law of Treaties 1969]

Revision

Revision has basically the same meaning as amendment. However, some treaties provide for a revision additional to an amendment (i.e., Article 109 of the Charter of the United Nations). In that case, the term "revision" refers to an overriding adoption of the treaty to changed circumstances, whereas the term "amendment" refers only to a change of singular provisions.

Signature ad referendum

A representative may sign a treaty "ad referendum", i.e., under the condition that the signature is confirmed by his state. In this case, the signature becomes definitive once it is confirmed by the responsible organ.

[Art.12 (2) (b), Vienna Convention on the Law of Treaties 1969]

Signature Subject to Ratification, Acceptance or Approval

Where the signature is subject to ratification, acceptance or approval, the signature does not establish the consent to be bound. However, it is a means of authentication and expresses the willingness of the signatory state to continue the treaty-making process. The signature qualifies the signatory state to proceed to ratification, acceptance or approval. It also creates an obligation to refrain, in good faith, from acts that would defeat the object and the purpose of the treaty.

[Arts.10 and 18, Vienna Convention on the Law of Treaties 1969]

Succession

Succession occurs when one state ceases to exist or loses control over part of its territory, and another state comes into existence or assumes control over the territory lost by the first state. A central concern in this instance is whether the international obligations of the former state are taken over by the succeeding state. Changes in the form of government of one state, such as the replacement of a monarchy by a democratic form of government, do not modify or terminate the obligations incurred by the previous government.

When the state ceases to exist, however, the treaties it concluded generally are terminated and those of the successor state apply to the territory. These include political treaties like alliances, which depend on the existence of the state that concluded them. But certain obligations, such as agreements concerning boundaries or other matters of local significance,

carry over to the successor state. More difficult to determine is the continuing legality of treaties granting concessions or contract rights. Scholarly opinion has diverged on this aspect of succession, and state practice has likewise divided. Consequently each case must be studied on its merits to determine whether the rights and duties under the contract or concession are such that the successor state is bound by the obligations of the previous state.

Treaties

The term "treaty" can be used as a common generic term or as a particular term which indicates an instrument with certain characteristics.

- a. Treaty as a generic term: The term "treaty" has regularly been used as a generic term embracing all instruments binding at international law concluded between international entities, regardless of their formal designation. Both the 1969 Vienna Convention and the 1986 Vienna Convention confirm this generic use of the term "treaty". The 1969 Vienna Convention 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". The 1986 Vienna Convention extends the definition of treaties to include international agreements involving international organizations as parties. In order to speak of a "treaty" in the generic sense, an instrument has to meet various criteria. First of all, it has to be a binding instrument, which means that the contracting parties intended to create legal rights and duties. Secondly, the instrument must be concluded by states or international organizations with treaty-making power. Thirdly, it has to be governed by international law. Finally the engagement has to be in writing. Even before the 1969 Vienna Convention on the Law of Treaties, the word "treaty" in its generic sense had been generally reserved for engagements concluded in written form.
- b. Treaty as a specific term: There are no consistent rules when state practice employs the terms "treaty" as a title for an international instrument. Usually the term "treaty" is reserved for matters of some gravity that require more solemn agreements. Their signatures are usually sealed and they normally require ratification. Typical examples of international instruments designated as "treaties" are Peace Treaties, Border Treaties, Delimitation Treaties, Extradition Treaties and Treaties of Friendship, Commerce and Cooperation. The use of the term "treaty" for international instruments has considerably declined in the last decades in favour of other terms.

WIPO-Administered Treaties

Treaties concluded under the auspices of the World Intellectual Property Organization (WIPO) as a result of an international conference