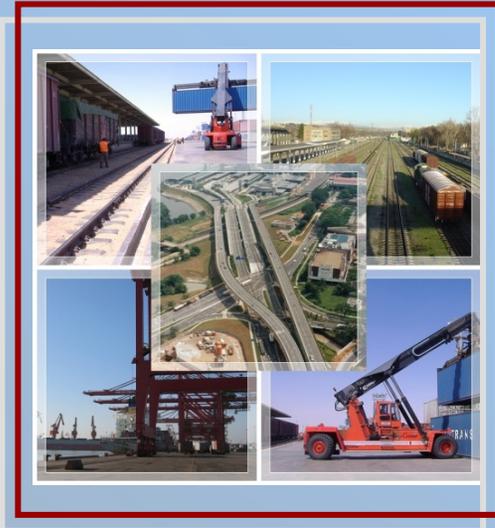


First Meeting of the Regional Network of Legal and Technical Experts on Transport Facilitation

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International Experience on Treaties

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UNITED NATIONS

ESCAP

Economic and Social Commission for Asia and the Pacific

Content

- Part I. Basic terminology
- Part II. Some useful provisions in Vienna Convention 1969

Three Important References

- ❑ Vienna Convention on the Law of Treaties (Vienna Convention 1969)
- ❑ Treaty Handbook, Treaty Section, Office of Legal Affairs, UN (2002)
- ❑ Final Clauses of Multilateral Treaties, Treaty Section, Office of Legal Affairs, UN (2003)

Terminology - Treaty (1)

- ❑ **Treaty:** a generic term embracing all instruments binding under international law, regardless of their formal designation, concluded between two or more international juridical persons
- ❑ Treaties may be concluded between:
 - ❑ States
 - ❑ International organizations with treaty-making capacity and States
 - ❑ International organizations with treaty-making capacity
- ❑ The application of the term treaty, in the generic sense, signifies that the parties intend to create rights and obligations enforceable under international law

Terminology - Treaty (2)

- ❑ **Treaty**, "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" (Article 2 (1) (a), Vienna Convention 1969)
 - ❑ Accordingly, conventions, agreements, protocols, and exchange of letters or notes may all constitute treaties
 - ❑ A treaty must be governed by international law and is normally in written form. Although the Vienna Convention 1969 does not apply to non-written agreements, its definition of a treaty states that the absence of writing does not affect the legal force of international agreements
 - ❑ No international rules exist as to when an international instrument should be entitled a treaty. However, usually the term treaty is employed for instruments of some gravity and solemnity
- ❑ **Bilateral treaty**, a bilateral treaty is a treaty between two parties
- ❑ **Multilateral treaty**, a multilateral treaty is a treaty between more than two parties

Terminology - Protocol

- ❑ Protocol, in the context of treaty law and practice, has the same legal characteristics as a treaty
- ❑ The term protocol is **often** used to describe agreements of a less formal nature than those entitled treaty or convention
- ❑ **Generally**, a protocol amends, supplements or clarifies a multilateral treaty. A protocol is normally open to participation by the parties to the parent agreement
- ❑ Advantage of a protocol: while it is linked to the parent agreement, it can focus on a specific aspect of that agreement in greater detail

Terminology - MOU

- ❑ Memorandum of understanding (M.O.U.) is often used to denote a less formal international instrument than a typical treaty or international agreement
- ❑ It **often** sets out operational arrangements under a framework international agreement
- ❑ It is **also** used for the regulation of technical or detailed matters
- ❑ An MOU **typically** consists of a single instrument and is entered into among States and/or international organizations
- ❑ The United Nations considers MOUs to be **binding** and registers them if submitted by a party or if the United Nations is a party

Terminology - Convention

- ❑ **Generally** used for formal multilateral treaties with a broad number of parties
- ❑ **Normally** open for participation by the international community as a whole, or by a large number of States
- ❑ **Usually** instruments negotiated under the auspices of an international organization are entitled conventions

Source: Treaty Handbook

Vienna Convention 1969 (1)

- Basis for bilateral treaties
- 8 Parts and 85 Articles
- Structure
 - Introduction
 - Conclusion, reservation and entry into force
 - Observance, application, interpretation and third states
 - Amendment and modification
 - Invalidity, termination, suspension of the operation
 - Succession, diplomatic relations and conclusion of treaties, aggressor State
 - Depositories, notifications, corrections and registration
 - Final provisions

Vienna Convention 1969 (2)

Status for regional members of UNESCAP, as of 28 Jan. 2014

Participant	Signature	Accession, Succession, Ratification	Participant	Signature	Accession, Succession, Ratification
Afghanistan	X		Mongolia		X
Armenia		X	Myanmar		X
Australia		X	Nauru		X
Cambodia	X		Nepal	X	
China		X	New Zealand	X	X
Georgia		X	Pakistan	X	
I.R. Iran	X		Philippines	X	X
Japan		X	Republic of Korea	X	X
Kazakhstan		X	Russian Federation		X
Kiribati		X	Solomon Islands		X
Kyrgyzstan		X	Tajikistan		X
Lao PDR		X	Timor-Leste		X
Malaysia		X	Turkmenistan		X
Maldives		X	Uzbekistan		X
			Viet Nam		X

Vienna Convention 1969 (3)

- Scope of application: treaties between States

- Observance of treaties
 - Every treaty in force is binding upon the parties to it and must be performed by them in good faith (Article 26)

 - A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty (Article 27)

- Application of treaties to territorial scope
 - Unless a different intention appears from the treaty or is otherwise established, a treaty is binding upon each party in respect of its entire territory (Article 29)

Vienna Convention 1969 (4)

□ Interpretation of treaties

□ General rule of interpretation (Article 31)

- A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose
- The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes:
 - (a) any agreement relating to the treaty which was made between all the parties in connection with the conclusion of the treaty
 - (b) any instrument which was made by one or more parties in connection with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty
- There shall be taken into account, together with the context:
 - (a) any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions
 - (b) any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation
 - (c) any relevant rules of international law applicable in the relations between the parties
- A special meaning shall be given to a term if it is established that the parties so intended

Vienna Convention 1969 (5)

□ Interpretation of treaties

□ Interpretation of treaties authenticated in two or more languages (Article 33)

- When a treaty has been authenticated in two or more languages, the text is equally authoritative in each language, unless the treaty provides or the parties agree that, in case of divergence, a particular text shall prevail
- A version of the treaty in a language other than one of those in which the text was authenticated shall be considered an authentic text only if the treaty so provides or the parties so agree
- The terms of the treaty are presumed to have the same meaning in each authentic text
- Except where a particular text prevails in accordance with paragraph 1, when a comparison of the authentic texts discloses a difference of meaning which the application of articles 31 and 32 does not remove, the meaning which best reconciles the texts, having regard to the object and purpose of the treaty, shall be adopted

Vienna Convention 1969 (6)

□ Invalidity of treaties

□ Error (Article 48)

- A State may invoke an error in a treaty as invalidating its consent to be bound by the treaty if the error relates to a fact or situation which was assumed by that State to exist at the time when the treaty was concluded and formed an essential basis of its consent to be bound by the treaty

- Paragraph 1 shall not apply if the State in question contributed by its own conduct to the error or if the circumstances were such as to put that State on notice of a possible error

- An error relating only to the wording of the text of a treaty does not affect its validity (Article 79 applies)

Vienna Convention 1969 (7-1)

□ Corrections

□ Correction of errors in texts or in certified copies of treaties (Article 79)

□ Where, after the authentication of the text of a treaty, the signatory States and the contracting States are agreed that it contains an error, the error shall, unless they decide upon some other means of correction, be corrected:

(a) by having the appropriate correction made in the text and causing the correction to be initialled by duly authorized representatives

(b) by executing or exchanging an instrument or instruments setting out the correction which it has been agreed to make

(c) by executing a corrected text of the whole treaty by the same procedure as in the case of the original text

Vienna Convention 1969 (7-1) (Cont'd)

□ Corrections

□ Correction of errors in texts or in certified copies of treaties (Article 79)

□ Where the treaty is one for which there is a depositary, the latter shall notify the signatory States and the contracting States of the error and of the proposal to correct it and shall specify an appropriate time-limit within which objection to the proposed correction may be raised. If, on the expiry of the time-limit:

(a) no objection has been raised, the depositary shall make and initial the correction in the text and shall execute a procès-verbal of the rectification of the text and communicate a copy of it to the parties and to the States entitled to become parties to the treaty

(b) an objection has been raised, the depositary shall communicate the objection to the signatory States and to the contracting States

Vienna Convention 1969 (7-2)

□ Corrections

- Correction of errors in texts or in certified copies of treaties (Article 79)
 - The rules in paragraphs 1 and 2 apply also where the text has been authenticated in two or more languages and it appears that there is a lack of concordance which the signatory States and the contracting States agree should be corrected
 - The corrected text replaces the defective text ab initio, unless the signatory States and the contracting States otherwise decide
 - The correction of the text of a treaty that has been registered shall be notified to the Secretariat of the United Nations
 - Where an error is discovered in a certified copy of a treaty, the depositary shall execute a procès-verbal specifying the rectification and communicate a copy of it to the signatory States and to the contracting States

Vienna Convention 1969 (8-1)

□ Conciliation (Annex)

- Every State which is a Member of the United Nations or a party to the Convention shall be invited to nominate two conciliators, and the names of the persons so nominated shall constitute the list
- When a request has been made to the Secretary-General, the Secretary-General shall bring the dispute before a conciliation commission constituted as follows:
 - The State or States constituting one of the parties to the dispute shall appoint:
 - (a) one conciliator of the nationality of that State or of one of those States, who may or may not be chosen from the list
 - (b) one conciliator not of the nationality of that State or of any of those States, who shall be chosen from the list
 - The State or States constituting the other party to the dispute shall appoint two conciliators in the same way. The four conciliators chosen by the parties shall be appointed within sixty days following the date on which the Secretary-General receives the request
 - The four conciliators shall, within sixty days following the date of the last of their own appointments, appoint a fifth conciliator chosen from the list, who shall be chairman

Vienna Convention 1969 (8-2)

□ Conciliation (Annex)

- The Conciliation Commission shall decide its own procedure. The Commission, with the consent of the parties to the dispute, may invite any party to the treaty to submit to it its views orally or in writing
- Decisions and recommendations of the Commission shall be made by a majority vote of the five members
- The Commission shall hear the parties, examine the claims and objections, and make proposals to the parties with a view to reaching an amicable settlement of the dispute

Vienna Convention 1969 (8-3)

□ Conciliation (Annex)

- The Commission shall report within twelve months of its constitution. Its report shall be deposited with the Secretary-General and transmitted to the parties to the dispute. The report of the Commission, including any conclusions stated therein regarding the facts or questions of law, shall not be binding upon the parties and it shall have no other character than that of recommendations submitted for the consideration of the parties in order to facilitate an amicable settlement of the dispute
- The Secretary-General shall provide the Commission with such assistance and facilities as it may require. The expenses of the Commission shall be borne by the United Nations



Thank you!