

INTERNATIONAL LEGAL INSTRUMENTS



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Introduction

- Our objective : to draft a *“new legal instrument which is expected to complement the 1949 and 1968 Conventions on Road Traffic. It will include, in addition to the typical sections on definitions and final clauses, a set of legal provisions for the safe deployment of automated vehicles in international traffic.”*
- According to the terms of reference :
 - A legal instrument refers to many instruments used in international law
 - Typical sections on definitions and final clauses and a set of legal provisions could lead us to think of a binding instrument : an instrument with no legal effect could not complement the 2 conventions properly.



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Different terms employed

- The term «international legal instrument» refers to different legal international tools by which States establish rights and obligations among themselves.
- Diversity of terminology and legal effects of international instruments :
 - International formal instruments: treaties, agreements, conventions, charters,
 - Non formal instruments : customary law, general principles of law, judicial decision
 - Non binding instruments(soft law): Resolutions and Declarations of the UN General Assembly and most other UN bodies, statements, principles, code of practice etc



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Focus on the survey

- Refers to 3 types of instruments (Question 16) :
 - New convention
 - Amendment
 - Protocol
 - Other
 - The responses are split between an amendment or a new convention
 - According to our programme of work : we need to identify the type of legal instrument recommended and its legal implications
- In order to help us in this task, I propose to focus on these 3 different types of existing legal international instruments

Treaties and conventions

- Definition : 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*". Treaties can be negotiated by States directly or under the supervision of an international organization.
- A treaty may also be known as an international agreement, protocol, covenant, convention, pact, or exchange of letters.
- Bilateral/Multilateral treaties :
 - Bilateral treaties are concluded between two states or entities.
 - A multilateral treaty is concluded among several countries, establishing rights and obligations between each party and every other party.

→ the term “**convention**” 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



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Treaties and conventions

- Effects: Every treaty in force is binding upon the parties to it and must be performed by them in good faith (art 26 - Vienna Convention on the Law of Treaties 1969) → every member state has to execute the treaty and has to take all measures in the domestic law order to apply it
- Forms: a treaty is a formal, legally binding written agreement between actors in international law. It is usually made by and between sovereign states and international organizations.
- Adoption : takes place by the consent of all the States participating. The consent of a State to be bound by a treaty is expressed by ratification.
- 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



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Protocol

- Definition : The term is used for agreements less formal than those entitled treaty or convention.
- Different type exists :
 - Protocol of Signature : instrument subsidiary to a treaty, and drawn up by the same parties. It deals with secondary question such as the interpretation of particular clauses of the treaty, formal clauses not inserted in the treaty, or the regulation of technical matters.
 - Optional Protocol : instrument that establishes additional rights and obligations to a treaty. 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"
 - Protocol based on a Framework Treaty : instrument with specific substantive obligations that implements the general objectives of a previous convention. Such protocols ensure a more simplified and accelerated treaty-making process and have been used particularly in the field of international environmental law.
 - Protocol to amend : instrument that contains provisions that amend one or various former treaties
 - Protocol as a supplementary treaty : instrument which contains supplementary provisions to a previous treaty,
 - Proces-Verbal : instrument that contains a record of certain understandings arrived at by the contracting parties.



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Amendment

- Definition : the term refers to the formal alteration of treaty provisions affecting all the parties to the particular agreement. Many multilateral treaties lay down specific requirements to be satisfied for amendments to be adopted.
- 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 on the law of treaties of 1969]



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Other type of legal instrument

- Declarations : The term "declaration" is used for various international instruments. 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. Declarations can however also be treaties intended to be binding at international level, but their provisions may reflect customary international law or may have gained binding character as customary law (Universal Declaration of Human Rights 1948).
- Exchange of Notes : record of a routine agreement, that has many similarities with the private law contract. The agreement consists of the exchange of two documents, each of the parties being in the possession of the one signed by the representative of the other. Under the usual procedure, the accepting State repeats the text of the offering State to record its assent.
- Memorandum of Understanding: 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
- Resolutions : are used by the UN; they are formal expressions of opinion or will of the United Nations bodies. They usually concern substantive issues.
- Decisions : other types of actions adopted by the UN (procedure, nomination, time of sessions etc)



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Conclusion : What type of legal instrument is best suited to complement the existing 1949 and 1968 Conventions ? (1)

- A protocol can supplement a previous treaty or add additional provisions; it would mean to adopt two protocols to complement the 2 Conventions → the goal of the GE3 group is to build only one new legal instrument
- An amendment : using this instrument requires to modify the two existing conventions. We can't have only one amendment for the 2 conventions : this option would mean to build 2 new legal instruments. And we know the 1968 Convention on Road Traffic is much easier to amend than the 1949 Convention on Road Traffic.

Conclusion : What type of legal instrument is best suited to complement the existing 1949 and 1968 Conventions ? (2)

- A new convention :
 - seems to be suitable with the terms of reference because the best instrument to complete 2 existing conventions would be the same instrument.
 - Moreover a convention can guarantee high levels of compliance and a uniform implementation of a rule.
 - Finally, given the subject of driving, which is a universal issue that is going to experience a new era which is “automated driving”, it seems eminently necessary to start again with a new convention.