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Global Forum for Road Traffic Safety

Group of Experts on drafting a new legal instrument on the use of automated vehicles in traffic

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Substantive activities

The types of legal instruments within the United Nations – a brief overview

Note by the secretariat

The text reproduced below was prepared by the secretariat in order to present an overview of legal instruments and their definitions, used within the United Nations and to inform the discussion on the selection of a type of legal instrument in the context of the activities of the Group of Experts (GoE) on drafting a new legal instrument on the use of automated vehicles in traffic (LIAV) and its task (b) in its programme of work.¹

Summary

This document provides the Group of Experts with:

- (a) An overview of definitions of the terms Treaty, Agreement, Charter, Convention, Declaration, Protocol, Accession, Ratification, Signature and Succession; and
- (b) A list of the current legal instruments under the purview of the Inland Transport Committee

It is intended to supplement the presentation provided by the expert from France at the third session of the Group of Experts.

I. Treaty

1. The 1969 Vienna Convention on the Law of Treaties (https://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf) 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".
2. The 1986 Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations (https://legal.un.org/ilc/texts/instruments/english/conventions/1_2_1986.pdf) extends the definition of treaties to include international agreements involving international organizations as parties.
3. In order to speak of a "treaty" in the generic sense, an instrument has to meet various criteria:
 - (a) It has to be a binding instrument, which means that the contracting parties intended to create legal rights and duties;
 - (b) The instrument must be concluded by states or international organizations with treaty-making power;
 - (c) It has to be governed by international law;
 - (d) The engagement has to be in writing.

II. Agreement

4. The term "agreement" can have a generic or a specific meaning. Further, the term can have a special meaning in the law of regional economic integration:

A. Agreement as a generic term

5. 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.
6. 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.
7. The term "international agreement" in its generic sense consequently embraces the widest range of international instruments.

B. Agreement as a particular term

8. "Agreements" are usually less formal and deal with a narrower range of subject-matter than "treaties".
9. 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.
10. The United Nations 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

11. 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.

III. Charter

12. The term "charter" is used for particularly formal and solemn instruments, such as the constituent treaty of an international organization. The term itself has an emotive content that goes back to the Magna Carta of 1215. Well-known recent examples are the Charter of the United Nations of 1945 and the Charter of the Organization of American States of 1952.

IV. Convention

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

A. Convention as a generic term

14. 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.

15. This generic use of the term "convention" embraces all international agreements, in the same way as does the generic term "treaty". The generic term "convention" thus is synonymous with the generic term "treaty".

B. Convention as a specific term

16. 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.

17. 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. The same holds true for instruments adopted by an organ of an international organization.

V. Declaration

18. The term "declaration" is used for various international instruments. However, declarations are not always legally binding.

19. 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.

20. 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. 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.

21. 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.

VI. Protocol

22. 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".

(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.

(d) **A Protocol to amend** is an instrument that contains provisions that amend one or various former treaties.

(e) **A Protocol as a supplementary treaty** is an instrument which contains supplementary provisions to a previous treaty.

(f) **A Proces-Verbal** is an instrument that contains a record of certain understandings arrived at by the contracting parties.¹

¹ United Nations Treaty Collection, Definitions,
https://treaties.un.org/Pages/overview.aspx?path=overview/definition/page1_en.xml#modus

VII. Accession, Ratification, Signature and Succession

A. Accession

23. Accession describes 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.

24. Accession usually occurs after the treaty has entered 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].

B. Ratification

25. 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.

26. 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].

C. Signature

1. Signature Ad Referendum

27. 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].

2. Signature subject to ratification, acceptance, or approval

28. 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].

D. Succession

29. “Succession of States” was defined in the Vienna Convention on Succession of States in respect of Treaties in 1978 (https://legal.un.org/ilc/texts/instruments/english/conventions/3_2_1978.pdf) and means the replacement of one State by another in the responsibility for the international relations of territory.

VIII. List of legal instruments under the purview of the Inland Transport Committee

30. The United Nations Economic Commission for Europe (UNECE) is a multilateral platform to facilitate greater economic integration and cooperation and to promote sustainable development. It does so, among others, by promoting and maintaining the United Nations Transport Conventions. Until now, UNECE has established 59 legal instruments under the purview of the Inland Transport Committee (see ECE/TRANS/294, Annex III, Appendix):

Title

Convention on Road Traffic, of 19 September 1949

Protocol on Road Signs and Signals, of 19 September 1949

European Agreement on the Application of Article 23 of the 1949 Convention on Road Traffic concerning the Dimensions and Weights of Vehicles Permitted to Travel on Certain Roads of the Contracting Parties, of 16 September 1950

European Agreement supplementing the 1949 Convention on Road Traffic and the 1949 Protocol on Road Signs and Signals, of 16 September 1950

Declaration on the Construction of Main International Traffic Arteries, of 16 September 1950

International Convention to Facilitate the Crossing of Frontiers for Passengers and Baggage carried by Rail, of 10 January 1952

International Convention to Facilitate the Crossing of Frontiers for Goods Carried by Rail, of 10 January 1952

General Agreement on Economic Regulations for International Road Transport, of 17 March 1954

Convention concerning Customs Facilities for Touring, signed in New York on 4 June 1954

Additional Protocol to the Convention concerning Customs Facilities for Touring, relating to the importation of tourist publicity documents and material, signed in New York on 4 June 1954

Customs Convention on the Temporary Importation of Private Road Vehicles, signed in New York on 4 June 1954

Customs Convention on the Temporary Importation for Private Use of Aircraft and Pleasure Boats, of 18 May 1956

Customs Convention on the Temporary Importation of Commercial Road Vehicles, of 18 May 1956

Customs Convention on Containers, of 18 May 1956

Convention on the Taxation of Road Vehicles for Private use in International Traffic, of 18 May 1956

Convention on the Contract for the International Carriage of Goods by Road (CMR), of 19 May 1956

Convention on the Taxation of Road Vehicles engaged in International Passenger Transport, of 14 December 1956

 Title

Convention on the Taxation of Road Vehicles engaged in International Goods Transport, of 14 December 1956

European Agreement concerning the International Carriage of Dangerous Goods by Road (ADR), of 30 September 1957

European Agreement on Road Markings, of 13 December 1957

Customs Convention concerning Spare Parts Used for Repairing EUROP Wagons, of 15 January 1958

Agreement concerning the Adoption of Uniform Technical Prescriptions for Wheeled Vehicles, Equipment and Parts which can be fitted and /or be used on Wheeled Vehicles and the Conditions for Reciprocal Recognition of Approvals Granted on the Basis of these Prescriptions, of 20 March 1958

Customs Convention on the International Transport of Goods under Cover of TIR Carnets (TIR Convention), of 15 January 1959

Convention relating to the Unification of Certain Rules concerning Collisions in Inland Navigation, of 15 March 1960

European Convention on Customs Treatment of Pallets Used in International Transport, of 9 December 1960

Convention on the Registration of Inland Navigation Vessels, of 25 January 1965

Convention on the Measurement of Inland Navigation Vessels, of 15 February 1966

Convention on Road Traffic, of 8 November 1968

Convention on Road Signs and Signals, of 8 November 1968

European Agreement concerning the Work of Crews of Vehicles engaged in International Road Transport (AETR), of 1 July 1970

Agreement on the International Carriage of Perishable Foodstuffs and on the Special Equipment to be Used for such Carriage (ATP), of 1 September 1970

European Agreement supplementing the 1968 Convention on Road Traffic, of 1 May 1971

European Agreement supplementing the Convention on Road Signs and Signals (1968), of 1 May 1971

Customs Convention on Containers, of 2 December 1972

Protocol on Road Markings, Additional to the European Agreement supplementing the Convention on Road Signs and Signals, of 1 March 1973

Convention on the Contract for the International Carriage of Passengers and Luggage by Road (CVR), of 1 March 1973

Convention relating to the Limitation of the Liability of Owners of Inland Navigation Vessels (CLN), of 1 March 1973

Agreement on Minimum Requirements for the Issue and Validity of Driving Permits (APC), of 1 April 1975

Customs Convention on the International Transport of Goods under Cover of TIR Carnets (TIR Convention), of 14 November 1975

Title

European Agreement on Main International Traffic Arteries (AGR), of 15 November 1975

Convention on the Contract for the International Carriage of Passengers and Luggage by Inland Waterway (CVN), of 6 February 1976

Protocol to the Convention relating to the Limitation of the Liability of Owners of Inland Navigation Vessels (CLN), of 5 July 1978

Protocol to the Convention on the Contract for the International Carriage of Passengers and Luggage by Inland Waterways (CVN), of 5 July 1978

Protocol to the Convention on the Contract for the International Carriage of Goods by Road (CMR), of 5 July 1978

Protocol to the Convention on the Contract for the International Carriage of Passengers and Luggage by Road (CVR), of 5 July 1978

International Convention on the Harmonization of Frontier Controls of Goods, 21 October 1982

European Agreement on Main International Railway Lines (AGC), of 31 May 1985

Convention on Civil Liability for Damage caused during Carriage of Dangerous Goods by Road, Rail and Inland Navigation Vessels (CRTD), of 10 October 1989

European Agreement on Important International Combined Transport Lines and Related Installations (AGTC), of 1 February 1991

Protocol on Combined Transport on Inland Waterways to the European Agreement on Important International Combined Transport Lines and Related Installations (AGTC) of 1991, of 1997

Protocol amending article 1 (a), article 14 (1) and article 14 (3) (b) of the European Agreement of 30 September 1957 concerning the International Carriage of Dangerous Goods by Road (ADR), of 28 October 1993

Convention on Customs Treatment of Pool Containers Used in International Transport, 21 January 1994

European Agreement on Main Inland Waterways of International Importance (AGN), of 19 January 1996

Agreement concerning the Adoption of Uniform Conditions for Periodical Technical Inspections of Wheeled Vehicles and the Reciprocal Recognition of Such Inspections, of 13 November 1997

Agreement concerning the Establishing of Global Technical Regulations for Wheeled Vehicles, Equipment and Parts which can be fitted and / or be used on Wheeled Vehicles, of 25 June 1998

European Agreement Concerning the International Carriage of Dangerous Goods by Inland Waterway (ADN), of 25 May 2000

Convention on International Customs Transit Procedures for the Carriage of Goods by Rail under Cover of SMGS Consignment Notes Geneva, 9 February 2006

Additional Protocol to the CMR concerning the electronic consignment note (e-CMR), of 2011

Title

Convention on the facilitation of border crossing procedures for passengers, luggage and load-luggage carried in international traffic by rail, of 22 February 2019
