



WP.1 / GE.3

## **Presentation 6**

4<sup>th</sup> GoE on LIAV, 1-2 September 2022

Provisional agenda item 2

# **Types of legal instruments and related actions within the United Nations – a brief overview**

Presentation introducing ECE/TRANS/WP.1/GE.3/2022/6.

Note by the secretariat

# Brief overview: types of legal instruments and related actions within the United Nations



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## Types of legal instruments:

- Treaty
- Agreement
- Charter
- Convention
- Declaration
- Protocol

## Terms related to treaty actions:

- Accession
- Ratification
- Signature
- Succession



# Treaty



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- The 1969 Vienna Convention on the Law of Treaties 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 on the Law of Treaties between States and International Organizations or between International Organizations 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:
  - (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**.

# Agreement



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## A. Agreement as a generic term

The term “international agreement” in its generic sense embraces the **widest range** of international instruments:

- 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”**. It is also referred to as "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.

## B. Agreement as a particular term

- “Agreement” (as particular term) is usually **less formal** and **deals with a narrower range** of subject-matter than “treaty”.
- 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.
- 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. Nowadays, most international instruments are designated as agreements.

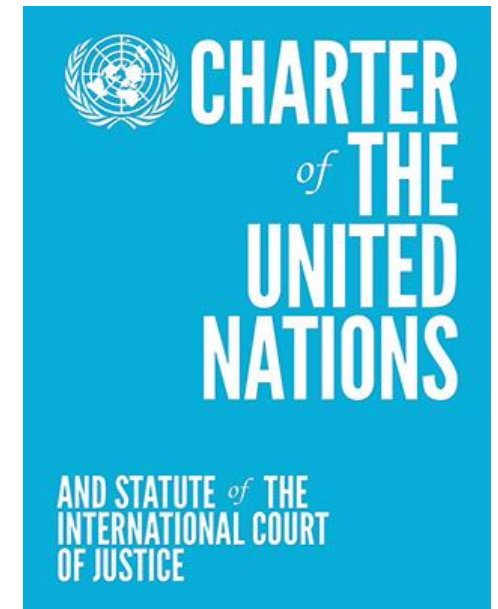
# Charter



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- 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.



# Convention



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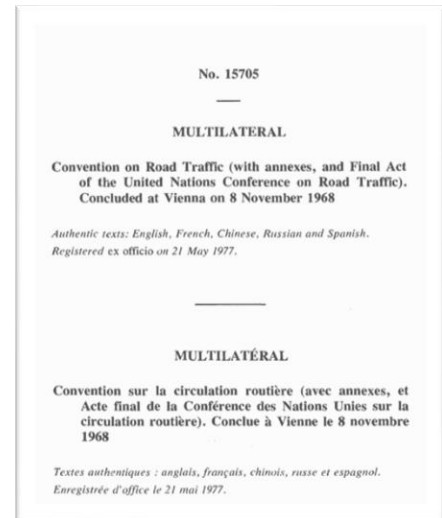


## A. Convention as a generic term

- “International conventions, whether general or particular” are referred to **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.
- The 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

- During the last century, the term “convention” was regularly employed for bilateral agreements. Now, it 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. The same holds true for instruments adopted by an organ of an international organization.



# Declaration



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- 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.
- Declarations can however also be treaties in the generic sense, intended to be binding at international law, what needs to be established in each individual case, whether parties intended to create binding obligations. Declarations that are **intended to have binding effects** could be **classified** as follows:
  - a) A declaration can be a **treaty** in the proper sense.
  - 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**. Typical examples 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.

# Protocol



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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.



# Related actions: Accession, Ratification, Signature and Succession



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## A. Accession

- 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.
- Accession usually occurs **after the treaty has entered into force**.

## B. 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.

# Related actions: Accession, Ratification, Signature and Succession



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## C. Signature

### 1. *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.

### 2. *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.

## D. Succession

“Succession of States” means the **replacement of one State by another** in the responsibility for the international relations of territory.



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**Thank you!**

For more information, please see:

- ECE/TRANS/WP.1/GE.3/2022/6
- [https://treaties.un.org/Pages/overview.aspx?path=overview/definition/page1\\_en.xml](https://treaties.un.org/Pages/overview.aspx?path=overview/definition/page1_en.xml)
- [https://treaties.un.org/pages/overview.aspx?path=overview/glossary/page1\\_en.xml](https://treaties.un.org/pages/overview.aspx?path=overview/glossary/page1_en.xml)