

LEXICON

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Editor's Note:

This Lexicon has been distilled from many sources. The Editor is solely responsible for its composition, errors and/or omissions. Capitalized Terms herein generally refer to other entries in the Lexicon

ab initio

The term derives from the Latin meaning “from the start” or “from the beginning. If, for example, one Party to a bilateral Instrument deceives another on a material fact, the Instrument would be null and void *ab initio*.

Acceptance (Approval)

Acceptance (Approval) is an act by which a State consents to be bound by an Instrument. Some countries, especially Eastern European States, prefer these terms to Accession, Adherence, *etc.* States generally use Acceptance (Approval) when domestic law does not require Ratification by a head of state Both are also used when International Organizations rather than States become Parties to an Instrument, *e.g.*, the European Union. They have, however, the same legal effect as Ratification.

Accession

Countries that do not initially sign an Instrument can become a Party to it through Accession. In essence, Accession is Ratification without Signature. Usually Accession occurs after an Instrument has entered into force.

Procedures vary between countries. In some, the head of state or government is empowered to accede. In others, consent of the legislative authorities is required; in some, a combination of the two.

Conditions for Accession may be specified in an Instrument. Provisions may permit Accession by all States (an Open Treaty) or only by a select few (Closed Treaty). Lacking such provisions, Accession occurs only with the consent of all current Participants.

Adhesion

Adhesion allows a State to enter an Open Treaty that it did not initially sign This contrasts with a Closed Treaty restricted to specific States, *e.g.*, the Organization of American States. By Adhesion a State consents to be bound by the Instrument. It effectively combines Signature and Ratification in a single act. Adhesion is a form of Accession available only for an Open Treaty.

Adoption

Adoption fixes the form and content of an Instrument making its text definitive. Adoption generally involves the collective consent of States participating in the instrument-making process.

With respect to an International Organization, Adoption is usually achieved by resolution of its representative assembly. Members of such assemblies or Unions are generally potential Participants in an Instrument.

Adoption is the usual modality of multilateral conferences convened for instrument-making purposes, *e.g.*, the 1883 Paris conference that adopted the *Convention for the Protection of Industrial Property*. At such conferences Adoption usually requires a two thirds vote in favour by States present and voting unless by a similar majority they decide to apply a different rule.

Agreement

Agreement has a generic and specific meaning. Generically, it embraces all Instruments including oral ones which can enjoy the same binding force as written Instruments depending on the intention of the Parties involved, *e.g.*, an oral Agreement between Ministers of Foreign Affairs.

Specifically, an Agreement tends to be narrower in scope than a Convention or Treaty, *e.g.*, of a technical or administrative nature. Agreements are often concluded by representatives of government departments and may not be subject to Ratification. A typical

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Agreement concerns economic, cultural, economic, financial, scientific and technical cooperation and/or taxation matters.

In international economic law, Agreement is also used for broad Multilateral Agreements such as commodity agreements, *e.g.*, coffee. Similarly, Agreement with respect to regional integration may have specific meaning, *e.g.*, within the European Union. Such schemes tend to be based on a broad framework Instrument of a constitutional nature. Instruments concluded within a framework are generally called Agreements to distinguish them from the constitutional Instrument itself.

Amendment

Amendment refers to alteration of the provisions of an Instrument affecting all Parties. Amendment is effected with the same formalities as the original instrument-making process. Instruments may have specific requirements before an Amendment is adopted. Lacking such provisions Amendment requires consent of all Parties to the original Instrument.

Authentication

Authentication is the procedure by which the text of an Instrument becomes authentic and definitive. An authenticated text cannot be changed unilaterally by any State. If there is no agreement on the process an Instrument will often be authenticated by Signature, Signature *ad referendum* or initialing by representatives of Negotiating States or International Organizations.

bona fide

The term is derived from the Latin meaning 'in or with good faith'. It implies acting honestly in the absence of deceit, fraud or wrongdoing

Charter

A charter is a formal Instrument often used to create an International Organization. The term goes back to the 1215 *Magna Carta*.

Recent examples include the 1945 *Charter of the United Nations* and the 1952 *Charter of the Organization of American States*.

Communication

A Communication is a notice issued by a State or International Organization alternatively:

- (i) expressing its views about an Instrument;
- (ii) notifying other Participants of a domestic law relating to the Instrument; or,
- (iii) rectifying an error or an omission made upon Ratification.

Communication may, under the terms of an Instrument, require that a State create or designate a competent national authority to send and receive such Communication.

Confirmation

Confirmation by an International Organization corresponds to Ratification by a State, *i.e.*, it formally consents to be bound by an Instrument. Confirmation may require a majority vote or consensus of Member States constituting an International Organization. Alternatively it may, for some Instruments, simply require an executive decision by a President or Secretary-General.

Convention

Convention has a generic and specific meaning. Generically, it is synonymous with Agreement, Charter, Covenant and Treaty, whether Bilateral or Multilateral. A Convention differs from a Declaration in that States agree to bind themselves to conform to its provisions. States bind themselves through Acceptance, Adhesion, Accession or Ratification. International Organizations tend to bind themselves through Confirmation.

Among its specific meanings, a Convention may be used to describe a formal Multilateral Instrument open for participation by the international community as a whole, or by a large number of States. In this sense it is an

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Open Treaty.

Another specific sense of Convention refers to Instruments negotiated by an International Organization, *e.g.*, the 1982 United Nations *Convention on the Law of the Sea*. This sense also embraces Instruments adopted by an organ of an International Organization, *e.g.*, the 1951 International Labour Organization *Convention concerning Equal Remuneration for Men and Women Workers for Work of Equal Value*.

Correction of Errors

If, after Authentication, signatory and Contracting Parties agree that an Instrument contains an error, it may be corrected by:

- (i) initialing the corrected text;
- (ii) by executing or exchanging an Instrument incorporating the correction; or
- (iii) by executing the corrected Instrument using the same procedure as for the original.

If there is a Depositary it communicates proposed corrections to signatory and Contracting Parties. If, after a reasonable time, no objections are raised the Depositary communicates a *proces-verbal* of rectification to the Parties and causes corrections to be effected, *i.e.*, making the corrected Instrument authentic.

Covenant

A Covenant, in contrast to an Agreement in its specific sense, is an Instrument generally dealing with peremptory norms of general international law, *i.e.*, *jus cogens*. Examples include three 1966 United Nations Covenants: the *International Covenant on Civil and Political Rights*; the *International Covenant on Economic, Social, and Cultural Rights*; and the *Optional Protocol to the Civil and Political Covenant*. Unlike the U.N.'s *Universal Declaration of Human Rights*, such Covenants require Ratification. The term does not appear in any sources used for this Lexicon.

Decision

A Decision is one of three legally binding Instruments within the European Union (EU). The other two are the Directive and Regulation. A Decision is a law that applies to a particular addressee, *e.g.*, a Member State, a legal or a natural person. This distinguishes it from Regulation and Directive which are binding on all. A Decision is an Instrument by which the Union rules on a particular matter. It can require a Member State or citizen to take or refrain from a particular action, or confer rights or impose obligations. A Decision may be adopted either by the Council, by the Council in conjunction with the European Parliament or by the Commission.

Declaration

A Declaration is alternatively:

- (i) a statement of principle, *e.g.*, why a State or International Organization became Party to an Instrument; or,
- (ii) a statement clarifying its interpretation of the meaning, scope or applicability of an Instrument or its specific provisions.

The later is an 'Interpretative Declaration'. A Declaration is not a legal Instrument like a Convention. It does not bind the Parties. Declarations are not subject to Ratification and do not require Parties to report compliance. Declarations, nonetheless, exercise moral force.

de minimis

The term derives from the Latin *de minimis non curat praetor* meaning "the chief magistrate does not concern himself with trifles" or "trivial matters are no concern of a high official". Today it refers to things unworthy of the law's attention. Accordingly a court, or similar body, will not sit in judgement of trivial transgressions of the law or provisions of an Instrument.

Denunciation

Denunciation is a formal notice by a

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Party to terminate consent to be bound by an Instrument.

Deposit

After Ratification or Accession a formal letter is prepared by each Party referring to the relevant decision, and signed by the responsible national authority. This represents formal consent by a State to be bound subject to any Reservations and/or Declarations. This is called the Instrument of Ratification or Accession.

The original document is then submitted to an agency or Depository designated in the initial Instrument, *e.g.* the Secretary-General of the UN or, if there are only a few Parties, the government of the State on whose territory the Instrument was signed. Its date of receipt is registered as the date of Ratification or Accession. Usually an Instrument becomes legally binding or “comes into force” after a specified time, *e. g.* 30 days after the Instrument of Ratification is received.

A Depository receives and transmits all notifications by States or International Organizations related to the initial Instrument, *e.g.*, Signatures, Ratifications, Acceptances, Accessions, Reservations, Declarations, *etc.* The Depository examines whether formal requirements are met, deposits them, registers the Instrument and notifies all Parties concerned about domestic and other acts relevant to the Instrument. In effect, the Depository is the guardian of the Instrument.

Derogation

Derogation derives from the Latin meaning ‘partial abrogation of a law’, *e.g.*, a Treaty. Abrogation, on the other hand, means rejecting a law in its entirety. Sometimes, however, Derogation may be used to mean abrogation as in the legal maxim: *Lex posterior derogat priori*, *i.e.* a subsequent law abolishes a previous one.

To derogate an Instrument may mean:

- (i) for a Member State to opt out of a specific provision of an Instrument;

- (ii) for a Member State to enact domestic law contrary to it;

- (iii) to impair the force or effect or timing of one or more of its provisions;

- (iv) to reduce a Member States’ financial class or organization status within an International Organization; or,

- (v) at the extreme, to abrogate membership, *e.g.*, former Member States of the European Free Trade Association derogated membership to join the European Union. States party to an Instrument must provide Notification of Derogation to the relevant Depository.

Directive

A Directive is one of three legally binding instruments within the European Union (EU). The other two are the Decision and Regulation. A Directive is a legislative act requiring Members to achieve a particular result without dictating the means to do so. Its main purpose is to align national legislation.

A Directive differs from Regulations which are self-executing and do not require implementing measures. It also differs from a Decision because it is generally addressed to all Members States. If Members fail to pass required national legislation, or if it does not adequately comply, the European Commission can initiate legal action before the European Court of Justice, or individual citizens can initiate action before national courts.

Entry into Force

An Instrument comes into force when a sufficient number of Parties, usually specified in the Instrument, consent to be bound by its terms and provisions. The Instrument then becomes part of the international legal system as well as part of the domestic legal systems of States or Rules of International Organizations. If the Instrument does not specify a date, it is generally enters into force when all negotiating States give consent.

With respect to bilateral instruments,

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entry into force may be set for a particular date or upon the day of last signature or upon exchange of Instruments of Ratification or Notification.

With respect to Multilateral Instruments, provisions may require a fixed number of Parties to consent for entry into force. Some may require additional conditions be met, *e.g.*, a certain category of States or International Organizations must be among those that consent; or provide additional time after a required number of Parties have consented or satisfied specific conditions. An Instrument may also come into force provisionally until specified conditions are met by a sufficient number of Participants.

Exchange of Notes

An Exchange of Notes is a record of Agreement similar to the private law contract. It involves the exchange of two documents so that each Party holds the one signed by the other. Usually the accepting State or International Organization repeats the text of the offering Party to record its assent. The signatories may be Ministers, diplomats or departmental heads. The Exchange of Notes is frequently used because of its speed or to avoid the process of legislative approval.

ex officio

The term derives from the Latin meaning “by right of office”, for example, holding one position by virtue of holding another. An *ex officio* member of a Union may, or may not, vote in a committee or congress depending upon the Internal Laws & Rules of a given International Organization.

ex parte

The term derives from the Latin meaning “one party only”. It has a number of meanings including:

- (i) a legal proceeding brought by one party in the absence and without representation or notice to other parties or their counsel;

- (ii) improper unilateral contact with a court or official by a party without notice to other parties or their counsel ; and,

- (iii) any proceeding that goes undefended even when notice has been given.

force majeure

The term derives from the French literally meaning “irresistible force” or “overwhelming power”. More generally it refers to an act of God or unpredictable act of nature. Thus for reasons of national security, *ordre public* or morality non-performance of some provisions of an Instrument may excuse a Party from fulfilling its obligations. It does not, however, excuse negligence or malfeasance, for example, when non-performance is due to the usual and natural consequences of external forces or where such intervening circumstances are specifically contemplated in an Instrument.

Full Powers

Full Powers refers to a document from the competent authority of a State or International Organization designating a person or persons to represent the Party for:

- (i) negotiating, adopting or authenticating the text of an Instrument;
- (ii) expressing consent to be bound by it; or
- (iii) accomplishing any other act required with respect to an Instrument;

inaudita altera parte

The term derives from the Latin meaning “not hear the other side”. It refers to taking legal action by a court or tribunal, for example, granting an injunction, without hearing from a defendant in order to deal with a situation where delay would cause damage or risk of harm to another party

in rem

The term derives from the Latin meaning “power against or about a thing,” It refers to judicial actions with reference to an

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object or property and not a person over whom the court may not have “*in personam* jurisdiction”, for example, over imports rather than the exporter resident in a foreign country.

Instrument

An Instrument is a generic term for any Agreement, Charter, Convention, Covenant, Treaty, Declaration, Protocol, *etc.* The important distinction is between a Declaration which is a moral commitment and other Instruments that are legally binding. Instruments take two forms.

(i) Bilateral

Refers to an Instrument between two Parties whether States and/or International Organizations, *e.g.*, the 1988 *Canada-American Free Trade Agreement* or the 1982 *Agreement between the WTO and WIPO*.

(ii) Multilateral

A Multilateral Instrument is one between three or more Parties - States and/or International Organizations, *e.g.*, the 1883 Paris Convention.

inter-alia

The term derives from the Latin meaning “for example” or “including”. It often precedes a list of examples covered by a general descriptive statement without restricting the scope of the general statement to include other things that were not noted in the *inter alia* list.

Internal Laws & Rules

According to the Vienna Convention on Treaties a State or International Organization Party to an Instrument may not invoke its internal law or Rules as justification for failure to perform the Instrument.

International Organization

An International Organization is an intergovernmental agency created by Member States through an Instrument such as a Charter, *e.g.*, of the Organization of American States

(OAS), or a Convention, *e.g.* the World Intellectual Property Organization (WIPO).

An International Organization is generally intended to:

(i) exercise the collective will of Member States concerning a specific matter of mutual concern, *e.g.*, inter-American relations or administration of industrial property such as the Paris Convention;

(ii) conduct its affairs according to administrative and/or judicial Rules established by the Member States either in the founding Instrument or subsequently; and,

(iii) act as Depository for the Instrument, letters of Ratification, subsequent amendments and/or Protocols as well as communicating such developments to Member States.

International Organizations are generally funded by contributions from Member States according to a schedule specified in the founding Instrument. Often the schedule recognizes classes of Member States, *e.g.*, developed or developing or by size of national GDP. Voting rights are also sometimes contingent on a Member State’s contribution relative to the total budget of the International Organization.

inter pares

The term derives from the Latin meaning “among equals”, for example, sovereign nations.

ipso facto

The term derives from Latin meaning “by the deed or fact itself”.

ipso jure

The term derives from the Latin meaning “by operation of law”. It refers to legal consequences that occur by the act of the law itself. It treats situations where when one legally significant fact occurs other relationships are automatically changed by the law.

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inter se

The term derives from the Latin meaning “between or among themselves”.

Jus cogens

Jus cogens is Latin for ‘compelling law’. As such it is a natural law concept referring to fundamental principles of international law accepted by the community of nations as peremptory norms from which no derogation is to be permitted, *e.g.*, *pacta sunt servanda* or “agreements must be kept”. Such “higher law” may not be violated because it serves the interests of the entire international community, not just the needs of individual States. In this regard, the *Vienna Convention on the Law of Treaties* states that any Treaty that conflicts with such a peremptory norm is void.

There is, however, no definitive statement by any authoritative body of what constitutes *jus cogens*. Rather such peremptory norms tend to arise out of case law as well as changing social and political attitudes. Such norms can be both affirmative as with *pacta sunt servanda* or prohibitive as with prohibitions against aggressive war, crimes against humanity, war crimes, maritime piracy, genocide, slavery and torture.

Lex causae, fori & loci

Lex causae is Latin for ‘law of the cause’. It refers to which law has precedence, when there is a conflict of laws in an action, *e.g.*, infringement of a patent granted in one State but infringed in another. There are two possibilities – *lex fori* and *lex loci*.

With respect to procedure, the applicable law will always be the law of the court (*lex fori*) hearing the case. With respect to substantive law, however, the law used to resolve the dispute may be domestic, *i.e.*, the law of the State within which a lawsuit is instituted or remedy sought, or, *lex loci*, *i.e.*, the law of the State where the matter in litigation transpired.

An example is the contrast between the

1889 Montevideo *Treaty on Literary and Artistic Property* and the 1886 Berne Convention. Unlike Berne, the Montevideo Treaty adhered to *lex loci* rather than *lex fori* meaning that the rights of an author were determined by the laws of the country of origin where the work was first published and not where the infringement took place. Another example is the 1883 *Paris Convention for the Protection of Industrial Property* which gives precedence to *lex fori* as *lex causae*.

Letters rogatory

Letters rogatory is a procedure by which a court calls upon another court for a civil process or investigation which it cannot undertake. They are the customary way or requesting assistance from a foreign country in the absence of a treaty or executive agreement. It requests the performance of an act which, if done without the sanction of the foreign court, would constitute a violation of that country's sovereignty.

Member State

A Member State is a Party to an Instrument, *e.g.*, the Paris Convention, and/or a member of an International Organization created by an Instrument, *e.g.* the United Nations, European Union or WIPO.

Memoranda of Understanding (MOU)

A Memorandum of Understanding is the least formal international Instrument. It often sets out operational arrangements for a broader framework agreement. It is also used for regulation of technical or detailed matters. It is typically in the form of a single Instrument and does not require Ratification. They are entered by States or International Organizations. The United Nations, for example, concludes MOUs with Member States to organize peacekeeping operations or UN Conferences. The UN also concludes MOUs concerning cooperation with other International Organizations.

Modification

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Modification refers to varying provisions of an Instrument between particular Parties. In relation to other Parties, the original provisions remain applicable. If the Instrument is silent on Modifications, they are allowed only if they do not affect the rights or obligations of other Parties and do not contravene the object and purpose of the Instrument.

modus vivendi

A *modus vivendi* is a provisional Instrument intended to be replaced by one of a more permanent and detailed character. It is usually informal and never requires Ratification.

mutatis mutandis

The term derives from the Latin meaning “with those things having been changed which need to be changed” or “the necessary changes having been made”. It is the logical reverse of *ceteris paribus* or “other things being equal” or “all other things remain the same.

Ne bis in idem

The term derives from the Latin meaning "not twice for the same". Thus a legal action cannot be initiated twice for the same cause of action. The concept derives from Roman Civil Law and is similar to the concept of double jeopardy in Common Law jurisdictions..

Notification

Notification is a formality through which a State or International Organization communicates facts or events of legal relevance to an Instrument. Notification may also be used to express final consent by a Party. Thus instead of an Exchange of Notes or Deposit, a Party may simply notify other Parties or a Depositary. Other internal and external acts and developments relating to an Instrument may also require Notification.

Objection

Any contracting Party may object to a

Reservation made by another Party. An Objection may be raised if a Reservation is considered incompatible with the object and purpose of the Instrument. The Objection may also preclude Entry into Force of the Instrument between objecting and reserving Parties.

ordre public

The term derives from the French meaning literally “public order”. Parties are permitted to prohibit importation of goods or registration of trademarks or designs that threaten the *ordre public*.

pacta sunt servanda

The term is derived from the Latin meaning “agreements must be kept”. It is *jus cogens*, *i.e.*, a peremptory norm of international law. According to it, all Instruments in force are binding on Parties to them who, in turn, must perform them in good faith. Thus Parties to an Instrument cannot invoke domestic law in the case of a State, or internal Rules in the case of an International Organization, as justification for a failure to perform. The only legal exception is when this norm conflicts with another *jus cogens*, *e.g.*, the prohibition against slavery, in which case the Instrument is void.

In practice, however, there are exceptions such as protection of the environment. In practice provisions may not be fully implemented. Accordingly such Instruments increasingly contain obligations to monitor compliance.

Partial Agreement

A Partial Agreement allows some Member States or International Organizations to participate in an activity in spite of the abstention of other Parties from those activities.

Party (Participant)

A Party (Participant) is a State or International Organization that ratifies or otherwise consents to be bound by an Instrument and thereby to respect and enforce its terms and

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conditions. There are three types of Participants:

(i) *Contracting Party*

A Contracting Party may be a State or International Organization. It is one that consents to be bound by an Instrument, whether or not that Instrument has entered into force. Such a State or Organization may or may not have been a Negotiating Party engaged in drafting and adopting the Instrument.

(ii) *Negotiating Party*

A Negotiating Party is a State or International Organization that takes part in the drafting and adoption of an Instrument. A Negotiating Party may or may not become a Contracting Party;

(iii) *Third Party*

A Third Party is a State or International Organization that is not party to an Instrument.

Perfidy

Derived from the Middle French, perfidy means a treacherous word or act. Article 37 of the 1977 Protocol I Additional to the 1949 Geneva Conventions on the rules of war specifically prohibits perfidy. Such acts include:

- (d) The feigning of protected status by the use of signs, emblems or uniforms of the United Nations or of neutral or other States not Parties to the conflict.

Such acts arguably include perfidious use of the distinctive marking required by the 1954 Hague Convention for the Protection of Cultural Property (Article 6, page 123 this volume).

Plenipotentiary

A person invested with fullpowers and authority by a State or International Organization in negotiating an Instrument, *e.g.*, able to sign without confirmation unlike a representative signing *Ad referendum*.
prima facie

The term derives from the Latin meaning “on the face of it” or “at first sight”. It denotes evidence that unless refuted is sufficient to prove a particular proposition or fact.

procès verbal

The term derives from the French meaning a written account of any proceeding or operation.

Protocol

A Protocol is any Instrument complementing or supplementing a pre-existing one, *e.g.*, the 2000 *Protocol on Biosafety* to the 1992 *Convention on Biodiversity*. It may add new elements or requirements. An Open Protocol places no formal obligation on Parties that ratified the initial Instrument to accept such new elements or requirements.

Provisional Application

Some Instruments contain Provisional Application clauses. Such clauses generally reflect a need to give effect to an Instrument’s obligations prior to formal Ratification, Accession or Confirmation. Provisional Application is a voluntary act by a Party consistent with its domestic legal framework in the case of a State or internal Rules in the case of an International Organization.

Provisional Application generally contemplates one of three situations:

- (i) when an Instrument has entered into force;
- (ii) when it has not entered into force; and,
- (iii) when it is provisionally entered into force.

(i) *When entered into force*

In this situation a Party undertakes to give effect to its obligations before domestic or internal procedures for Ratification, Accession or Confirmation have been completed. Provisional application, however, may be terminated at any time. In contrast, a Party that has formally consented to be bound by an

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Instrument is generally governed by rules of withdrawal contained in the Instrument itself.

(ii) *When not entered into force*

In this situation a Party notifies the Depository or other Parties directly that it will give effect to obligations specified in that Instrument provisionally even though not in force. Such application may be terminated at any time. As above, a Party that has formally consented to be bound is generally governed by rules of withdrawal contained in the Instrument itself.

Provisional application may continue even after Entry into Force until that Party formally consents to be bound by Ratification, Accession, Confirmation, *etc.* Provisional application ends if a Party notifies other Parties that it will not, in fact, ratify or otherwise become formally bound by the Instrument.

(iii) *Provisional Entry into Force*

In this situation an Instrument may permit provisional Entry into Force, if formal entry is not achieved within a given period. Provisional entry may also occur if some Parties decide to apply the Instrument as if it had entered into force. Once entered into force provisionally, however, the Instrument is binding on the Parties that agreed to bring it into force provisionally. As above, a Party that has formally consented to be bound, even provisionally before Entry into Force is generally governed by rules of withdrawal contained in the Instrument itself.

Ratification

Ratification is the formal means by which a Signature of an Instrument in the name of a State is formally confirmed. It generally involves two steps.

First, final approval must be given by the highest authority of a State, *e.g.* head of state, cabinet, parliament, senate or other legislative assembly. In effect, it is a formal decision to become Party to an Instrument in accordance with domestic legal procedures.

Second, the Government (normally the Ministry of Foreign Affairs) deposits the Instrument of Ratification with a Depository, *e.g.* the Secretary-General of the United Nations. *ratio decidendi*

The term derives from the Latin meaning “the reason for the decision”.

Recommendation

A Recommendation is a non-legally binding Instrument issued by an International Organization *e.g.* UNESCO or the Council of Europe. It is usually addressed to Member States as guidelines for national legislation or administrative practice.

Registration & 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 ... shall as soon as possible be registered with the Secretariat and published by it”. Instruments not so registered cannot be invoked before any organ of the United Nations. This provision is intended to promote public access and transparency.

Both U.N. Charter Article 102 and Article 18 of the *Covenant of the League of Nations* reflect the first of Woodrow Wilson's *Fourteen Points* “Open covenants of peace, openly arrived at, after which there shall be no private international understandings of any kind but diplomacy shall proceed always frankly and in the public view”.

Reservation

A Reservation is a unilateral statement by a Party, in written form, excluding or modifying the legal effect of specific provisions of an Instrument and its application to that Party. A Reservation must be made at the time when a Party consents to be bound by an Instrument.

res judicata

The term derives from the Latin meaning “a matter [already] judged”. The term

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is also used to preclude relitigation of cases between the same parties under different legal systems, for example under Common Law or Civil Code. In this sense it is synonymous with “preclusion.”

Resolution

An act or statement passed by majority vote or consensus of an International Organization, *e.g.* the UN or Council of Europe. Its legal validity is subject to interpretation depending on the rules of the organization.

restitutio in integrum

The term derives from the Latin meaning “restoration to original condition”. The term is also used in the European Patent Convention (EPC), as a means of redress available to an applicant or patentee who does not meet a time limit in spite of exercising “all due care required by the circumstances” (Article 122 EPC). If a request for *restitutio in integrum* is accepted, rights are re-established as if the time limit had been duly met.

Revision

Revision has the same general meaning as Amendment. Some Instruments, however, provide for Revision beyond simple Amendment. In such cases, Revision refers to an overhaul of the Instrument reflecting changed circumstances while Amendment refers only to changes in specific provisions.

Rules

Rules refer to the constituent Instruments, Decisions and Resolutions of an International Organization adopted in accordance with its founding Instrument and established practice and procedures of the Organization. Such internal Rules cannot be used to justify non-performance of obligations of an Instrument with other Parties once Confirmation of that Instrument has been granted.

Signature

Signature is the signing of an Instrument by an authorized representative of a State or International Organization. It takes three forms:

(i) *Definitive Signature*

Definitive signature is sometimes used when an Instrument does not require Ratification, Acceptance or Approval. Nonetheless, it represents consent by a State to be bound by the Instrument. Bilateral Treaties of a routine nature are often brought into force by Definitive Signature without recourse to Ratification.

(ii) *Signature Ad referendum*

Signature *Ad referendum* may be done by a representative of a State or International Organization. It signifies, however, that a State or International Organization must confirm the Signature *Ad referendum* to constitute full Signature of an Instrument.

(iii) *Signature subject to*

In most cases, Signature simply signals the intention of a Negotiating Party to proceed to Ratification, Acceptance, Approval or Confirmation. As such Signature is a preliminary endorsement of an Instrument. It is not legally binding but rather an indication that a Party will undertake careful examination of the Instrument subject to the domestic laws of a State or internal Rules of an International Organization. Signature is thus a formality, but important, because it constitutes preliminary endorsement. It also creates an obligation to refrain from acts contrary to the objectives or actions undermining the intent of the Instrument.

Single Undertaking (SU)

A SU is a set of Instruments constituting a single package permitting only a single Signature without Reservation, *e.g.* the TRIPS Agreement is one part of the WTO package. Thus to join the WTO, a State must accept all Agreements in the package.

LEXICON

Stare decisis

The term derives from the Latin meaning “to stand by things decided”. It refers to the doctrine that courts adhere to precedent on questions of law. This is the root of the Common Law tradition.

State

A State is a sovereign Nation-State recognized by its membership in the United Nations. Only States and International Organizations whose members are States can negotiate and finalize an Instrument. All other bodies corporate are ultimately subject to a State.

Succession

Succession refers to when a State responsible for international relations of a territory is replaced by another, *e.g.*, when the Ukraine succeeded the Soviet Union. Usually a newly independent State makes a notification of Succession and is then considered a Party to an Instrument from the date of Succession or date of Entry into Force, whichever is the later.

Territorial Declaration

A territorial declaration is a declaration by which a State specifies the territory or territories to which the Instrument will apply.

Treaty

A Treaty is an Instrument concluded between States and/or International Organizations 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. There are two types of Treaties: Open and Closed.

(i) Closed Treaty

A Closed Treaty is one open only to specified countries, *e.g.* those making up a particular geographical area such as the Council of Europe, the Organization of American States, the European Union, NAFTA, *etc.* An Open

Treaty is open to Participation by all interested States and International Organizations.

(ii) Open Treaty

An Open Treaty is an international Instrument that any State may sign and ratify as opposed to a Closed Treaty open only to specific countries, *e.g.* the Council of Europe, the European Union, NAFTA or the Organization of American States.

Union

A number of States joined or associated together by an Instrument to perform some common purpose or action. Examples include the Paris Convention of 1883 and the Berne Convention of 1886 which created ‘Unions’ with separate bureaux to administer the Conventions. In 1893, these two small bureaux were united to form the United International Bureaux for the Protection of Intellectual Property. Based in Berne, Switzerland, this was the predecessor of the World Intellectual Property Organization (WIPO) established by Convention in 1967. The term does not appear in any source consulted for this Lexicon.

Sources

Child Rights: The Process: From Signature to Ratification - UNICEF

European Conventions and Agreements Glossary - Council of Europe

EurLex - European Union

Glossary of Common UN Terminology – Canadian Heritage, Human Rights Division

International Law Terms, InsideJustice.com

Oxford English Dictionary

Treaty State Description, Conference on Biodiversity Bureau

UN Treaty Reference Guide

Vienna Convention on the Law of Treaties 1969

Vienna Convention on Treaties between States and International Organizations 1985

Wikipedia