



# Vienna Convention on Law of Treaties

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# Treaties for International Treaty

- Vienna Convention on the Law of Treaties 1969
  - Adopted in 1969, in force in 1980
- *Vienna Convention on Succession of States in Respect of Treaties* 1978
  - Adopted in 1978, in force in 1996
- Vienna Convention on the Law of Treaties Between States and International Organizations or between International Organizations 1986
  - Adopted in 1986, not yet in force



# Nature

- Drafted by UN International Law Commission (ILC),
- Work started in 1949 and finished in 1969.
- Codification pre-existing customary international law on treaties, with some necessary gap-filling and clarifications.
- Non-member state may still be bound by it as restatement (evidence) of customary law.



# Status

- Entry into force: 27 January 1980
  - Parties to Convention: 113
    - Signatory to Convention: 45 Parties
- India has not yet signed the Convention
  - Whether useful in interpreting Indian DTAA?
    - Not in binding nature
      - But certainly provides guidance for interpretation
      - E. g. Use of OECD Model Tax Convention & Commentary
    - Evidence of Customary Law



# Fundamental Principles

- Free consent
- Good faith
- *pacta sunt servanda* (Agreement is to be respected)
- Principles laid down in UN Charter
  - Equal rights and self-determinations of peoples
  - Sovereign equality and independence of all states
  - Non-interference in domestic affairs of states
  - Prohibition of threat or use of force
  - Universal respect for human rights



# Scope of Application

- Art.1: only applies to treaties between States;
  - Meaning of ‘State’ not clear
    - Whether Taiwan a ‘State’?
    - Whether it can be applied to treaties signed between territories as contemplated u/s. 90A?
- Art 1(2)(a): “treaty” means 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.



# Designation (title)

- treaty, agreement, convention,
- charter, protocol,
- Memoranda of Understanding,
- Modus Vivendi (temporary agreement)
- Statute, covenant, accord, pact
- exchange of notes (bilateral treaty)
- Declaration: *(joint declaration between UK and China on Question of HK, 1984)*



# Treaties under IGOs

- Article 5: The present Convention applies to any treaty
  - which is the constituent instrument of an international organization
    - *UN Charter, Agreement establishing the WTO*
  - adopted within an international organization without prejudice to any relevant rules of the organization.





# Agreements outside VCLT

- Article 3: Excluded Agreements
  - Agreements between IGOs and States
  - Agreement between IGOs
  - Oral Agreement
- Implications
  - they may still be valid and legally binding;
  - Rules in VCLT may apply to them as customary law or general legal principles;
    - If UK, USA and World Bank reached an agreement, VCLT applies to the relations between UK and USA under it.



# Non-Retroactivity

- retrospective v prospective
- Article 4: Without prejudice to the application of any rules set forth in the present Convention to which treaties would be subject under international law independently of the Convention,
  - the Convention applies only to treaties which are concluded by States after the entry into force of the present Convention with regard to such States
- Article 28: treaties bind party after they enter into force



# Who can represent a state?

- Article 7
- Person with full powers [Art.2(1)(c)]
- Person without full powers if s/he is
  - Head of state; head of government; Minister for foreign affairs [conclude a treaty]
  - Head of diplomatic mission [adopt a treaty]
  - Representative to international conference or IGO [for adoption of a treaty]



# Adoption and Authentication

- Art. 9: Adopt the text of treaty
  - By consent of all negotiating states or
  - By voting of two-thirds states present and voting
  
- Art. 10: text is established as authentic and definitive by
  - Signature, signature *ad referendum* (for further confirmation) or initialing



# Consent

- Expressed by
  - Signature (art.12)
  - Exchange of instruments (art.13)
  - Ratification (acceptance, approval, acceptance) (art.14)
  - Accession (art.15)



# Ratification

- In case of bilateral treaties
  - Exchange the requisite instruments;
- In case of multilateral treaties
  - Deposit ratification with the depositary of the treaty.
- Functions:
  - It gives states necessary time to seek required approval for the treaty on the domestic level and
  - to enact the necessary legislation to give domestic effect to that treaty.



# Accession

- A state accepts offer or opportunity to become a party to a treaty *already negotiated and signed by other states*.
- Same legal effect as ratification.
- Usually occurs after treaty has entered *into force*.
- A treaty might provide for the accession of all other states or for a limited and defined number of states.



# Use of Terms

- “negotiating State” means a State which took part in the drawing up (drafting) and adoption of the text of the treaty;
- “contracting State” means a State which has consented to be bound by the treaty, whether or not the treaty has entered into force;
- “party” means a State which has consented to be bound by the treaty and for which the treaty is in force;





# Observance (Performance)

- **Article 26 “Pacta sunt servanda”**
  - Every treaty in force is binding upon the parties to it and must be performed by them in good faith.
- **Article 27 Internal law and observance of treaties**
  - Subject to Article 46, a party may not invoke the provisions of its internal law as justification for its failure to perform a treaty.
- **Article 18: obligation not to defeat object / purpose**
  - Before treaty enter into force
  - Sign treaty in Good faith



# Interpretation of Treaty I

## *Article 31*

1. 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.
2. Context: text (including preamble and annexes):
  - any previous agreement
  - any previous instrument
3. There shall be taken into account, together with the context:
  - any subsequent agreement
  - any subsequent practice
  - any relevant rules of international law applicable between the parties.
4. Special meaning prevail over ordinary meaning



# Interpretation II

- Supplementary Means (Art.32)
  - Preparatory work / circumstance of conclusion
  - In order to confirm the meaning resulting from Art 31 or
  - To determine the meaning if meaning or result under 31 absurd or unreasonable (golden rule)
- Two or More Languages (Art.33)
  - Equally authoritative unless treaty provides otherwise
  - Unauthenticated version → authentic if treaty provides so
  - Terms presumed to have same meaning in each language, if different, best reconciles the texts



# Termination

- Art. 53: by consent
- Art. 59: by conclusion of new treaty relating to the same subject-matter
- Art. 60: termination for material breach
  - Repudiation (denunciation or withdrawal, see Art.56): [anticipatory breach]
  - Violation of provision essential to accomplish object or purpose of treaty
  - legal effect: Art.60(2): terminate / suspend



# Consequence of termination

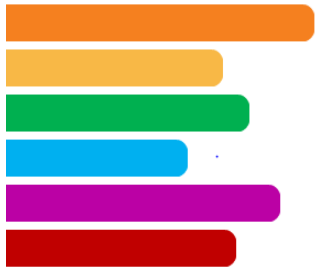
Art. 70

- Release parties from pending obligation to perform the treaty
- Not affect right, obligation or situation created before termination
  - Compared to the rescission for void treaty



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