

Introduction to Multilateral Environmental Agreements (MEAs)¹

To understand international environmental law, it is of value to have a basic understanding of general international law. International law has been developing over a long period of time, with international environmental law as a sub-sector. International environmental law is generally incorporated in Multilateral Environmental Agreements (MEAs).

Sources of International Law

Treaties

Treaties are the major mechanism for international cooperation in international relations, and the main source of international law today. The Vienna Convention on the Law of Treaties (1969) 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 term ‘treaty’ is the generic name, and there are very many terms used to indicate the same. The term ‘treaty’ encompasses, among others, the terms convention, agreement, pact, protocol, charter, statute, covenant, engagement, accord, exchange of notes, *modus vivendi*, and memorandum of understanding. As long as they fall under the above definition, they refer to international instruments that are binding under international law.

The various terms may be employed to indicate differing degrees of political or practical significance. So, the nature of the labelling used to describe an international agreement may say something about its content, although this is not always the case.

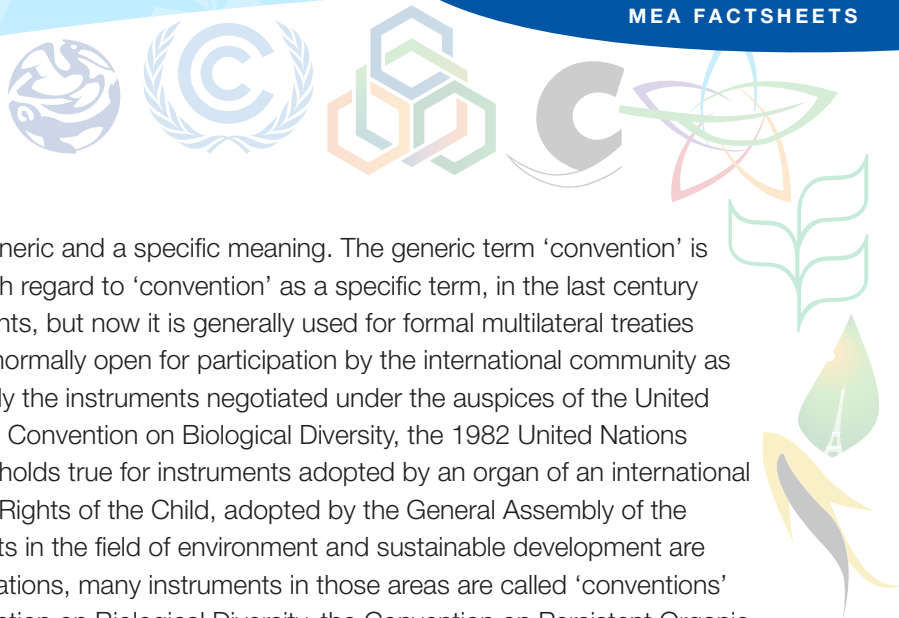
Treaty

The term ‘treaty’ can be used as a common generic term or as a particular term which indicates an instrument with certain characteristics. There are no consistent rules to determine when State practice employs the terms ‘treaty’ as a title for an international instrument. Although in the practice of certain countries, the term treaty indicates an agreement of a more solemn nature. Usually the term ‘treaty’ is reserved for matters of some gravity. Typical examples of international instruments designated as ‘treaties’ are Peace Treaties, Border Treaties, Delimitation Treaties, Extradition Treaties and Treaties of Friendship, Commerce and Cooperation. The designation ‘convention’ and ‘agreement’ appear to be more widely used today in the case of multilateral environmental instruments.

Agreement

The term ‘agreement’ can also have a generic and a specific meaning. The term ‘international agreement’ in its generic sense consequently embraces the widest range of international instruments. In the practice of certain countries, the term ‘agreement’ invariably signifies a treaty. ‘Agreement’ as a particular term usually signifies an instrument less formal than a ‘treaty’ and deals with a narrower range of subject-matter. 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, and are not subject to ratification. Typical agreements deal with matters of economic, cultural, scientific and technical cooperation, and financial matters, such as avoidance of double taxation. Especially in international economic law, the term ‘agreement’ is also used to describe broad multilateral agreements (e.g. the commodity agreements). Nowadays the majority of international instruments, and international environmental instruments, are designated as agreements.

¹ This section relies on information set out in “An Overview of International Law Working Draft” (United Nations Forum on Forests, 2004), available at <https://www.un.org/esa/forests/wp-content/uploads/2014/12/background-3.pdf>.



Convention

The term 'convention' can also have both a generic and a specific meaning. The generic term 'convention' is synonymous with the generic term 'treaty'. With regard to 'convention' as a specific term, in the last century it was regularly employed for bilateral agreements, but now it is generally used for formal multilateral treaties with a wide range 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 the United Nations are entitled conventions (e.g. the 1992 Convention on Biological Diversity, the 1982 United Nations Convention on the Law of the Sea). The same holds true for instruments adopted by an organ of an international organization (e.g. the 1989 Convention on the Rights of the Child, adopted by the General Assembly of the UN). Because so many international instruments in the field of environment and sustainable development are negotiated under the auspices of the United Nations, many instruments in those areas are called 'conventions' such as the Desertification Convention, Convention on Biological Diversity, the Convention on Persistent Organic Pollutants, among others.

Charter

The term 'charter' is used for particularly formal and solemn instruments, such as the constituent treaty of an international organisation. Well-known recent examples are the 1945 Charter of the United Nations, the 1963 Charter of the Organization of African Unity and the 1981 Banjul Charter on Human and Peoples' Rights. The 1982 World Charter for Nature is a resolution adopted by the General Assembly of the United Nations and not a treaty.

Protocol

The term 'protocol' is used for agreements less formal than those entitled 'treaty' or 'convention'. A protocol signifies an instrument that creates legally-binding obligations at international law. In most cases this term encompasses an instrument which is subsidiary to a treaty. The term is used to cover, among others, 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 additional matters such as the interpretation of particular clauses of the treaty. Ratification of the treaty will normally also involve ratification of such a protocol.
- b. An Optional Protocol to a treaty is an instrument that establishes additional rights and obligations with regard to a treaty. It is sometimes adopted on the same day but is of independent character and subject to independent ratification. Such protocols enable certain Parties to 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'. An example is formed by the Optional Protocols to the 1966 International Covenant on Civil and Political Rights, which first Optional Protocol deals with direct access for individuals to international courts and tribunals.
- c. A Protocol can be a supplementary treaty, it is in this case an instrument which contains supplementary provisions to a previous treaty, e.g. the 1967 Protocol relating to the Status of Refugees to the 1951 Convention relating to the Status of Refugees.
- d. A Protocol can be based on and further elaborate a framework convention. This framework 'umbrella convention', which sets general objectives, contains the most fundamental rules of a more general character, both procedural as well as substantive. These objectives are subsequently elaborated and incorporated by a Protocol, with specific substantive obligations, according to rules agreed upon in the basic treaty. This structure is known as the so-called 'framework-protocol approach'.

Examples are the 1985 Vienna Convention on the Ozone Layer and its 1987 Montreal Protocol with its subsequent amendments; the 1992 United Nations Framework Convention on Climate Change with its 1997 Kyoto Protocol (and Paris Agreement); and the 1992 Convention on the Protection and Use of Transboundary Watercourses and International Lakes with its 1999 Protocol on Water and Health and its 2003 Protocol on Civil Liability and Compensation for Damage Caused by the Transboundary Effects of Industrial Accidents on Transboundary Waters.



Declaration

The term 'declaration' is used to describe various international instruments. However, in most cases declarations are not 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. Examples are the 1992 Rio Declaration on Environment and Development, the 2000 United Nations Millennium Declaration and the 2002 Johannesburg Declaration on Sustainable Development. Declarations can sometimes also be treaties in the generic sense intended to be binding at international law. An example is the 1984 Joint Declaration between the United Kingdom and China on the Question of Hong Kong, which was registered as a treaty by both parties with the UN Secretariat. It is therefore necessary to establish in each individual case whether the Parties intended to create binding obligations, which can often be a difficult task. 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, as is the case with the 1948 Universal Declaration of Human Rights.

Signature

Once the text of a treaty is agreed upon, States indicate their intention to undertake measures to express their consent to be bound by the treaty. Signing the treaty usually achieves this purpose, and a State that signs a treaty is a signatory to the treaty. Signature is a voluntary act. Often major treaties are opened for signature amidst much pomp and ceremony. Once a treaty is signed, customary law, as well as the 1969 Vienna Convention, state that a State must not act contrary to the object and purpose of the particular treaty, even if it has not entered into force yet.

Ratification

The next step is the ratification of the treaty. The signatory State will have to comply with its constitutional and other domestic legal requirements in order to ratify the treaty. This act of ratification, depending on domestic legal provisions, may have to be approved by the legislature, parliament, the head of State, or similar entity. It is important to distinguish between the act of domestic ratification and the act of international ratification. Once the domestic requirements are satisfied, in order to undertake the international act of ratification the State concerned must formally inform the other Parties to the treaty of its commitment to undertake the obligations under the treaty. In the case of a multilateral treaty, this constitutes submitting a formal instrument signed by the Head of State or Government or the Foreign Minister to the depositary who then informs the other Parties. With ratification a signatory State expresses its consent to be bound by the treaty. Instead of ratification, it can also use the mechanism of acceptance or approval, depending on its national preference. A non-signatory State, which wishes to join the treaty at a later stage, usually does so by lodging an instrument of accession.

Accordingly, the adoption of the treaty text does not, by itself, create any international obligations. A State usually signs a treaty stipulating that it is subject to ratification, acceptance or approval. A treaty does not enter into force and create binding rights and obligations until the required number of States, as indicated by the treaty, express their consent to be bound by the treaty. The expression of such consent to be bound usually occurs with ratification, approval, acceptance or accession. Sometimes, depending on the treaty provisions, it is possible for treaty Parties to agree to apply a treaty provisionally until its entry into force.

Reservations

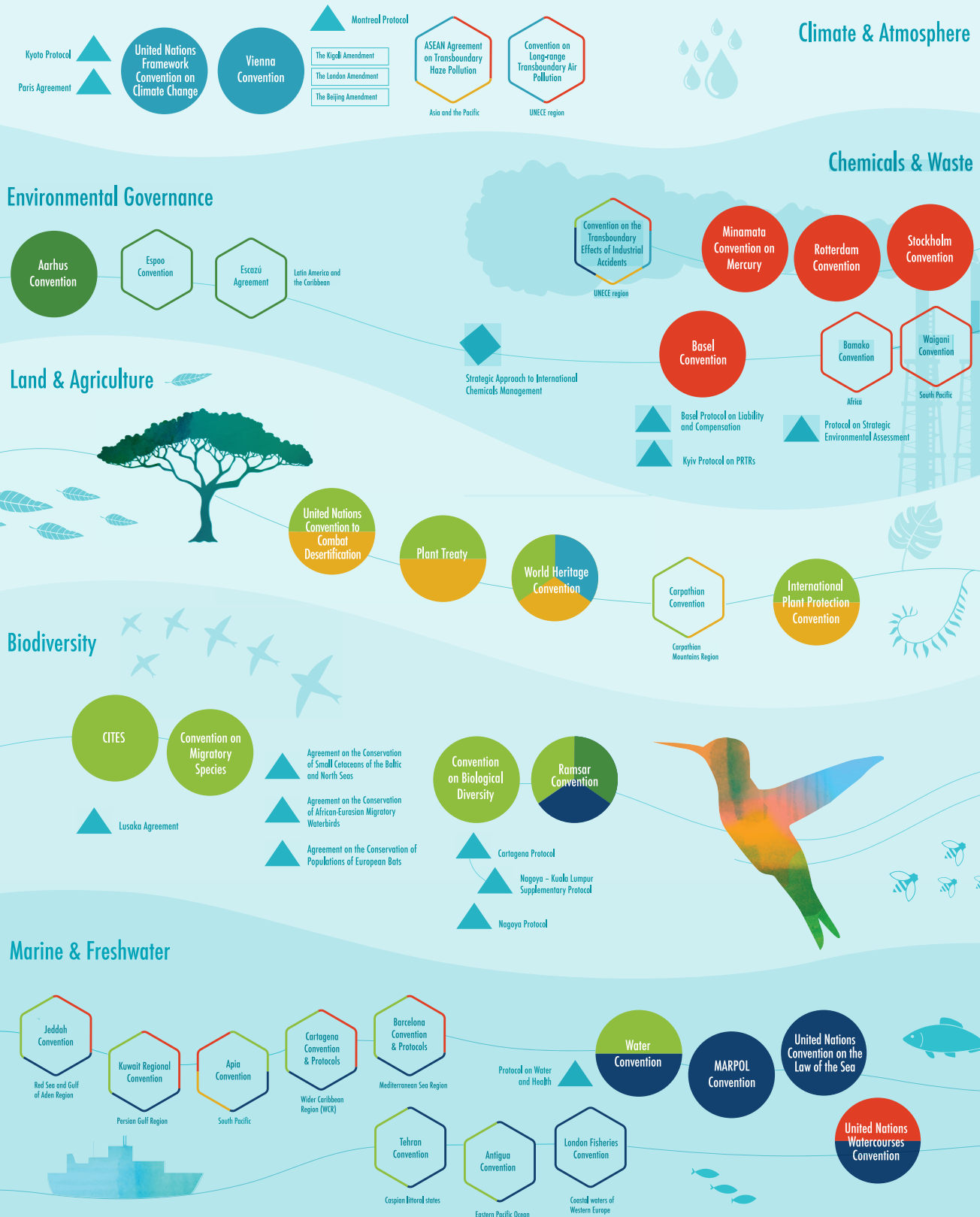
One of the mechanisms used in treaty law to facilitate agreement on the text is to leave the possibility open for a State to make a reservation on becoming party. A reservation modifies or excludes the application of a treaty provision. A reservation must be lodged at the time of signature or ratification (or acceptance, or approval, or accession). In general, reservations are permissible except when (a) they are prohibited by the treaty, (b) they are not included among expressly authorized reservations, and (c) they are otherwise incompatible with the object and purpose of the treaty.

Recently, it has become more common for treaties, including most of the recently concluded environmental treaties, to include a provision that prohibits reservations to the treaty.

Multilateral Environmental Agreements



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treaty



Global
treaty



Protocol/
Agreement



Global Policy
Framework

Amendment

