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International Experience on Treaties

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UNITED NATIONS

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Content

- Part I. Basic terminology
- Part II. Some useful provisions in Vienna Convention 1969

Three Important References

- ❑ Vienna Convention on the Law of Treaties (Vienna Convention 1969)
- ❑ Treaty Handbook, Treaty Section, Office of Legal Affairs, UN (2002)
- ❑ Final Clauses of Multilateral Treaties, Treaty Section, Office of Legal Affairs, UN (2003)

Terminology - Treaty (1)

- ❑ **Treaty:** a generic term embracing all instruments binding under international law, regardless of their formal designation, concluded between two or more international juridical persons
- ❑ Treaties may be concluded between:
 - ❑ States
 - ❑ International organizations with treaty-making capacity and States
 - ❑ International organizations with treaty-making capacity
- ❑ The application of the term treaty, in the generic sense, signifies that the parties intend to create rights and obligations enforceable under international law

Terminology - Treaty (2)

- ❑ **Treaty**, "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" (Article 2 (1) (a), Vienna Convention 1969)
 - ❑ Accordingly, conventions, agreements, protocols, and exchange of letters or notes may all constitute treaties
 - ❑ A treaty must be governed by international law and is normally in written form. Although the Vienna Convention 1969 does not apply to non-written agreements, its definition of a treaty states that the absence of writing does not affect the legal force of international agreements
 - ❑ No international rules exist as to when an international instrument should be entitled a treaty. However, usually the term treaty is employed for instruments of some gravity and solemnity
- ❑ **Bilateral treaty**, a bilateral treaty is a treaty between two parties
- ❑ **Multilateral treaty**, a multilateral treaty is a treaty between more than two parties

Terminology - Protocol

- ❑ Protocol, in the context of treaty law and practice, has the same legal characteristics as a treaty
- ❑ The term protocol is **often** used to describe agreements of a less formal nature than those entitled treaty or convention
- ❑ **Generally**, a protocol amends, supplements or clarifies a multilateral treaty. A protocol is normally open to participation by the parties to the parent agreement
- ❑ Advantage of a protocol: while it is linked to the parent agreement, it can focus on a specific aspect of that agreement in greater detail

Terminology - MOU

- ❑ Memorandum of understanding (M.O.U.) is often used to denote a less formal international instrument than a typical treaty or international agreement
- ❑ It **often** sets out operational arrangements under a framework international agreement
- ❑ It is **also** used for the regulation of technical or detailed matters
- ❑ An MOU **typically** consists of a single instrument and is entered into among States and/or international organizations
- ❑ The United Nations considers MOUs to be **binding** and registers them if submitted by a party or if the United Nations is a party

Terminology - Convention

usually used for formal multilateral treaties with a broad number of parties

usually open for participation by the international community as a whole, or by a large number of States

usually instruments negotiated under the auspices of an international organization or multilateral titled conventions

Source: Treaty Handbook

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