

Treaty

1. Vienna Convention on the Law of Treaties [VCLT], art. 2(1):

- “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”
- Elements of a treaty as defined in VCLT:
 - agreement between states **this convention only refers to treaties of states**
 - in writing
 - governed by international law
 - designation is irrelevant eg “Treaty”, “Agreement”, “Covenant”, “Convention”, “Protocol”, “Pact”
 - may be contained in one or more instruments

2. Application of VCLT

- only applies to agreements between states (art. 2)
- only applies to written treaties (art. 2)
- only applies to treaties concluded after VCLT entered into force [1980 or date state became party] (art. 4) **it denote different number of countries. If the country is part of VCLT, analyse it in the same way of the provision**
 - When does a treaty come into force?
 - Treaty enters into force on its own terms (**arts. 24-25**): usually when a specified number of states have “consented to be bound”
 - How does a state express consent to be bound?
 - signature (arts. 11, 12) not yet accept obligation
 - exchange of instruments (arts. 11, 13)
 - ratification, acceptance or approval (arts. 2, 11, 14, 16) **there could a lap between agreement and ratification; how many countries is required to ratify to come into force? Decide by the party**
 - accession (arts. 2, 11, 15, 16) or **once the treaty period has expired**
 - any other agreed method
 - VCLT itself: requires either signature + ratification, or accession; came into force after 35th ratification or accession
- BUT many provisions of VCLT reflect CIL anyway – see eg *Costa Rica v Nicaragua* (ICJ, 2009) **if the state is not a part of VCLT**
- **Consent to entry into the treaty of contracting party: Regardless ratification, the moment you sign, you signalise your consent on IL obligation is triggered by ratification process.**

3. Exclusions from VCLT: art. 3

- International agreements not within the scope of the present Convention
- The fact that the present Convention does not apply to international agreements concluded between States and other subjects of international law or between such other subjects of international law, or to international agreements not in written form, shall not affect:
 - the legal force of such agreements;
 - the application to them of any of the rules set forth in the present Convention to which they would be subject under international law independently of the Convention;
 - the application of the Convention to the relations of States as between themselves under international agreements to which other subjects of international law are also parties.
- treaties concluded before 1980 (when VCLT came into force)

4. Treaty negotiation and conclusion

- Treaty negotiation
 - bilateral treaties
 - multilateral treaties **reservation only applies here**
- **Art 6**: every state has capacity to conclude treaties
- **Art 7**: rep. of state needs full powers to adopt or authenticate text or consent to be bound [“plenipotentiary”], unless:
 - state practice or circumstances show rep. is accepted
 - rep. is head of state, Min FA, head of diplomatic mission etc
 - rep. is accredited to an international conference or IO or organ for purpose of adopting text
- **Art 8**: unauthorised rep. can be confirmed by state afterwards – otherwise ineffective, state not bound
- **Art 9**: text “adopted” by:
 - consent of all negotiating states, unless