



CENTER for INTERNATIONAL
ENVIRONMENTAL LAW

Final Provisions of International Legal Instruments

Key Considerations for the Future Plastics Treaty

In March 2022, United Nations Environment Assembly (UNEA) resolution 5/14 was adopted to develop an international legally binding instrument on plastic pollution, including in the marine environment (plastics treaty). The resolution requested the United Nations Environment Programme (UNEP) to convene an Intergovernmental Negotiating Committee (INC) to begin its work during the second half of 2022 “with the ambition of completing its work by the end of 2024.”¹

During the fourth meeting of the INC (INC-4) in Ottawa, Canada, the co-facilitators of subgroup 2.2 — which focused on implementation (Part IV), treaty governance (Part V), and final provisions (Part VI) — prepared a list of final provisions to be included in a compiled “revised zero draft” (hereafter the “Compilation Draft”) at the request of the subgroup.² While similar to the list of final provisions in treaties prepared by the Secretariat for INC-1,³ these provisions have not been discussed by INC members during an INC meeting. With one remaining scheduled meeting of the INC (INC-5 in Busan, Republic of Korea, in November 2024), this brief aims to highlight key final provisions that determine the adaptability and effectiveness of the treaty over time, such as amendments to the treaty; the adoption, amendment, and adjustment of annexes; entry into force; and reservations. Additionally, while protocols and adjustments are not included in the Compilation Draft, such agreements and procedures are examined in the context of past instruments, as these mechanisms could still be relevant in the final stages of negotiation. Finally, given that some INC members may be considering a framework or hybrid treaty⁴ due, at least in part, to the short amount of scheduled negotiating time remaining, it is

1. UN Environmental Assembly (UNEA), Resolution 5/14, End Plastic Pollution: Towards an International Legally Binding Instrument, UNEP/EA.5/Res.14 (March 2, 2022), undocs.org/UNEP/EA.5/Res.14.

2. UN Environment Programme (UNEP), Compilation of Draft Text of the International Legally Binding Instrument on Plastic Pollution, including in the Marine Environment (Advance version) (“Compilation Draft”), UNEP/PP/INC.5/4, n. 60 (July 1, 2024).

3. UNEP, Description of Standard Articles on Final Provisions that are Typically Included in Multilateral Environmental Agreements, UNEP/PP/INC.1/8 (September 8, 2022), undocs.org/UNEP/PP/INC.1/8.

4. For a discussion of different treaty structures and possible implications for the plastics treaty, see CIEL, Structures of International Legal Instruments: Key Considerations for the Future Plastics Treaty (CIEL, September 2024).

worth considering whether the adoption and amendment of protocols should be included in the final provisions of the plastics treaty.

Amendments to the Instrument

Amendments to a treaty allow for adaptation of the treaty over time but are generally not quick or easy to negotiate, and entry into force can take many years. The rationale is that to amend the treaty text, similar negotiation, adoption, and ratification provisions should be required for the amendment to enter into force as occurred for the original treaty text. As a result, treaty amendments to multilateral environmental agreements (MEAs) are relatively infrequent, in contrast to amendments to annexes that occur more often.

The treaty text of the following MEAs⁵ has not been amended:

- Convention on Biological Diversity (CBD)
- Minamata Convention
- Rotterdam Convention
- Paris Agreement
- Stockholm Convention
- UN Framework Convention on Climate Change (UNFCCC)
- UN Convention to Combat Desertification (UNCCD)
- Vienna Convention for Protection of the Ozone Layer⁶

MEA treaties and protocols that have been amended include:

- Basel Convention
- Convention on International Trade in Wild Species of Fauna and Flora (CITES)
- Kyoto Protocol
- Montreal Protocol
- Ramsar Convention

The Basel Convention,⁷ Kyoto Protocol,⁸ and Ramsar Convention⁹ have each been amended once, and amendment adoption to entry into force ranged from just under seven to more than twenty-four years. CITES is over fifty years old, and yet the treaty text has

5. Throughout this brief, MEAs are used in lists as non-exhaustive examples.

6. The Russian Federation did propose a treaty amendment in 2019, which was withdrawn following some discussion at the 9th COP to the Stockholm Convention. UNEP, Report of the Conference of the Parties to the Stockholm Convention on Persistent Organic Pollutants on the Work of its Ninth Meeting, UNEP/POPS/COP.9/30, para. 144 (June 27, 2019), undocs.org/UNEP/POPS/COP.9/30.

7. "Status of Ratifications: Ban Amendment," Basel Convention, accessed September 20, 2024, <https://www.basel.int/Countries/StatusofRatifications/BanAmendment/tabid/1344/Default.aspx>.

8. "What is the Kyoto Protocol?," UNFCCC, accessed September 20, 2024, https://unfccc.int/kyoto_protocol.

9. Convention on Wetlands of International Importance Especially as Waterfowl Habitat (Ramsar Convention), The Regina Amendments to the Convention on Wetlands (1987), https://www.ramsar.org/sites/default/files/documents/library/regina_amendments_e.pdf.

only been amended twice — once to create a Secretariat¹⁰ and the second time to allow regional economic integration organizations such as the European Union to become Members.¹¹ The first amendment took more than seven years from adoption to entry into force, and the second took over thirty years to enter into force. The Montreal Protocol is unique in having been amended and adjusted many times, as well as in terms of the breadth of the amendments and the relative speed with which they have entered into force.¹²

Although the 1969 Vienna Convention on the Law of Treaties (VCLT) provides a basic amendment procedure for treaties,¹³ MEAs generally include specific amendment procedures for each treaty.¹⁴ Treaty amendment is generally a two-step process:

The COP adopts the amendment.



The number of Parties to reach the proportion required for entry into force must ratify the amendment.

Adoption of a Treaty Amendment

For the first step of COP adoption of a treaty amendment, the Compilation Draft text presents two bracketed options: either a two-thirds or three-quarters majority vote, if consensus on the adoption of the amendment cannot be reached.¹⁵ It is worth considering voting thresholds for amendment from other conventions,¹⁶ in addition to those cited in the Compilation Draft.¹⁷ Notably, the standard majority for amendment at an “international conference” under the VCLT is two-thirds. Table 1 outlines the agreements requiring a two-thirds¹⁸ and three-fourths majority for amendments, respectively.

10. “Bonn Amendment to the Text of the Convention,” CITES, accessed September 21, 2024, <https://cites.org/eng/disc/bonn.php>.

11. “Gaborone Amendment to the Text of the Convention,” CITES, accessed September 21, 2024, <https://cites.org/eng/disc/gaborone.php>.

12. “The Montreal Protocol on Substances that Deplete the Ozone Layer, Amendments,” Ozone Secretariat, UNEP, accessed September 21, 2024, <https://ozone.unep.org/treaties/montreal-protocol/amendments>; “Adjustments to the Montreal Protocol,” Ozone Secretariat, UNEP, accessed September 21, 2024, <https://ozone.unep.org/treaties/montreal-protocol/adjustments-montreal-protocol>.

13. Louis Bélanger and Jean-Frédéric Morin, “Treaty Amendment Procedures: A Typology from a Survey of Multilateral Environmental Agreements,” *Leiden Journal of International Law* 37, no. 1 (March 2024): 64, <https://doi.org/10.1017/S0922156523000341>.

14. Treaties with specific procedures have been amended on average 1.42 times, but treaties relying on VCLT procedures have been amended only an average of 0.10 times. Bélanger and Morin, “Treaty Amendment Procedures,” 68.

15. Compilation Draft, Part VI.2(3).

16. Tables 1 (page 74), 2 (page 77), and 3 (page 80) in Bélanger and Morin, “Treaty Amendment Procedures” provide a good overview of treaty amendment provision structure commonality based on hundreds of MEAs.

17. See Compilation Draft, footnotes 66, 67.

18. Vienna Convention on the Law of Treaties (VCLT), arts. 9(2), 39, May 23, 1969, 1155 UNTS 331. Requiring unanimity for amendments and other decisions may result in deadlock and an agreement that cannot meet its stated goals. Allowing majority decisions involves reputation costs for dissenting Parties. Bélanger and Morin, “Treaty Amendment Procedures,” 72.

Table 1: Majority Thresholds for Amendment Adoption

Two-Thirds Majority for Amendment	Three-Fourths Majority for Amendment
<ul style="list-style-type: none"> • Bamako Convention¹⁹ • Bonn Convention on Conservation of Migratory Species (CMS)²⁰ • CBD²¹ • CCD²² • CITES²³ • International Convention for the Prevention of Pollution from Ships (MARPOL)²⁴ • United Nations Convention on the Law of the Sea on the Conservation and Sustainable Use of Marine Biological Diversity of Areas beyond National Jurisdiction (BBNJ)²⁵ • Montreal Protocol²⁶ • Tropical Timber Agreement²⁷ 	<ul style="list-style-type: none"> • Barcelona Convention²⁸ • Basel Convention²⁹ • Minamata Convention³⁰ • Rotterdam Convention³¹ • Stockholm Convention³² • UNFCCC³³ • Vienna Convention³⁴

19. Bamako Convention on the Ban of the Import into Africa and the Control of Transboundary Movement and Management of Hazardous Wastes Within Africa (Bamako Convention), art. 17(3), January 30, 1991, 2101 UNTS 177.

20. Bonn Convention on the Conservation of Migratory Species of Wild Animals (CMS), art. X(4), June 23, 1979, 1651 UNTS 333.

21. Convention on Biological Diversity (CBD), art. 29(3), December 29, 1993, 1760 UNTS 79.

22. United Nations Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa (CCD), art. 30(3), December 26, 1996, 1954 UNTS 3.

23. Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), art. XVII(1), July 1, 1975, 993 UNTS 243.

24. Protocol of 1978 Relating to the International Convention for the Prevention of Pollution from Ships, 1973 (MARPOL), arts. 16(2)(d), 16(3)(b), February 17, 1978, 1340 UNTS 61.

25. Agreement under the United Nations Convention on the Law of the Sea on the Conservation and Sustainable Use of Marine Biological Diversity of Areas beyond National Jurisdiction (BBNJ), art. 23(2), June 19, 2023, A/CONF.232/2023/4, undocs.org/A/CONF.232/2023/4.

26. Vienna Convention for the Protection of the Ozone Layer (Vienna Convention), art. 9(4), March 22, 1985, 1513 UNTS 293.

27. International Tropical Timber Agreement, 2006, arts. 2(8), 40(1), January 27, 2006, 2797 UNTS 75.

28. Convention for the Protection of the Mediterranean Sea Against Pollution (Barcelona Convention), February 16, 1976, 1102 UNTS 27, art. 16(3) (art. 22(3) of revised Convention).

29. Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (Basel Convention), art. 17(3). March 22, 1989, 1673 UNTS 57. Protocols under the Basel Convention, however, may be amended by a two-thirds majority. Basel Convention, art. 17(4).

30. Minamata Convention on Mercury (Minamata Convention), art. 26(3), October 10, 2013, 3202 UNTS.

31. Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (Rotterdam Convention), art. 21(3), September 10, 1998, 2244 UNTS 337.

32. Stockholm Convention on Persistent Organic Pollutants (Stockholm Convention), art. 21(3). May 22, 2001, 2256 UNTS 119.

33. UNFCCC, May 9, 1992, 1771 UNTS 107, art. 15(3).

34. Vienna Convention, art. 9(3).

Ratification of a Treaty Amendment

In the second stage, the proportion of Parties required to ratify the treaty amendment for it to enter into force, the suggested text included in the Compilation Draft is **three-fourths of the Parties that were Parties to the agreement at the time of adoption of the amendment**. While this is similar to ratification requirements for treaty amendments in other conventions,³⁵ Table 2 breaks down treaties by whether they require ratification by two-thirds or three-fourths of the Parties for entry into force.

Table 2: Majority Thresholds for Amendment Ratification

Two-Thirds of Parties	Three-Fourths of Parties
<ul style="list-style-type: none"> • Bamako Convention³⁶ • BBNJ³⁷ • CBD³⁸ • CCD³⁹ • CITES⁴⁰ • CMS⁴¹ • International Treaty on Plant Genetic Resources⁴² • Montreal Protocol⁴³ • Tropical Timber Agreement (two-thirds represents seventy-five percent of voting power)⁴⁴ 	<ul style="list-style-type: none"> • Barcelona Convention⁴⁵ • Basel Convention⁴⁶ • Minamata Convention⁴⁷ • Rotterdam Convention⁴⁸ • Stockholm Convention⁴⁹ • UNFCCC⁵⁰ • Vienna Convention⁵¹

35. In many treaties, amendments only go into force for Parties after they accept/ratify the amendment or fail to object, depending on the treaty's own provisions. Bélanger and Morin, "Treaty Amendment Procedures," 63.

36. Bamako Convention, art. 17(5).

37. BBNJ, art. 72(3).

38. CBD, art. 29(4).

39. CCD, art. 30(4).

40. CITES, art. XVII(3).

41. CMS, art. X(5).

42. International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA), art. 23(4), November 3, 2001, 2400 UNTS 303. ITPGRFA is an example of a "Soft Veto" amendment structure, requiring consensus to adopt an amendment but not consensus to enter force. Soft Veto structures may encourage empty promises, where a State agrees to an amendment to avoid diplomatic costs but fails to ratify. Bélanger and Morin, "Treaty Amendment Procedures," 76-78.

43. Vienna Convention, art. 9(5).

44. Tropical Timber Agreement, 2006, art. 40(3). The Tropical Timber Agreement is more complicated than some other agreements, giving Parties multiple votes and splitting Parties into two blocs, producers, and consumers. The agreement is one of few examples of an MEA with a "Hard Majority" approach to amendments, where a majority may adopt an amendment by vote, then cause the amendment to enter force by accepting or ratifying it, and any Party failing to accept must accept or cease to be a Party. Bélanger and Morin, "Treaty Amendment Procedures," 79.

45. Barcelona Convention, art. 22(4) (in current amended Convention).

46. Basel Convention, art. 17(5). The three-fourths majority is based on the number of Parties at the time of adoption of the amendment. UNEP, Decision BC-10/3 'Indonesian-Swiss country-led initiative to improve the effectiveness of the Basel Convention,' UNEP/CHW.10/28, (Nov. 1, 2011), section A, para. 2, undocs.org/UNEP/CHW.10/28. For protocols under the Basel Convention two-thirds of Parties to the Protocol are required, unless otherwise specified in the Protocol.

47. Minamata Convention, art. 26(5).

48. Rotterdam Convention, art. 21(5).

49. Stockholm Convention, art. 21(5).

50. UNFCCC, art. 15(4). The UNFCCC is an example of a "soft majority" amendment structure, where a majority may both adopt an amendment and bring it into force, but a Party may still evade the obligations of the amendment by not ratifying it. Bélanger and Morin, "Treaty Amendment Procedures," 78.

51. Vienna Convention, art. 9(5).

If a treaty does not specify when an amendment enters into force, then the VCLT provision states that it is either after ratification by all Parties or at the same level of ratification as required by the initial treaty.⁵² Although the proportions of Parties required for adoption and ratification of treaty amendments are generally the same within each treaty, on the rare occasions that a treaty amendment is adopted, ratification typically takes many years before the amendment can enter into force.

Annexes: Adoption and Amendment

As noted previously, amendments to annexes are more common and occur more frequently than treaty text amendments. They are a fixture and part of the basic operation of substantive treaties.⁵³ Amendments to annexes are varied and include:

- The addition and removal of items, such as substances, products, or species
- The modification of dates and timelines
- Changes in guidance documents

Annex amendments generally only require one step for entry into force rather than two for treaty amendments. Once the amendment to the annex is adopted by the COP, under MEAs, it enters into force automatically within a set timeframe specified in the treaty. Parties not wishing to be bound by the amendment to the annex can opt out through a procedure set out in the treaty text.

The CBD, UNCCD, and Vienna Convention for Protection of the Ozone Layer have not amended their annexes. The lack of annex amendments in these cases is logical because CBD's annexes focus on identification and monitoring, arbitration, and conciliation.⁵⁴ The UNCCD's annexes are general approaches for implementation for each of the regions affected by desertification. The Vienna Convention framework is supported by its implementing instrument, the Montreal Protocol, whose annexes have been amended several times.⁵⁵

However, as shown in Table 3, there have been many amendments to treaties whose annexes include lists that include covered substances, products, or species.

52. VCLT, art. 24(2). The VCLT default approach of requiring consensus to adopt and universal ratification to enter force can be described as a *Hard Veto* procedure; these procedures provide high state control but little adaptability and no flexibility (i.e., ability to contain Parties operating under different regimes). Bélanger and Morin, "Treaty Amendment Procedures," 76.

53. For a discussion of different treaty structures and possible implications for the plastics treaty, see CIEL, *Structure and Elements of International Legal Instruments: Key Considerations for the Future Plastics Treaty* (September 2024).

54. CBD, Annexes I, II – Part 1, and II – Part 2.

55. "Adjustments to the Montreal Protocol," Ozone Secretariat, UNEP, accessed September 21, 2024, <https://ozone.unep.org/treaties/montreal-protocol/adjustments-montreal-protocol>.

Table 3: Amendments to Treaties with Annexes of Lists of Covered Substances, Products, or Species

Convention	Amendments
Basel Convention	Plastic Waste Amendments to Annexes II, VIII, and IX ⁵⁶ and the E-Waste Amendments to Annexes II, VIII, and IX, the latter of which will enter into force in 2025 ⁵⁷
CITES	Appendices I and II have been amended at every single COP, adding tens of thousands of species ⁵⁸
CMS	Each COP has amended appendices to add migratory species, ⁵⁹ with nearly 1,200 currently included ⁶⁰
Minamata Convention	Two amending decisions of annexes A and B ⁶¹
Stockholm Convention	Annexes A–C have been amended at every COP since the fourth and now list twenty-two additional substances as POPs ⁶²

Although it is a framework convention, the UNFCCC has amended Annex I three times⁶³ and Annex II once.⁶⁴ As these annexes include different sets of States, with those listed in Annex II responsible for making financial contributions for adaptation and mitigation in developing countries,⁶⁵ the amendments have added or removed States from the respective annexes based on changes in circumstances.⁶⁶

Although adopting new annexes generally follows the same procedures as those for annex amendments, they occur less frequently than amendments to annexes. The primary reason is that it is less common for an entirely new annex to be necessary. If it is, Parties

56. “Basel Convention Plastic Waste Amendments,” Basel Convention, accessed September 21, 2024, <https://www.basel.int/Implementation/Plasticwaste/Amendments/Overview/tabid/8426/Default.aspx>.

57. “Basel Convention E-waste Amendments,” Basel Convention, accessed September 21, 2024, <https://www.basel.int/Implementation/Ewaste/EwasteAmendments/Overview/tabid/9266/Default.aspx>.

58. “The CITES Species,” CITES, accessed September 21, 2024, <https://cites.org/eng/disc/species.php>.

59. UNEP, Report of the First Extraordinary Meeting of the COP to the Convention on the Conservation of Migratory Species of Wild Animals, UNEP/CMS/ExCOPI/Doc.6, (November 28, 2023). Only the online, extraordinary meeting of the COP to approve a budget due to the delay of COP-14 because of COVID-19 did not amend the appendices.

60. “Landmark UN Report Reveals Shocking State of Wildlife: The World’s Migratory Species of Animals Are in Decline, and the Global Extinction Risk Is Increasing,” CMS, February 12, 2024, <https://www.cms.int/en/news/press-release-landmark-report-state-world-migratory-species>.

61. UNEP, Minamata Convention on Mercury Report of the Conference of the Parties to the Minamata Convention on Mercury on the Work of its Fourth Meeting (in-person segment) (Bali, March 21–25, 2022), UNEP/MC/COP.4/28/Add.1, (April 8, 2022), decision MC-4/3, undocs.org/UNEP/MC/COP.4/28/Add.1; Decisions Adopted by the Conference of the Parties to the Minamata Convention on Mercury at its Fifth Meeting (Geneva, October 30–November 3, 2023), UNEP/MC/COP.5/25/Add.1, (November 24, 2023), decision MC-5/4, undocs.org/UNEP/MC/COP.5/25/Add.1.

62. “The New POPs under the Stockholm Convention,” Stockholm Convention, accessed September 21, 2024, <https://chm.pops.int/TheConvention/ThePOPs/TheNewPOPs/tabid/2511/Default.aspx>. Annex amendments began at the fourth COP in May 2009 (decisions SC-4/10-18) the most recent amendments occurred at the eleventh COP in May 2023 (decisions SC-11/9-11).

63. UNFCCC, Report of the COP on its Third Session (Kyoto, December 1–11, 1997), Part Two: Action Taken by the COP at its Third Session, FCCC/CP/1997/7/Add.1 (March 18, 1998), decision 4/CP.3, undocs.org/FCCC/CP/1997/7/Add.1; Report of the COP on its Fifteenth Session (Copenhagen, December 7–19, 2009), Part Two: Action Taken by the Conference of the Parties at its Fifteenth Session, FCCC/CP/2009/11/Add.1, (March 30, 2010), decision 3/CP.15, undocs.org/FCCC/CP/2009/11/Add.1; Report of the COP on its Seventeenth Session (Durban, November 28–December 11, 2011), Part Two: Action taken by the Conference of the Parties at its Seventeenth Session, FCCC/CP/2011/9/Add.2, (March 15, 2012), decision 10/CP.17, undocs.org/FCCC/CP/2011/9/Add.2.

64. UNFCCC, Report of the COP on its Seventh Session (Marrakesh, October 29–November 10, 2001), Part Two: Action Taken by the Conference of the Parties, FCCC/CP/2001/13/Add.4 (January 21, 2002), decision 26/CP.7, undocs.org/FCCC/CP/2001/13/Add.4.

65. UNFCCC, art. 4(2).

66. “Proposals to Amend the Lists in Annexes I and II of the Convention,” UNFCCC, accessed September 20, 2024, <https://unfccc.int/process-and-meetings/the-convention/history-of-the-convention/proposals-to-amend-the-lists-in-annexes-i-and-ii-of-the-convention>.

may endeavor to find another way to achieve the same ends, for example, through COP guidance, rather than negotiating a new annex. Furthermore, new annexes are often limited to procedural, scientific, technical, or administrative matters, as stated in the Compilation Draft. Additionally, while new annexes can implement or support the implementation of treaty provisions or modify the lists in annexes to which existing obligations in the treaty apply, they cannot alter the obligations within the treaty.

To date, new annexes have not been adopted under the Basel Convention, CBD, Minamata Convention, Stockholm Convention, Vienna Convention, or UNFCCC. After accession by States from this region, the UNCCD adopted one new annex on regional implementation for Central and Eastern Europe.⁶⁷ The Rotterdam Convention has adopted two new annexes, the first on the arbitration and conciliation procedures for dispute settlement and the second on procedures and mechanisms on compliance.⁶⁸ At the last COP, the attempt to adopt a new annex fell short by just seven votes.⁶⁹ The Montreal Protocol is again the exception, with the addition of multiple annexes (B–F) to the agreement over time. All annexes list controlled substances, except for Annex D, which is a list of products containing the controlled substances in Annex A.⁷⁰

To amend existing annexes or adopt new ones, the Compilation Draft cites the same first step as that required for treaty amendment: adoption by consensus or, if consensus cannot be reached, a bracketed two-thirds or three-fourths majority vote.⁷¹ For the second stage, the annex amendment or new annex will automatically enter into force one year after communication of adoption for all Parties that did not submit a notification that they are unable to accept it.⁷² Table 4 outlines treaties that require either a two-thirds or three-fourths majority vote to amend annexes.

67. UNCCD, Report of the COP on its Fourth Session (Bonn, December 11–22, 2000), ICCD/COP(4)/11/Add.1, (January 25, 2001), decision 7/COP.4, [undocs.org/ICCD/COP\(4\)/11/Add.1](https://undocs.org/ICCD/COP(4)/11/Add.1).

68. UNEP, FAO, Report of the COP to the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade on the Work of Its First Meeting, UNEP/FAO/RC/COP.1/33, (October 22, 2004), decision RC-1/11, undocs.org/UNEP/FAO/RC/COP.1/33; UNEP, FAO, Report of the COP to the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade on the work of its Ninth Meeting, UNEP/FAO/RC/COP.9/23*, (June 27, 2019), decision RC-9/7, undocs.org/UNEP/FAO/RC/COP.9/23.

69. UNEP, FAO, Report of the COP to the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade on the Work of its Eleventh Meeting, UNEP/FAO/RC/COP.11/25 (August 28, 2023), para. 152, undocs.org/UNEP/FAO/RC/COP.11/25.

70. “The Montreal Protocol on Substances that Deplete the Ozone Layer,” Ozone Secretariat, UNEP, accessed September 20, 2024, <https://ozone.unep.org/treaties/montreal-protocol/montreal-protocol-substances-deplete-ozone-layer>.

71. Compilation Draft, Part VI.3(3)(a), Part VI.3(4).

72. Bamako Convention, arts. 18(2)(a), 17(3).

Table 4: Majority Thresholds to Amend Annexes

Two-Thirds Majority	Three-Fourths Majority
<ul style="list-style-type: none">• Bamako Convention⁷³• BBNJ⁷⁴• CBD⁷⁵• CCD (additional procedures for amendments to certain annexes)⁷⁶• CITES (amending Appendices I and II)⁷⁷• CMS⁷⁸	<ul style="list-style-type: none">• Stockholm Convention (for new annexes and amending Annexes A–C)⁷⁹• Rotterdam Convention (except Annex III)⁸⁰• Basel Convention⁸¹• Barcelona Convention (without the consensus expectation)⁸²• UNFCCC⁸³• Vienna Convention⁸⁴• Minamata Convention⁸⁵

Consensus for Amendments to Specific Annexes

Notably, for amendments to specific Annexes, **both the Stockholm and Rotterdam Conventions require consensus**, the former for amending Annexes D–F⁸⁶ and the latter for Annex III.⁸⁷ Annex III of the Rotterdam Convention is for substances requiring the prior informed consent (PIC) procedure. As a result of the consensus requirement, a small number of States have been able to block the addition of recommended substances over the course of many years despite recommendations by the Convention’s own scientific body.⁸⁸ In 2022, Parties proposed a new procedure to create a new annex where chemicals could be added by a three-fourths majority, which would only be binding on those Parties that chose to ratify it to circumvent the Annex III consensus requirement.⁸⁹ Ultimately, adopting the new annex fell short of the required three-quarters majority by just seven votes.⁹⁰

73. Bamako Convention, arts. 18(2)(a), 17(3).

74. BBNJ, arts. 74(2), 72, 47(5).

75. CBD, arts. 30(2)(a), 29(3).

76. CCD, art. 31(1), 30(3).

77. CITES, art. XV(1)(b).

78. CMS, art. XI(4).

79. Stockholm Convention, arts. 22(3)(a), 22(4), 21(3).

80. Rotterdam Convention, arts. 22(3)(a), 22(4), 21(3).

81. Basel Convention, arts. 18(2)(a), 17(3).

82. Barcelona Convention, art. 23(2)(ii) (as amended).

83. UNFCCC, arts. 16(2), 15(3).

84. Vienna Convention, arts. 10(2)(a), 10(3), 9(3).

85. Minamata Convention, arts. 27(3)(a), 26(3).

86. Stockholm Convention, art. 22(5)(b).

87. Rotterdam Convention, art. 22(5)(b).

88. Rotterdam Convention, art. 22(5); Annex III; “Chrysotile Asbestos,” Rotterdam Convention, accessed September 20, 2024, <https://www.pic.int/TheConvention/Chemicals/RecommendedtoCOP/Chrysotileasbestos/tabid/1186/language/en-US/Default.aspx>.

89. UNEP, FAO, Prior Informed Consent Procedure, para. 134.

90. UNEP, FAO, Prior Informed Consent Procedure, para. 152.

Additional annexes and amendments to annexes generally enter into force for all Parties that have not notified the depositary of non-acceptance⁹¹ by the deadline set in the treaty. Table 5 organizes treaties according to their timeframes for entry into force following adoption.

Table 5: Timeframes for Entry into Force of Annexes and Amendments

Ninety Days from Adoption	Six Months from Adoption	180 Days from the Close of the Meeting
<ul style="list-style-type: none"> • Vienna Convention⁹² • CITES⁹³ • CMS⁹⁴ 	<ul style="list-style-type: none"> • Basel Convention⁹⁵ • UNFCCC⁹⁶ • CCD⁹⁷ 	<ul style="list-style-type: none"> • BBNJ⁹⁸

Treaties for which the additional annex or annex amendment enters into force one year after adoption — as proposed in the Compilation Draft include CBD⁹⁹ and the Minamata,¹⁰⁰ Rotterdam,¹⁰¹ and Stockholm Conventions (new and amending A–C).¹⁰² Finally, some treaties state that the amendment to the annex or new annex enters force on the date specified in the adopting decision, including the Barcelona (except amendments to the Annex on Arbitration)¹⁰³ and Stockholm Conventions (amending D–F).¹⁰⁴

Adjustments

Adjustments are a form of amendment, generally to scientific and technical annexes related to elements such as percentages, amounts, and timeframes. For example, the Montreal Protocol allows for adjustments to annexes with the approval of a two-thirds

91. Bélanger and Morin, “Treaty Amendment Procedures,” 64. Many amendment procedures in MEAs, for annexes and the text of the treaty itself, provide an “out” for Parties opposing modifications by allowing non-acceptance or only applying the amendment to those Parties that have actively accepted it.

92. Vienna Convention, art. 9(5).

93. CITES, art. XV(1)(c). Parties may make a reservation with respect to the amendment within 90 days of its adoption to be treated as a non-party to the Convention with respect to the species concerned. CITES, art. XV(3).

94. CMS, art. XI(5).

95. Basel Convention, art. 18(2)(c).

96. UNFCCC, art. 16(3).

97. CCD, art. 31(2).

98. BBNJ, art. 74(3)(b).

99. CBD, art. 30(2)(c).

100. Minamata Convention, art. 27(3)(c). Art. 30(5) of the Minamata Convention, however, allows States to declare upon ratification of the treaty that amendments to annexes require ratification for them to apply to that Party.

101. Rotterdam Convention, art. 22(3)(c).

102. Stockholm Convention, art. 22(3)–(c5). Because Parties may evade newly adopted obligations under the Stockholm Convention by notifying the Secretariat of non-acceptance, many Parties are not subject to substances that have been added to Annexes A–C. Australia, for example, has not accepted any of the 20 substances added since the Convention’s adoption. Bélanger and Morin, “Treaty Amendment Procedures,” 63.

103. Barcelona Convention, art. 23(2)(vi), (iv) (as amended).

104. Stockholm Convention, art. 22(5)(c).

majority vote, and then these automatically enter into force for all Parties.¹⁰⁵ The Montreal Protocol does not provide an opt-out provision for adjustments.¹⁰⁶ Other agreements, such as the Sulfur Protocol under the Convention on Long-range Transboundary Air Pollution,¹⁰⁷ require adjustments to be adopted by consensus before they automatically enter into force for all Parties and also do not include the opt-out provision available under annex amendments.

The Compilation Draft does not currently include any text on adjustments. Still, the INC could include adjustment procedures for certain elements of annexes in final provisions or a relevant article in Part II. The Montreal Protocol has effectively used adjustments adopted at seven different Meetings of the Parties to transition phasedowns to phaseouts and accelerate phaseout schedules of already-listed substances.¹⁰⁸

Protocols

Protocols are agreements developed under the umbrella of a framework or hybrid convention to provide concrete and specific obligations to the treaty's general objectives.¹⁰⁹ Well-known examples of protocols include both the Montreal Protocol and the Kyoto Protocol. The former is seen as one of the most successful international agreements and succeeded in reducing ozone-depleting substances, while the latter did not reduce global emissions, although it did meet the goals of the Protocol¹¹⁰ and has essentially been replaced by the Paris Agreement. Protocols can also be integral to the functioning of the treaty, as under the Barcelona Convention, which requires any Party seeking to become a Party to the Convention to also become a Party to at least one of the Protocols.¹¹¹

While the option to develop protocols can add flexibility to a convention, it can also cause significant delays in the development and entry into force of binding obligations. New protocols often take many years of negotiations and then more years for ratification and eventual entry into force, requiring Parties' significant investment of time and resources. For example, the UNFCCC, which was adopted in 1992 and entered into force in 1994,

^{105.} Montreal Protocol on Substances that Deplete the Ozone Layer (Montreal Protocol), art. 2(9)(a)-(d), September 16, 1987, 1522 UNTS 3. This type of treaty decision has been deemed the "hard majority" by scholars. In their assessment of different treaty amendment procedures, they found thirty examples of hard majority amendment procedures. Notably, the number of amendments under the hard majority procedures was "similar to that found for the whole group of MEAs with various types of procedures." Bélanger and Morin, "Treaty Amendment Procedures," 81.

^{106.} Montreal Protocol, art. 2(9)(d).

^{107.} Protocol to the 1979 Convention on Long-Range Transboundary Air Pollution on Further Reduction of Sulphur Emissions, art. 11(6), June 14, 1994, 2030 UNTS 122.

^{108.} "Adjustments to the Montreal Protocol," Montreal Protocol, Ozone Secretariat, accessed September 20, 2024, <https://ozone.unep.org/treaties/montreal-protocol/adjustments-montreal-protocol>.

^{109.} See, CIEL, Structures of International Legal Instruments: Key Considerations for the Future Plastics Treaty (September 2024).

^{110.} Data for Annual Greenhouse Gas Emissions, Matthew W. Jones et al., last modified April 8, 2024, https://ourworldindata.org/grapher/total-ghg-emissions?tab=chart&country=-OWID_WRL; Igor Shishlov et al., "Compliance of the Parties to the Kyoto Protocol in the First Commitment Period," Climate Policy 16, no. 6 (August 2016): 768–82, <https://doi.org/10.1080/14693062.2016.1164658>.

^{111.} Barcelona Convention, art. 23.

negotiated the Kyoto Protocol and adopted it in 1997, but the Protocol did not enter into force until 2005. Additionally, many key Parties either did not join or left the Kyoto Protocol because they did not want to be bound by emissions reductions.¹¹² The text of the Basel Convention called for the development of a protocol on liability and compensation,¹¹³ which was adopted in 1999, ten years after the adoption of the Basel Convention, but has yet to reach the twenty ratifications required for entry into force.¹¹⁴ The Montreal Protocol is an exceptional example, as it was adopted in 1987 before the Vienna Convention for the Protection of the Ozone Layer entered into force in 1988¹¹⁵ and experienced few delays, being adopted in 1987 with entry into force in 1989.

If INC Members decide to pursue a framework or hybrid convention in place of a substantive treaty, the Final Provisions should include text on protocols. The Compilation Draft's section on Final Provisions does not include any text on protocols, as the "zero draft" and subsequent Compilation Draft are most similar to a substantive convention with annexes. Text on protocols can be very general, such as that in the CBD and Vienna Convention, which state that Parties may adopt protocols and that the text of a proposed protocol must be submitted to the Secretariat at least six months before the meeting where it will be considered.¹¹⁶ The UNFCCC similarly states that Parties may adopt protocols and requires submission at least six months before the meeting. It also states that entry into force will be based on the terms in the Protocol itself and, logically, only Parties to the Convention may become Parties to the Protocol.¹¹⁷ Under the Basel Convention, the text on protocols is even more open-ended, as it is situated within the article on the COP, to "[c]onsider and adopt protocols as required,"¹¹⁸ but the treaty text does provide for amendments to both protocols and any annexes to it in its final provisions.¹¹⁹

Entry into Force

The number of Parties required to ratify impacts the length of the period between the adoption of the treaty at the Diplomatic Conference and entry into force. For example, ratification by twenty States generally occurs much faster than ratification by fifty States,

¹¹². Although the United States was a signatory, in 2001 it announced that the US would not be ratifying the Kyoto Protocol. Martin Phillipson, "The United States Withdrawal from the Kyoto Protocol," *Irish Jurist* 36 (2001): 288–304. Notably, Canada formally withdrew from the Kyoto Protocol in December 2011, as it was not on track to meet its emissions reductions and compliance was projected to cost approximately Can\$14 billion. CBC, "Canada pulls out of Kyoto Protocol," (December 13, 2011), <https://www.cbc.ca/news/politics/canada-pulls-out-of-kyoto-protocol-1.999072>.

¹¹³. Basel Convention, art. 12.

¹¹⁴. Basel Protocol on Liability and Compensation," Basel Convention, accessed September 20, 2024, <https://www.basel.int/TheConvention/Overview/LiabilityProtocol/tabid/2399/Default.aspx>.

¹¹⁵. The Convention specified entry into force 90 days after deposit of the twentieth document of acceptance, ratification, approval, or accession. Vienna Convention, art. 17(1).

¹¹⁶. Vienna Convention, art. 8; CBD, art. 28 (protocols must be adopted at the COP).

¹¹⁷. UNFCCC, art. 17.

¹¹⁸. Basel Convention, art. 15(5)(d).

¹¹⁹. Basel Convention, arts. 17, 18.

depending on the treaty. After ratification by the number of Parties required for entry into force, there is a fixed period of time, often ninety days, before the treaty enters into force.

The Compilation Draft proposes fifty States and ninety days, which is the same as the CCD,¹²⁰ UNFCCC,¹²¹ and the Minamata,¹²² Rotterdam,¹²³ and Stockholm Conventions.¹²⁴ Several other treaties also enter into force ninety days after the required number of ratifications are met, but instead of fifty ratifications, CITES requires only ten,¹²⁵ the Basel¹²⁶ and Vienna¹²⁷ Conventions only twenty, and CBD only thirty.¹²⁸ Similarly, the recently adopted WIPO Treaty on Intellectual Property, Genetic Resources and Associated Traditional Knowledge enters into force three months after only fifteen ratifications.¹²⁹ Still, others have different time frames for entry into force after the required number of ratifications is met, such as CMS, which is the first day of the third month after the fifteenth instrument of ratification,¹³⁰ and BBNJ is one hundred and twenty days after the sixtieth instrument of ratification.¹³¹ There can be other conditions for entry into force, such as in the Paris Agreement, which is thirty days after fifty-five Parties to the Convention accounting for fifty-five percent of GHG emissions to ratify.¹³² The requirements for MARPOL entry into force were that fifteen States constituting fifty percent of merchant fleet gross tonnage had to ratify. Once that occurred, the treaty entered into force twelve months later.¹³³

Reservations

Reservations are when a Party registers that it does not wish to be bound by a particular article in a treaty. Although VCLT does state that reservations are permitted upon ratification, unless prohibited by the treaty, not permitted for the specific article, or otherwise incompatible with the “object and purpose of the treaty,”¹³⁴ in general, MEAs do not permit reservations. **Reservations may undermine certain elements that the majority of Parties believe are integral to the treaty.** The text in the Compilation Draft

¹²⁰. CCD, art. 36(1).

¹²¹. UNFCCC, art. 23(1).

¹²². Minamata Convention, art. 31(1).

¹²³. Rotterdam Convention, art. 26(1).

¹²⁴. Stockholm Convention, art. 26(1).

¹²⁵. CITES, art. XXII(1).

¹²⁶. Basel Convention, art. 25(1).

¹²⁷. Vienna Convention, art. 17(1).

¹²⁸. CBD, art. 36(1).

¹²⁹. WIPO Treaty on Intellectual Property, Genetic Resources and Associated Traditional Knowledge, art. 17.

¹³⁰. CMS, art. XVIII(1).

¹³¹. BBNJ, art. 68(1).

¹³². Paris Agreement, art. 21(1), December 12, 2015, 3156 UNTS 79.

¹³³. MARPOL, art. 15(1).

¹³⁴. VCLT, art. 19.

states that no reservations may be made.¹³⁵ The following MEAs also do not allow reservations:

- Bamako Convention¹³⁶
- Basel Convention¹³⁷
- BBNJ (unless expressly permitted by other Articles in Agreement)¹³⁸
- CBD¹³⁹
- CCD¹⁴⁰
- Helsinki Convention¹⁴¹
- Minamata Convention¹⁴²
- Rotterdam Convention¹⁴³
- Stockholm Convention¹⁴⁴
- UNFCCC¹⁴⁵

While CITES¹⁴⁶ and CMS¹⁴⁷ both allow for specific reservations, these apply only to species listings in the appendices, akin to the opt-out to annex amendment provisions in other MEAs detailed above, rather than a reservation to an article of the treaty text.

Conclusion

Although final provisions often contain similar articles between treaties, seemingly minor variations in the proportions of Parties required for adopting amendments, the number of States required to ratify before entry into force, or other provisions for future modifications to an agreement, such as protocols or adjustments, can make a significant difference in the treaty's effectiveness over time. Furthermore, while infrequently included in the final provision text, treatment of non-parties can be included there, if not

¹³⁵. Compilation Draft, Part VI, Final Provisions (8).

¹³⁶. Bamako Convention, art. 26(1).

¹³⁷. Basel Convention, art. 26(1).

¹³⁸. BBNJ, art. 70.

¹³⁹. CBD, art. 37.

¹⁴⁰. CCD, art. 37.

¹⁴¹. Convention on the Protection of the Marine Environment of the Baltic Sea Area (Helsinki Convention), art. 33(1), March 22, 1974, 1507 UNTS 166 (as amended in March 1992).

¹⁴². Minamata Convention, art. 32.

¹⁴³. Rotterdam Convention, art. 27.

¹⁴⁴. Stockholm Convention, art. 27.

¹⁴⁵. UNFCCC, art. 24.

¹⁴⁶. CITES, arts. XV, XVI, XXIII.

¹⁴⁷. CMS, arts. XIV and XI.

elsewhere in the treaty text.¹⁴⁸ As such, INC Members should carefully consider the proposed final provisions in the Compilation Draft, fully understand the implications for the ease or difficulty with which the future treaty can be strengthened, and be prepared to negotiate key elements for entry into force and subsequent treaty modifications.

¹⁴⁸ See CIEL, *Non-Party Trade Provisions in Multilateral Environmental Agreements: Key Elements for Consideration in the Context of a Treaty to End Plastic Pollution* (CIEL, April 2023), https://www.ciel.org/wp-content/uploads/2023/04/CIEL_brief_Non-Party-Trade-Provisions-in-meas_April-2023.pdf.

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