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Practice Guide to International Treaties

2023 version

This brochure sets out the rules and practices adopted by Switzerland in relation to treaties and other international instruments. It is primarily intended for staff within the Federal Administration based in Switzerland and at the representations abroad. It therefore essentially focuses on practical requirements. The webpages for which links are provided below were last visited on 29 March 2023.

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I. Concept of treaties

A. Definition

1 A treaty is an international agreement, generally concluded in writing, between two or more subjects of international law, in which they express their joint will to assume obligations governed by international law or to renounce rights, whether this agreement is embodied in a single instrument or in two or more related instruments and whatever its particular designation.[1]

B. Bilateral treaty and multilateral treaty

2 Firstly, a fundamental distinction should be made between a bilateral treaty, concluded between two parties, and a multilateral treaty, concluded between more than two parties[2]. Bilateral and multilateral treaties essentially differ in the way they are concluded, their entry into force and their administration.

C. Form

3 A bilateral treaty generally takes the form of a single instrument signed by the two parties or the exchange of two documents, diplomatic notes or letters, confirming the agreement of the parties. A multilateral treaty is made up of a single document. In exceptional circumstances, a multilateral treaty may be concluded in the form of an exchange of documents, provided there are no more than four or five signatories.

4 International law is governed by the principle of contractual freedom. It does not stipulate any special form for treaties. It even recognises the validity of oral agreements[3] subject to evidence. Verbal treaties are nevertheless uncommon for reasons of legal certainty.

D. Naming

5 The terminology used to name treaties varies greatly and practice is inconsistent. The terms used can cause confusion. While they are more or less interchangeable, some terms have a particular connotation.

6 The title of an international act is not decisive in determining its nature.[4] However, establishing whether the parties wish to make their agreement legally binding is essential. If this is not the intention, it is not a treaty.[5] The legal nature of an international instrument depends upon the text of the act and not its title. However, a particular usage has become established and the title of a treaty is not entirely arbitrary and may constitute a means of interpreting the intention

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1 See Art. 2 para. 1 let. a of the Vienna Convention of 23 May 1969 on the Law of Treaties (Vienna Convention; VCLT; SR *0.111*). This convention contains the main rules, often customary, on the conclusion, application, interpretation and termination of treaties.

2 Switzerland has concluded more than 5,000 bilateral treaties and is a contracting party to approximately 1,200 multilateral treaties.

3 Art. 3 let. a VCLT: “The fact that the present Convention does not apply to international agreements …. not in written form shall not affect … the legal force of such agreements.” The term 'gentlemen's agreement' is sometimes used.

4 Art. 2 para. 1 let. a *in fine* VCLT.

5 See no. 18 ff.; see also Administrative Case Law of the Federal Authorities (ACLFA) 70.69 (2006 IV) and the references.

of the parties. As a guide, a hierarchy is therefore set out in descending order reflecting the importance of the acts.[6]

a. Treaty

7 A generic term or a term used to designate agreements generally of major significance. 'Treaty' has long been the customary term used for international agreements. It is today reserved for reasonably significant acts.

b. Convention

8 A convention usually contains general legislative provisions but in a less significant area than treaties. It has become the standard term to designate instruments established under the aegis of international organisations.

c. Agreement

9 This is a very general term. An agreement may contain commitments of a particularly technical, economic, commercial, financial or cultural nature. Specific agreements are often needed to flesh out the terms of a *framework agreement*. A *project agreement* may also be required to implement a framework agreement.

d. Arrangement

10 Arrangements generally govern secondary or provisional matters. They may set out the procedures for implementing a framework treaty.

e. Exchange of letters or notes

11 The exchange of letters or diplomatic notes is the simplest form of concluding a treaty. The term indicates exactly what is involved in the procedure used to establish this type of agreement.[7] It generally governs matters of lesser significance in isolation or annexed to another instrument. Exchanges of letters or notes are frequently used to make minor amendments to bilateral agreements.

12 The preamble and the final clauses are reduced to their simplest form. The first communication constitutes the proposal and sets out the rights and obligations which the contracting parties have agreed beforehand, including the terms of entry into force and termination. The second communication, which often quotes the text of the first in full to avoid any misunderstanding, responds to it by restricting itself to expressing consent and customary salutations.

13 The agreement may enter into force, unless provisions to the contrary apply, from the date of the second communication or more commonly from the date of receipt of the letter or note of reply. It is usually concluded in just one language agreed beforehand.[8] Full signatory powers are not required, at least for an exchange of notes.

f. Other

14 The *protocol* and *additional protocol* are generic terms commonly used to designate acts supplementing a basic instrument.

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6 Also see Annex A for a list of suggested titles in the three official languages and in English.

7 See Art. 13 VCLT.

8 Also see no. 65 ff.

15 The more specific term of *concordat* usually indicates, on the one hand, the treaties concluded by the Holy See to govern the legal position of the Catholic Church in a partner state and, on the other, the agreements between the Swiss cantons, which are not treaties.[9]

16 The *declaration of reciprocity* sometimes indicates an exchange of letters or notes in which one party makes the granting of certain rights or benefits dependent upon the recognition of the same rights or benefits by the other party.

17 *Pact*, *charter*, *constitution*, *constitutive act*, *statute* or *act* are terms for instruments of reasonable significance but are less commonly used. A*greed minutes*, *regulations* and *rules* are used for instruments of secondary importance. *Supplementary agreement* or *amendment* are used for amending texts.

E. Instruments which are not treaties

a. Instruments which are not legally binding

18 Some instruments are not binding as, in the event of non-performance, they do not engage the international legal responsibility of the contracting parties. They are based on a joint declaration of intent by the parties the scope of which is political. First and foremost, the signatories must agree on the non-binding legal nature of such instruments. They may be entitled[10] *statement* or *letter of intent, memorandum of understanding*[11], *ministerial statement, (joint) declaration*[12]*, modus vivendi*, or, for more specific acts, *resolution,*[13] *decision*[14], *recommendation*, *final act*[15], *minutes*[16] or *joint communiqué.* Other terms from diplomatic correspondence are also used: *aide-mémoire* and *memorandum*.

19 For reasons of transparency and legal certainty, as far as possible these terms should not be used to designate an authentic treaty. Conversely, it is not sufficient for an act to formally bear one of these titles in order for it to be non-legally binding in nature. The text in its entirety has to be drafted using terms which do not express legal commitment.

20 A number of clauses and terms should therefore be reserved for treaties. Their usage, which could convey an intention by the parties to enter into legally binding commitments, should be avoided when drafting an instrument which does not contain legal obligations. For example, terms such as '*wishes*', '*may'* or '*intends'* are used in non-binding instruments, whereas '*undertakes*' or '*shall*' and certain verbs in the present or future tense should be reserved for

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9 Art. 48 Cst.

10 Also see Annex A.

11 Some states wish, often for reasons of domestic procedure, to call memorandums of understanding (MoU) legally binding acts; Switzerland can comply with such requests in the event of absolute necessity because, as previously mentioned, the title does not determine the nature of the act.

12 Stand-alone instruments under this head are generally non-legally binding. Appended to a treaty, such declarations may, however, have legal implications – subject to interpretation.

13 This should not be confused with the resolutions of the UN Security Council, for example, the often binding legal status of which is not brought into question.

14 Adopted within the framework of international organisations or conferences, decisions can however, as is sometimes the case with those of joint committees generally set up with the EU, contain modifications to treaties or their annexes. Their treaty-based nature or otherwise is examined on a case-by-case basis.

15 See no. 39 and 42.

16 The *minutes* of a meeting, if signed jointly, must be drafted carefully in terms of not expressing any legal commitment. The title *agreed minutes* should be reserved for simple legally binding treaties. To avoid any confusion in German, the terms *Sitzungsprotokoll* or *Niederschrift* should be given preference over *Protokoll* (also see no. 14).

treaties.[17] It is also recommended that a specific provision is included which specifies that such texts do not place any legally binding obligations on their signatories.[18] However, attention should be paid to ensure that such clauses excluding the intention of the parties to establish rights and obligations are not contradicted by binding wording within the same act.

21 Although non-legally binding understandings may in theory be used for any subject matter, they should not be used, for example, for non-disclosure agreements, dispute settlements and the determination of detailed financial plans or in-depth procedures, to which non-binding instruments are generally unsuited. Similarly, provisions setting deadlines, commencement clauses and termination clauses are also reserved for treaties. At most, the date from which it takes effect may be set out in a non-legally binding instrument. Otherwise, the date of the signature, which has to be included, indicates the commencement of the application of the instrument.

22 In summary, the criteria for distinguishing between a legally binding instrument and texts which are not are as follows, in descending order of importance:
- the terms used in the text and its wording generally,
- possibly a specific clause indicating the nature of the text,
- the compatibility of the content and nature of the instrument,
- certain final clauses reserved for treaties, and
- the title of the instrument taken as an indication of the will of the parties.

23 Soft law[19] comprises texts laying down rules of conduct that do not have legally binding force (soft) but nevertheless have a certain normative nature (law). Soft law encompasses more than just political statements of intent and best practices. It aims to shape the behaviour of the addressees, especially in relation to multilateral issues. Soft law is not international law and rarely creates new rules of customary law. Although soft law is less uniform in its application, it is more flexible and can often be applied faster than a treaty.

b. Unilateral acts

24 Other instruments do not constitute treaties where will is not expressed jointly but instead just by one party. A unilateral declaration may be made independently of any treaty. Its author may also, in association with a treaty, undertake through a unilateral act to assume obligations extending beyond those imposed by the treaty. A unilateral declaration places an obligation on the subject of international law which has drawn it up if it has intended to enter into a legal undertaking and if the other subjects concerned were aware of this undertaking. No counterparty is required. No acceptance is necessary.[20]

25 In view of the effects of such an act, the domestic procedure for deciding to enter into legal undertakings at international level through a unilateral act follows the same rules as those used for the conclusion of a treaty.

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17 Depends on the language. Also see Annex B for a list, in the three official languages and English, of suggestions of terms specific to the type of instrument, legal or political, to be concluded.

18 See no. 108.

19 On this issue generally, see 'Parliamentary consultation and participation in the field of soft law', a Federal Council report dated 26 June 2019 in response to Postulate 18.4104, Foreign Policy Committee, www.parliament.ch → Item: 18.4104; see also 'Aide-mémoire sur le droit souple' (Soft law guide, Intranet: https://intranet.bk.admin.ch → Roter Ordner → Internationale Verhandlungen...). See nos. 108 and 111 on national powers to approve soft law and involve Parliament.

20 See ACLFA 60.133 (1995 IV).

F. Treaties of the Confederation and treaties of the cantons

26 Article 54 paragraph 1 of the Federal Constitution of the Swiss Confederation of 18 April 1999 (Cst.; SR *101*) stipulates that foreign relations are the responsibility of the Confederation. The main responsibility conferred is the general authority to conclude treaties. The Confederation represents Switzerland within the international community as a subject of public international law.[21] It may also conclude treaties in areas which fall under the responsibility of the cantons at national level but exercises great restraint in this regard.[22]

27 Article 55 paragraph 3 Cst. on the participation of the cantons in foreign policy decisions stipulates that the cantons shall participate in international negotiations in an appropriate manner. The Federal Act of 22 December 1999 on Participation of the Cantons in the Foreign Policy of the Confederation (CPFPA; SR *138.1*) establishes the procedures for the involvement and consultation of the cantons where their powers or essential interests are affected. Where the cantons are responsible for the implementation of international law, they are obliged to undertake the necessary amendments in a timely manner (Art. 7 CPFPA). However, the Confederation may also undertake enforcement itself in accordance with the contents of the treaty or in order to adhere to international commitments where necessary.[23]

28 Pursuant to Article 56 Cst., the cantons may conclude treaties with foreign states on matters that lie within the scope of their powers (para. 1). Such treaties must not conflict with the law or the interests of the Confederation or with the law of any other cantons (para. 2 *in initio*). If this should nevertheless occur, the Federal Council or a canton may raise an objection with the Federal Assembly (Art. 186 para. 3 Cst.), which will then decide on approval (Art. 172 para. 3 Cst.).

29 Before concluding a treaty, the cantons must inform the Confederation (Art. 56 para. 2 *in fine*).[24] They may deal directly with lower ranking foreign authorities; in other cases, the Confederation shall conduct relations with foreign states on behalf of the cantons (para. 3). In practice, the Federal Council generally signs the treaty in its own name and/or in the name of the cantons. The denunciation of a treaty concluded by the Federal Council on behalf of the cantons must be undertaken through the Federal Council.

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21 Also see no. 107.

22 Dispatch of 20 November 1996 on a New Federal Constitution, Federal Gazette (BBl) 1997 I 1, p. 231ff on Art. 49 of the bill.

23 *Ibidem.*

24 The details are governed by Arts. 61*c* and 62 of the Federal Act of 21 March 1997 on the Organisation of the Government and the Administration (GAOA; SR *172.010*) as well as 27*o* to 27*t* of the Ordinance of 25 November 1998 on the Organisation of the Government and the Federal Administration (GAOO; SR *172.010.*1). A representation or an office which is requested to conclude a treaty for a canton must inform, if the canton has not already done so, the DIL, which can, depending upon the case, make contact with the canton and the Federal Chancellery in order to initiate the procedure provided for.

II. Negotiation of treaties[25]

A. Initiation of the procedure

30 The initiative for concluding bilateral treaties or participation in multilateral treaties generally lies with the FDFA or one or more other departments for treaties which fall within the scope of their powers. It may also come from the Federal Council itself, a parliamentary procedural request or a canton.

31 In bilateral relations, the initiative may also come from a subject of international law wishing to enter into an agreement with Switzerland in a particular area. In the case of multilateral issues, it may come from the international organisation under whose aegis the treaty is to be concluded or from a state or group of states.

B. Consultation

32 Article 147 Cst. on the consultation procedure stipulates that the cantons, the political parties and interested groups shall be invited to express their views in relation to significant treaties. Such consultation has to be organised during the preparatory work on the treaties that are submitted for referendum as provided for by Article 140 paragraph 1 letter b Cst or subject to referendum as provided for by Article 141 paragraph 1 letter d no. 3 Cst.[26] or those that affect the essential interests of the cantons. It may be organised for other treaties. A consultation procedure may be dispensed with for objective reasons if no new information is expected because the stakeholders' positions are known, for example because the subject matter of the project was previously presented for consultation.[27]

33 The consultation procedure may be opened at any time prior to the assignment of the negotiation mandate until after the signing of the instrument subject to ratification. The organisational unit concerned will choose the moment which seems the most opportune for achieving the aim of the consultation procedure as defined by law.[28]

C. Negotiation mandate

34 A mandate generally has to be issued by the Federal Council for the negotiation of significant treaties. However, practice has not yet established the legal criteria for determining whether a given area is to be considered significant. Political judgement is decisive. The competence for decision-making and issuing the mandate is based on Article 184 paragraph 1 Cst. which assigns responsibility for foreign relations in general to the Federal Council. It consults with the competent parliamentary committees over foreign policy on the key objectives and on the directives or guidelines concerning a mandate for important international negotiations before adopting or amending this mandate. The Federal Council then keeps the committees informed of progress in terms of the approach adopted and the status of negotiations.[29]

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25 Also see the schematic overview of the procedure set out in Annex C.

26 On the referendum, see no. 117 ff.

27 Art. 3 para. 1 let. c and para. 2 and Art. 3*a* para. 1 let. b and para. 2 of the Federal Act of 18 March 2005 on the Consultation Procedure (CPA; SR *172.061*).

28 In accordance with Art. 2 CPA, the consultation procedure aims to involve the cantons, the political parties and stakeholders in the definition of the position of the Confederation and the drawing-up of its decisions. It enables determination of whether a bill is substantively correct, capable of implementation and broadly acceptable.

29 Art. 152 para. 3 of the Federal Act of 13 December 2002 on the Parliament (ParlA, SR *171.10*) and Art. 5*b* GAOO.

35 For bilateral treaties, the granting of mandates by the Federal Council is often not deemed essential in practice, except in relations with the EU and other important partners, or if certain politically or economically sensitive issues are involved. A negotiation mandate may appear unnecessary in certain circumstances, for example in areas essentially requiring standardised agreements.[30] However, in the case of multilateral treaties at the preparatory stage, the department wishing for Switzerland to be bound generally requests the Federal Council to decide, by mandate, on participation in a conference of plenipotentiaries and to issue instructions to the Swiss delegation responsible to participate in the drafting and adoption of the treaty.

36 Federal Council directives on the dispatch of delegations to international conferences[31] provide some clarification with regard to mandates. They stipulate in particular that the Federal Council decides the dispatch of delegations and the instructions (no. 41). However, the dispatch of the delegation and the instructions may be decided at department or office level, after consultation with the federal services concerned (no. 441-443), in one of the two following cases (no. 44):

- no new obligation exceeding the powers of the department or office responsible is created, and the conference is also of limited political significance or the negotiations take place under the aegis of an international organisation of which Switzerland is a member and which aims to contribute to the development of international law or of international standards or guidelines;
- the Federal Council has already issued sufficient instructions either generally or for a similar previous conference.

D. Drawing up a draft text[32]

37 In the case of bilateral treaties, after consultations which may be necessary at international level, a draft text will often be drawn up unilaterally or in collaboration with the partner before the actual opening of negotiations. The department concerned may either draft it during the preparatory meetings or by means of correspondence.

38 The drawing-up of a draft multilateral treaty generally takes place within the international organisation under the aegis of which the treaty is adopted or by the diplomatic conference responsible for the adoption of a treaty. These bodies sometimes assign a mandate to an external entity specialised in drafting.

E. Official negotiations

a. Full powers of negotiation

39 The credentials are established in Switzerland by the Federal Chancellery, in principle on the basis of the Federal Council's decision to assign the mandate.[33] They include a reference to

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30 See no. 43.

31 These directives dated 9 December 2022 (BBI 2022 3078) only apply directly with regard to multilateral treaties (no. 11), but it is sometimes possible to draw upon them for bilateral negotiations.

32 Editorial questions in relation to the terms, the wording of expressions and the structure, but also the coherence of the text in itself and in relation to other treaties and national law may be posed to the Federal Chancellery's Central Language Services if the text has not yet been initialed, it has to be published in an official publication (BBI, AS, SR) and if one of the original versions of the text is in German, French or Italian.

33 When the granting of the mandate is the responsibility of the department or office (see no. 36), but full powers are nevertheless required, the unit concerned obtains them by means of the presidential decree procedure.

the members of the delegation authorised to take part in an international conference and, where applicable, the authorisation to sign the final act of this conference.

40 The head of a delegation assigned such powers of negotiation is authorised, without further procuration, to initial[34], if a definitive text resulting from the negotiations exists, or, if the adoption of the text is put to the vote, to vote on behalf of Switzerland. A credentials committee is generally set up during international conferences. Its role is to verify the powers issued and to indicate to the conference the delegations, whose powers have been confirmed as being in due and proper form, which are to be authorised to take part in voting, the signature of the final act or initialling.[35] However, specific full powers generally issued in a separate document are required for the signature of an international treaty.[36]

b. Adoption and authentication of the treaty text

41 When a draft has been drawn up before the opening of negotiations, the definitive text has to be established during them. If no draft text has been drawn up, it has to be drafted and agreed during the official negotiations and then finally acknowledged as being authentic and definitive (Art. 9 f. VCLT).

42 When it is adopted at a conference in accordance with the procedures, which vary from case to case (consensus, voting), the definitive text of a multilateral treaty is often annexed to the final act of the conference. The final act is an instrument without binding legal status which sets out in abridged form the objective of the conference, important organisational elements and summary information on the conference proceedings and its results.

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34 See no. 90 f.

35 The criteria concerning the validity of powers set out by a credentials committee within a conference may be more flexible than those governing the full powers of the signature of a treaty (see no. 94, for example, the acceptance of copies or documents signed by an official of lower rank than head of state, head of government or minister for foreign affairs).

36 See no. 93 ff.

III. Content of treaties

43 The structure of treaties is broadly similar. In many fields, international practice has established standard clauses or bilateral treaty models, which provide draft texts drawn up on the basis of which only unresolved issues are negotiated. Similarly, one party often presents identical texts to several partners in bilateral relations. This results in largely standardised texts, as is sometimes the case in the fields of double taxation, investment protection, air transport, social security, readmission, visa exemption and free trade. Model texts are also provided by international organisations, such as the OECD, in some specific fields.

A. Title and preamble

a. Subject matter and names of the parties

44 The title indicates the subject matter of the treaty. In the case of bilateral treaties or treaties restricted to very few parties, the names of the parties precedes the subject matter in the title. The contracting parties are indicated using the names of the states or international organisations, or by the names of the bodies representing them. The states are named according to their official designation,[37] in treaties between several states in the alphabetical order of the language of the text concerned.[38] As far as possible, the names of the parties should be uniform throughout the treaty (title, preamble, text and signatures) and the contracting parties should be at the same hierarchical level. Switzerland is sometimes referred to as 'Switzerland' or 'the Swiss Confederation' and sometimes 'the Swiss Federal Council'.[39] It is not necessary for the title to indicate the national authority empowered to enter into the treaty. Even if a treaty is approved by a department on the basis of legally assigned powers, it is generally signed on behalf of the Federal Council where the partner signs it on behalf of its government.

45 Treaties often begin with a preamble which appears below the title. In addition to restating the names of the parties, the preamble may include the following:

b. Reasons

46 The preamble outlines the reasons which have led the parties to conclude the treaty. The agreement's objective is often mentioned in one of the first articles of the treaty. Reference is also often made to the good relations between the contracting parties and to existing multilateral or bilateral treaties on a related subject connecting the parties. Generally, the preamble does not contain legal norms and does not have immediate legal significance. However, it can be significant to the interpretation of the treaty.

c. Indication of plenipotentiaries and clause on full powers

47 At the end of the preamble, the surnames, first names, titles and positions of the plenipotentiaries may be set out, as well as wording attesting that they have been assigned full powers and that these have been verified as being in proper and due form and have been exchanged. These elements are often not included, particularly in multilateral treaties, and are hardly used in recent instruments.

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37 See the lists of the official names of the states in the three national languages on the FDFA's website at www.fdfa.admin.ch/treaties.

38 For bilateral treaties, see no. 79 ff.

39 The term 'Swiss Federal Council' should be given preference over 'Swiss government' and the adjective 'Helvetic' should be avoided.

B. The main body

48 The main body is the principal part of the treaty. It contains the substantive clauses agreed by the parties. It is generally divided into articles, which are themselves sub-divided into paragraphs. The articles – which may be grouped in parts, chapters or sections – are numbered in Arabic numerals and less frequently in Roman ones. The main body contains in order the general provisions, special provisions and final clauses. As far as possible, the legislative directives of the Confederation[40] and the principles of the 'Legislative Guide'[41] are followed during the drawing-up and drafting of treaties if this seems reasonable in the context of the negotiations.

49 The general provisions are set out chronologically, in other words according to the steps to be undertaken by the parties for the execution of the treaty. The special provisions are also set out in a logical and systematic order. Reference to subsequent provisions in the text should be avoided and, for the sake of clarity, cross-referencing in the same treaty should not be used too frequently. It is also important to avoid footnotes or only add footnotes to identify sources or insert formal references. For reasons of legal certainty and to avoid interpretation problems, all substantive provisions should be included in the main body of the text.[42]

C. Final clauses

50 The final clauses are part of the main body of the treaty but require particular attention. Often neglected during the negotiation and drafting of treaties, they nevertheless play a significant role in ensuring the correct application of the treaty provisions by the parties.[43]

a. Dispute settlement

51 Switzerland attaches great importance to the dispute settlement clause in the interpretation and application of both bilateral and multilateral treaties. This clause is usually inserted before the final provisions. In multilateral treaties, it may also be the subject of a special annex or protocol where the clause is divided into several detailed provisions.

b. Entry into force

52 The wide range of means available to the parties for the entry into force of a treaty indicates that fixed rules do not exist in this respect. The will of the parties is decisive. A treaty enters into force in such manner and upon such date as it may provide[44] or as the negotiating States may agree upon. Failing any such provision or agreement, a treaty enters into force as soon as consent to be bound by the treaty has been established for all the negotiating States (Art. 24 paras. 1 and 2 VCLT). In the case of multilateral treaties, entry into force often depends upon the ratification or accession of a particular number of parties, sometimes after a certain period from the meeting of this condition or the meeting of substantive or financial conditions.

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40 www.bk.admin.ch/bk/en/home.html → Documentation → Legislative support (de, fr, it)

41 www.bj.admin.ch/bj/en/home.html → State & Citizen → Legal drafting instruments (de, fr, it)

42 If the partner insists on footnotes of material importance, the document should provide that the footnotes form an integral part of the agreement and have the same binding force.

43 See Annex E as well as, for example, the UN Final Clauses of Multilateral Treaties Handbook (https://treaties.un.org/Pages/Resource.aspx?path=Publication/FC/Page1_en.xml).

44 See no. 126 ff.

c. Provisional application

53 In contrast to entry into force, provisional application is not definitively binding. A treaty or a part of a treaty is applied provisionally pending its entry into force if the treaty itself so provides or the negotiating States have in some other manner so agreed (Art. 25 VCLT).[45] The provisional application of a treaty which revokes a previous agreement provisionally suspends its application.

54 In Switzerland, if responsibility for the approval of a treaty lies with Parliament, the Federal Council may decide on or agree to its provisional application, provided this is necessary to protect Switzerland's essential interests and in the event of particular urgency. The parliamentary committees concerned must be consulted beforehand. The Federal Council shall refrain from applying the treaty provisionally if the committees of both Councils are against doing so. The Federal Council has six months from the date on which the provisional application takes effect to submit the treaty concerned for approval to the Federal Assembly.[46] This approach does not impede parliamentary powers of approval; the provisional application of a treaty may be interrupted at any time. This ensures that Switzerland is not bound to it long-term and definitively unless the treaty is approved in accordance with the ordinary procedure.

55 If responsibility for approval of the treaty does not lie with Parliament, these conditions do not have to be met. The Federal Council, a department or an office which has the power to conclude the treaty can decide on its entry into force upon signature. A fortiori, it may decide on its provisional application. However, limited use is made of this procedure in practice and preference should be given to entry into force of the treaty upon signature or shortly afterwards.[47]

d. Denunciation and withdrawal

56 The term denunciation is reserved for bilateral treaties and withdrawal for multilateral treaties. It is advisable to provide for a clause on this in all treaties which can be denounced by their nature. This is not the case with peace treaties or territorial settlements, for example. In the absence of such a clause, a treaty is only subject to denunciation or withdrawal if it is established that the parties intended to admit such a possibility or if such a right may be implied by the nature of the treaty. In these two scenarios, notification of the denunciation or withdrawal has to be provided at least twelve months in advance (Art. 56 VCLT).

57 The denunciation of a bilateral treaty is usually communicated by verbal note from one party to the other and it results in the treaty being repealed. Withdrawal from a multilateral treaty is generally addressed to the depositary who notifies the parties. It does not detract from the validity of the treaty, even if the number of parties falls below the number necessary for its entry into force (Art. 55 VCLT). State law determines the authority authorised to denounce or withdraw from a treaty.[48]

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45 See also Guide to Provisional Application of Treaties and related commentary in: Report of the International Law Commission, Seventieth session, 30 April–1 June and 2 July–10 August 2018, p. 215 ff., UN, New York 2018 (A/73/10), https://undocs.org/en/A/73/10.

46 Article 7b GAOA and Art. 152 para. 3*bis* ParlA. See CLAUDE SCHENKER, L'application provisoire des traités: Droit et pratique suisses (Provisional Application of Treaties: Swiss law and practice), RSDIE 2/2015, p. 217 ff.

47 However, for treaties to be published, as publication has to take place shortly before entry into force or from when this is known (see no. 163), a period of time between the signature and entry into force should preferably be provided for to enable publication in time.

48 See no. 122 f.

e. Other

58 A territorial clause may specify the scope of the treaty for the contracting states which administer extra-metropolitan territories. Unless a different intention appears from the treaty or is otherwise established, a treaty is binding upon each party in respect of its entire territory (Art. 29 VCLT). In multilateral treaties, such exceptions to this principle are set out in declarations made by the parties concerned where they are not included in the body of the text.

59 A duration clause only generally exists in certain bilateral treaties. It may provide for an expiration date determined in advance or an initial fixed period of validity and then renewal by tacit consent from year to year, combined with a notice period for denunciation. Unless otherwise provided, a treaty establishing the border between two states is concluded for an unlimited period and cannot be denounced; a treaty solely concerning performance and counter-performance is generally automatically terminated when both have been completed.

60 It is often the case that upon conclusion the parties agree on a procedure enabling the amendment of the agreement, if the need arises, mainly when a treaty is of indefinite duration and above all for multilateral treaties.[49]

61 The termination of a treaty takes place pursuant to its provisions or by unanimous agreement of the parties. A treaty may also be terminated by its performance. Furthermore, external events, such as cases of force majeure, may also have an effect on the existence of a treaty (see Arts. 54 to 64 VCLT).

62 In contrast to termination, the suspension of the application of the treaty does not affect its validity. Suspension is in principle only possible under certain established conditions (Art. 57 f. VCLT) and may only be given preference over denunciation if the grounds on which it is based are of a transitory nature.[50]

D. Annexes

63 Bilateral and multilateral treaties are often accompanied by annexes which govern technical issues or details. They may also contain exchanges of supplementary letters, application protocols, lists of all kinds, geographical maps, etc.

64 In principle, the annexes have to be considered as an integral part of the treaties. They may also have to be signed by the plenipotentiaries depending on their form (e.g. protocol), at least as far as bilateral treaties are concerned, with the exception of lists, maps and of course the exchange of notes for which initialling is preferred.

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49 Also see no. 192.

50 With respect to the authority in Switzerland empowered to take such action, see no.122.

IV. Treaty languages

65 In light of the increase in languages admitted or officially recognised by international organisations and the growing requirement of states to use their own language(s), the drafting of treaties has become an issue of increasing importance.

A. Authentic text

66 The authentic text of a treaty may be drafted in one or more languages. It is advisable to specify which language prevails in case of divergence (see Art. 33 VCLT). However, some international institutions, such as the UN and as a rule the EU, declare that the texts drafted in all of their official languages are equally authentic.

67 Bilateral treaties are generally drafted in the official language or one of the official languages of each party. This authentic version is handed over to the partner for verification and approval prior to signature. A third language, often English as this is used in negotiation, is sometimes provided for as the single version which prevails in the event of divergence between the different versions, above all where the language of a state is not very accessible. For Switzerland, the drafting of an authentic version in at least one of the official languages is a legal requirement for treaties whose publication is mandatory.[51] This requirement is subject to exceptions where English is used in cases of urgency or where peremptory requirements concerning form or usage exist.[52]

B. Translations

68 In Switzerland, the Official Compilation of Federal Legislation (AS) and the Classified Compilation of Federal Legislation (SR)[53] are published in French, German and Italian. Translations are therefore frequently produced for publication. However, only the authentic text designated as such by the treaty is authoritative.[54]

69 Treaties drafted under the aegis of international organisations rarely have a German or Italian version. In the case of the most significant multilateral treaties, a joint translation for the German-speaking states or Italian-speaking states is sometimes produced by the states concerned. In contrast to autonomous Swiss translations, which are often based on the authentic French version, the joint translations are generally based on the English version of the treaties. Although they are joint translations, they may still contain differences based on specific linguistic particularities in one of the participating countries.

70 To reduce the risk of inconsistencies and in the interests of signatories to a multilateral treaties, official translations are sometimes produced in one or more other languages, often by the depositary, in addition to the authentic version drafted and signed in one or more languages. Amending a treaty in order to add an authentic version is now sometimes preferred to this procedure.

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51 See no. 161 ff.

52 Article 13 of the Federal Act of 5 October 2007 on the National Languages (LangA; SR *441.1*) and Article 5 of the Ordinance of 4 June 2010 on the National Languages (LangO; SR *441.11*). The exchange of notes or letters (see no. 13) is an example of the peremptory requirement of form (Art. 5 para. 1 let. b LangA); the use of English (see Art. 5 para. 1 let. c LangO) essentially concerns specific commercial agreements.

53 See www.fedlex.admin.ch/fr/oc and no. 161 ff. as well as www.fedlex.admin.ch/fr/cc and no. 166 ff.

54 Article 15 paragraph 3 of the Publications Act of 18 June 2004 (PublA; SR *170.512*) provides that the authoritative version of international treaties and decrees under international law is determined by the provisions thereof. The Language Services of the departments translate texts required for publication into French, German and Italian.

C. Amendment of drafting errors

71 Drafting errors, such as grammatical, spelling or typographical mistakes or a lack of concordance, namely differences not of substantive scope between the authentic versions of the treaty, do not influence the content of the treaty and therefore do not invalidate the consent of the parties. Such errors do therefore not affect the validity of the treaty (Art. 48 para. 1 and 3 VCLT). In the case of bilateral treaties, an exchange of diplomatic notes acknowledging the drafting error and confirming the correction is sufficient. Each party can then amend the error in its own original.

72 In the case of multilateral treaties, the matter is governed in detail by the Vienna Convention (Art. 79). The depositary notifies the signatory and contracting parties of the error and the proposed amendment. If no objection is made within a specified period, the depositary makes the rectification to the original copy of the treaty and then draws up and sends a procès-verbal of rectification of the text. These rules also apply where the treaty has not yet entered into force. No procedure is required within Switzerland to approve such corrections.

V. Depositary of the treaties[55]

A. Designation

73 Multilateral treaties generally establish a depositary. When negotiating a treaty, the parties are free in their choice of depositary. This will generally be the secretariat of the international organisation under the auspices of which the treaty was concluded or the government of a state involved in the negotiations. The UN is therefore currently the depositary for over 560 treaties and the Council of Europe for over 220.

74 Switzerland acts as depositary for around 80 treaties,[56] including the Geneva Conventions for the Protection of War Victims and their additional protocols.[57] It therefore possesses extensive experience of the field. The role of depositary vested in the Federal Council is exercised by the DIL of the FDFA[58] and its Treaty Section. The decision to accept the designation of the Federal Council as the depositary of a treaty logically lies with it.

B. Role

75 The depositary is designated and its role is often specified by the treaty itself in the final clauses. In the absence of specific provisions, the obligations of the depositary are governed by the principles of general international law as codified in the Vienna Convention, reflecting customary law (Arts. 76 to 80). After providing for an obligation to act impartially (Art. 76 para. 2), it sets out the depositary's main functions in detail but not exhaustively (Art. 77).

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55 On the matter in general, see e.g. 'Le rôle de la Suisse en tant que dépositaire des Conventions de Genève' (Switzerland's role as depositary of the Geneva Conventions), Annex 2 to the Foreign Policy Report of 15 June 2007 (BBl 2007 5257, 5291ff) and CLAUDE SCHENKER 'Dépositaire: une impartialité sous surveillance. L'exemple de la Suisse', SRIEL 2018/1, p. 25 ff.

56 See www.fdfa.admin.ch/depositary

57 See *ibidem* and SR *0.518.12*, *0.518.23*, *0.518.42*, *0.518.51*, *0.518.521*, *0.518.522*, *0.518.523*.

58 Art. 8 para. 3 let. d of the Organisation Ordinance of 20 April 2011 for the Federal Department of Foreign Affairs (OrgO-FDFA; SR *172.211.1*).

76 In particular, the depositary receives and keeps, on behalf of the parties, the original documents, such as the text of the treaty, the full powers of signature, the ratification instruments, the communications and all acts relevant to the implementation and the field of application of the treaty in question. It examines the formal admissibility of the powers, instruments and any reservations and declarations. It notifies the parties and other interested States of signatures, ratifications, accessions, successions, reservations, declarations and withdrawals. It produces certified copies of the treaty text, carries out the procedure for the correction of errors in the original documents and registers the treaty with the office of the UN Secretary-General. [59] The depositary therefore performs an international role of an administrative nature which requires precision and exactitude.

77 It is not for the depositary to check the substantive provisions of the acts submitted to it. This responsibility lies exclusively with the parties. For example, the legitimacy of the proposed corrections to one of the language versions is exclusively the responsibility of the signatories and the parties (Art. 79 VCLT). They are also responsible for evaluating the admissibility of any reservations made which run counter to a treaty (Art. 20 VCLT). In such cases, the depositary's role is restricted to forwarding the documents received.[60] When a substantive assessment has to be made on a particular act associated with a treaty, where the depositary is also a party,[61] it has to distinguish between its two roles. It can nevertheless exercise its rights as a party unrestrictedly.

78 The depositary's duty of impartiality does not oblige it to play a passive role. The depositary designated is often chosen because it has played a major role during the negotiations of the new treaty or because it attaches great importance to the field governed. The choice of depositary therefore often represents recognition of the diligence shown. It may also express the expectation that this particular commitment will continue in future. The assumption of a degree of responsibility for the proper functioning and wide geographical application of the treaty is therefore common.

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59 See no. 174.

60 This may not be the case if the reservation is clearly inadmissible, for example, if the treaty itself excludes the possibility of making reservations.

61 This is the case for the majority of treaties for which Switzerland assumes the role of depositary.

VI. Alternat for bilateral treaties

A. Concept

79 Responsibility for the preparation and formatting of the texts[62] in principle lies with, unless agreed otherwise, the party in whose country the treaty is signed. The diplomatic representation of the partner often provides assistance with the preparation of the texts. The authority concerned and the representation agree on the type of paper, the format used and the method of preparation, including the use of a cover, a ribbon or piece of cord and possibly a seal. Each party usually provides its own materials.

80 All bilateral treaties are drawn up in two original copies, one for each of the contracting parties in a practice known as 'alternat'. The Swiss original and the partner's original contain the texts of the treaty in all of the languages in which it has been drawn up. A treaty with a Spanish-speaking state drawn up in three languages,– for example, French, English and Spanish.– is therefore made up of the Swiss original and the partner's original both of which are drawn up in each of these three languages which means six texts in two originals.

81 The two documents are identical, except for the order in which the contracting parties are indicated in the title, the signatures and, in many cases, the preamble. Each party is given precedence in the document assigned to it. The Swiss original mentions Switzerland first whereas the partner's original mentions Switzerland second. In the Swiss original, the signature of the Swiss plenipotentiary is entered on the left and that of the partner on the right. In the partner's original, the signature of the Swiss plenipotentiary appears on the right and that of the partner on the left. This precedence may also be applied in the body of the text but is used increasingly less frequently; if need be, the same sentence firstly mentions the party whose original the text in question constitutes.[63]

82 Original copies are always printed on neutral paper without coats of arms, logos or letterheads. The use of an entire page for each article has to be avoided as well as double-sided printing unless the treaty text is very long. It is also vital that the originals are compared in all the languages provided for.

B. Cover

83 Treaties of a certain importance are bound in a cover. The party in whose country the treaty is signed can supply the two covers provided they are of neutral appearance. Otherwise each partner uses its own cover. The Swiss original and the partner's original, drawn up in all the treaty languages, are placed in a single cover for each original if possible. When opening the cover, the version drawn up in the national language of the state whose original it constitutes is placed on top of the version drawn up in the partner's language.

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62 Also see Annex D.

63 If the Swiss original states, for example, "Considering the legislation of Switzerland and of the United Kingdom…", the content of the UK version will be "considering the legislation of the United Kingdom and of Switzerland…". The same applies to all the languages of the treaty.

C. Ribbon or piece of cord

84 The texts of the treaty are then bound to the covers with a ribbon or a piece of cord. The ribbon or piece of cord used is often in the colours of the party whose original it constitutes.[64]

D. Seal

85 The ribbon or piece of cord can be attached with a seal. Either a dry seal to be affixed or a red wax seal may be used. Virtually all treaties used to be bound with ribbon or cord and sealed. Only treaties of limited importance, generally not bound, were not embellished with ribbon or sealed. The exception has now become the rule which means that the seal is never mandatory. The dry seal to be affixed no longer exists in Switzerland and it is only at the partner's request to seal a treaty with wax that Switzerland still does this on rare occasions.

86 Each delegation checks the original of the other party and the text of the treaty in all of its languages before the seals are finally affixed, which takes place at the ministry of foreign affairs of the host state where the treaty is signed and always before signing.[65] A head of mission or representative of the FDFA abroad in principle uses the seal of the embassy concerned. The head of delegation also uses this or the seal of his/her department.

87 The two seals are affixed once to each original either in the place provided for this purpose on the back of the cover or directly below the space provided for the signature of the corresponding plenipotentiary. In the second case, they are attached at the end of the text drawn up in the national language of the state whose original it constitutes on the treaty itself and not on any annexes.

E. Original

88 Each party is entitled to a signed original copy of each text in all of the languages of the treaty, in other words, all of the versions of its own original. It may also request a copy of all of the texts constituting the partner's original.

F. Certified copy

89 The alternat system does not apply to multilateral treaties. The original is in principle made up of a single treaty text signed in all of the languages in which it has been drawn up. A certified copy conforming with the original of a multilateral treaty is issued by the depositary to each party involved in its drafting or upon request to each party likely to be bound by it.

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64 The use of a double bind on each cover, one in the colours of Switzerland and the other in the partner's colours, is tending to disappear.

65 In Switzerland, the Treaty Section of the DIL, which has an FDFA seal for treaties signed in Bern, should be contacted in good time to affix the seals at least a day before the signature.

VII. Signature of the treaties

A. Initialling

90 Initialling is the simple entering of the negotiators' initials at the end of the treaty text. This optional formality generally takes place when the definitive text of the treaty has been adopted by the negotiators without them having full powers to sign it or when the treaty's clauses differ substantially from the instructions received. The initialling takes place to give a certain degree of gravity to the completion of the negotiations of an important treaty. Initialling is generally intended to be followed by the signature of the treaty unless the parties deem initialling sufficient (Art. 10 let. b and Art. 12 para. 2 let. a VCLT).

91 The initials are generally entered at the bottom of the last page of the treaty text. The partner sometimes requires the initialling of each page of a bilateral treaty by the two parties. This wish should be complied with but not expressed by Swiss representatives, at least for a treaty whose pages are bound and therefore irremovable.

B. Signature *ad referendum*

92 A signature *ad referendum* is given subject to confirmation. Similar to initialling in terms of its effect, this formality is becoming less important and is not used by Switzerland. The signature *ad referendum* is equivalent to the definitive signature of the treaty when it is confirmed (Art. 10 let. b and Art. 12 para. 2 let. b VCLT).

C. Full powers of signature

93 The powers must unequivocally authorise one or more persons, the plenipotentiaries, to sign, on behalf of the state, a treaty which must be clearly designated. When the text of a treaty expressly stipulates that the signature must be followed by ratification, there is no point in indicating in the powers or upon signature that this is undertaken subject to ratification.

94 Only heads of state, heads of government and ministers for foreign affairs may sign a treaty without producing full powers (Art. 7 VCLT). The other representatives of a state have to produce the powers before or during signature. By extension, the full powers have to be signed by one of the three aforementioned authorities.[66] Copies or emails may be provisionally accepted if they come from constitutionally empowered bodies and provided their authenticity is certified by the designated plenipotentiary but they then have to be confirmed by the original powers in proper and due form and through documents validly signed electronically.

95 In Switzerland, the powers required for signing a treaty are established by the Federal Chancellery based on a Federal Council decision.[67] The full powers are submitted in the original copy to the partner of a bilateral treaty in exchange for its powers or to the depositary of a multilateral treaty. If the designated plenipotentiary is authorised to delegate the signature, the signatory so delegated will also produce the original evidence of this delegation. In the case of bilateral treaties, the partner's original copy of the full powers document and, where

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[66] It may also be a person provisionally exercising the powers of the head of state, the head of government or minister of foreign affairs (but the powers must then indicate 'acting' or 'ad interim') excluding their deputies.

[67] This generally takes place at the same time as the decision of adoption and signature of the treaty. For treaties where authority lies with a department, sector or office, the unit in question requires the powers from the Federal Chancellery through the presidential decree procedure after having obtained confirmation of its powers of conclusion from the DIL (Directives of the Federal Council concerning the dispatch of delegations to international conferences, no. 52 ff., see no. 36).

applicable, a translation must also be handed over at the same time as the original copy of the signed treaty to the DIL.

D. Signature

96 Unless it is definitive and expresses the consent of a party to be bound by a treaty (Art. 12 para. 1 VCLT),[68] the signature by the plenipotentiaries only attests the authenticity of the negotiated text. This is known as a simple signature. The signatory is therefore not yet legally bound by the treaty itself. It is however obliged to act in good faith with regard to the treaty and to refrain from acts which may jeopardise the subsequent execution of the treaty or render it impossible (Art. 18 VCLT).

a. Handwritten signature

97 In the case of bilateral treaties, each party firstly signs its own original, on the left, in all the languages of the treaty. It then hands over its original to the partner, who signs it on the right. Any annexes to the treaty should also be signed in the same way.[69] After the signature, each party takes back its own original. They are not exchanged, this practice being reserved for full powers documents and ratification instruments. With multilateral treaties, the plenipotentiaries sign the single original copy in the order in which they are mentioned at the beginning of the treaty or, failing that, according to the alphabetical order of the parties concerned.

98 Usually, treaties are signed by persons at the same level. When a minister of foreign affairs or a senior official from this ministry signs on one side, in the absence of the counterpart, the other party is often represented by an ambassador (diplomatic level). If another head of delegation signs it, it is often his/her counterpart who enters into the undertaking for the partner (administrative level).

b. Electronic signature

99 The parties may use the electronic signature method to sign the treaty. The Vienna Convention provides that treaties are concluded in written form (Art. 2 para. 1 let. a), but this does not necessarily require a handwritten signature.

100 To ensure a minimum level of security with regard to the provenance and integrity of the treaty, the treaty should include a provision in which the parties agree to use the electronic signature method. The names and functions of the signatories should be indicated. The electronic signature must be used by all parties and be verifiable, with the date specified. The main body of the text and, where applicable, all the language versions and annexes should be included within a single digital document that can be printed. The document should also show the signatures and dates. Treaties do not generally indicate the place of signature, which is increasingly uncertain, or the number of copies.[70]

E. Place, date

101 All treaties must indicate the place where it was actually signed, unless an electronic signature is used.

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68 See also no. 126 f.

69 See also no. 79 ff.

70 For further information and template clauses, see Best Practices zum Abschluss von Staatsverträgen durch elektronische Signatur, Intranet: www.collaboration.eda.admin.ch/de/services/law/e-signatur.

102 All treaties must contain the date of their signature. The date should follow the place. For multilateral treaties, the date of adoption of the treaty text by a diplomatic conference and the date of opening for signature can be different. This is due to the need to leave the depositary, the secretariat of the conference or the competent bodies sufficient time to draw up the treaty text in all of its languages or to provide the parties with additional time to prepare for signature. In order to encourage participation in the treaty by the largest number of parties possible, the signature deadline often extends over a certain period or may even be unlimited. The depositary takes note of the date of signature. The plenipotentiaries may, if necessary, add this by hand next to their signature.

103 If a treaty is signed in different places or on different dates, this must be indicated. With the exception of exchanges of notes or letters, original copies of treaties signed by correspondence are prepared in advance, signed by one of the parties and sent to the other party, which signs and returns its original copy to the first signatory.[71] If the date of the signature has legal implications, e.g. in terms of the date the treaty enters into force, the most recent date is taken into account.

F. Identification of the signature

104 For bilateral treaties, the signature should be preceded or followed by the full name of the plenipotentiary, the official title of their position and the authority that they represent, at least where full powers are not handed over at the same time. For an exchange of letters, the letterhead may stand in lieu.[72]

G. Reservations and declarations[73]

105 Subject to the provisions of the treaty in question, the parties may set out reservations and unilateral declarations at the time of the signature of a multilateral treaty, including declarations on the territorial application of the treaty or on the authorities designated to implement it. The reservations and declarations were sometimes set out at the end of the treaty text itself, by hand and above the signature, but this has become rare. They are more commonly included in a separate document, letter or note and handed over to the depositary upon signature.

106 Reservations or declarations formulated when signing subject to ratification must, unless the treaty includes provisions to the contrary, be confirmed upon ratification (Art. 23 para. 2 VCLT) in the instrument itself or in an attached document.

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71 If two high-ranking representatives wish to sign a bilateral treaty during a videoconference, each party should sign and date the other party's original copy in advance and send this to the other party, allowing each party subsequently to sign and date its own original copy second during the videoconference. The treaty will show different dates and places, i.e. the actual date and place for each signature, and a single conclusion date, which will be the date of the videoconference.

72 For an exchange of notes, the person who initials is not identified.

73 About this issue in general, see no. 142 ff.

VIII. Domestic procedure for the approval of treaties[74]

A. Distinction between treaties and non-binding instruments

107 It is the content of an agreement and not its form or its title which, in Switzerland, determines the domestic procedure required for its approval and entry into force. To establish the national competence for concluding, amending or denouncing any international instrument, it firstly has to be determined whether it will result in any legally binding effects under international law. If this instrument is drawn up in such a way that the Swiss Confederation (acting through the Federal Council or a subordinate authority) undertakes specific commitments which place it under legal obligations, it is a treaty. Under international law, it is the Swiss Confederation (see Art. 6 VCLT) – and not the administrative unit, which does not have any legal personality – that can be held responsible for the obligations undertaken.

108 If the text does not express any legal obligation for the parties, which it should refer to expressly if possible,[75] it is a non-binding instrument.[76] In principle, competence for concluding, amending or terminating the instrument therefore lies with the Federal Council pursuant to Article 184 paragraph 1 Cst. Soft law also falls within this category. Such an instrument can only be concluded, amended or terminated by a department under its own competence if it is of very limited importance in terms of conducting Swiss foreign policy or if it is clear in the circumstances that the department has solely entered into a political commitment.[77] It can only be concluded, amended or terminated by an office or sector if this possesses a delegation of competence for treaties in this field.[78]

B. Competence of the Federal Assembly

109 Foreign relations are the responsibility of the Swiss Confederation (Art. 54 para. 1 Cst.). Article 166 paragraph 2 Cst. provides that the Federal Assembly shall approve treaties with the exception of those that are concluded by the Federal Council under a statutory provision or a treaty. This also applies to amendments and denunciations.[79] However, depending upon the legal basis, amendment or denunciation may not be subject to the authority which approved the treaty.[80] However, it is established practice that the approving authority is responsible for extending the treaty.

110 This approval is required from the Federal Assembly by the Federal Council, in principle by means of a dispatch,[81] to which the treaty text is annexed (Art. 184 para. 2 Cst.). The treaty can only be approved or rejected as a whole. At most, the Federal Assembly may make its approval dependent upon the formulation of a reservation unless this is prohibited under the treaty. Approval is provided by means of the adoption of a federal decree.

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74 On these matters, see also ACLFA 70.69 (2006 IV) and the references as well as the aide-mémoire in Annex F.

75 Through a provision stipulating, for example, that "this text is not intended to create legally binding obligations between the signatories, either directly or indirectly."

76 See no. 18 ff.

77 Based on established practice, on a restrictive basis, this may apply to material 'ministerial statements'.

78 Also see ACLFA 70.69 (2006 IV), D and the references.

79 See Art. 7*a* para. 1 GAOA and Art. 24 para. 2 ParlA.

80 See nos. 122 f., 187 ff. and 192 f. This is the case with an amendment to or denunciation of a treaty submitted to Parliament which, if it is of limited importance pursuant to Art. 7a paras. 2–4 GAOA, can be approved by the Federal Council alone.

81 Some treaties in the field of commerce are subject to the approval of the Federal Assembly by means of periodic reports of the Federal Council, for example, on international economic policy; see Art. 10 paras. 2 and 3 of the Federal Act of 25 June 1982 on International Trade Measures (SR *946.201*).

111 Parliament does not approve treaties where the power to conclude the treaty has been delegated to the Federal Council, nor does it approve non-legally binding instruments, including soft law. However, Parliament is involved in shaping foreign policy and supervising the maintenance of foreign relations (Art. 166 para. 1 Cst.). It is therefore suitably involved in negotiating and concluding such texts. The Federal Council informs the committees responsible for foreign policy regularly, comprehensively and in good time of important developments and consults them regarding major plans (Art. 152 paras. 2 and 3 ParlA).[82]

C. Competence of the Federal Council

112 Pursuant to Article 184 paragraph 1 Cst., the Federal Council is responsible for foreign relations, subject to the rights of participation of the Federal Assembly, and represents Switzerland abroad. This provision establishes the general competence of the Federal Council, in particular to conclude, amend or terminate non-legally binding international instruments as well as to assign negotiation mandates. This same provision also establishes the Federal Council's decision-making authority in cases in which a treaty provides for the current parties to decide whether a new party may join.[83]

113 Article 184 paragraph 2 Cst. states that it is the Federal Council which signs the treaties, submits them to the Federal Assembly for approval and ratifies them.[84] The executive always has the competence to decide whether to sign a treaty subject to ratification and, technically, to perform this signature. It also has the competence to decide on ratification subject to the approval of Parliament and, technically, to carry out the deposit or the exchange of the ratification instruments.

114 There are various legal bases[85] conferring authority on the executive to conclude treaties. This includes the authority to amend and denounce treaties (Art. 7a para. 1, 2nd sentence GAOA). This authorisation is effectively provided for in various special laws or in some treaties already approved by Parliament as well as in the GAOA, Article 7a paragraph 2 of which states that the Federal Council may conclude treaties of limited scope at its own behest.

115 Pursuant to Article 7a paragraph 3 GAOA, treaties treaties or amendments of limited scope are those that (a) do not create new obligations for Switzerland and do not constitute a waiver of existing rights, (b) serve to implement treaties approved by the Federal Assembly and simply provide more detail on rights, obligations or organisational principles that are already set out in the main treaty, or (c) concern authorities and involve technical administrative issues. However, limited scope is excluded, pursuant to paragraph 4 of this provision, in particular if (a) meet any of the requirements for an optional referendum on an international treaty, (b) the treaty contains provisions on matters the regulation of which falls solely under cantonal jurisdiction, or (c) cause non-recurring expenditure exceeding five million francs or recurring expenditure of more than two million francs per year.[86] These conditions are illustrative, but the criteria in paragraph 3 are alternative and those in paragraph 4 cumulative.

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82 See also Art. 5*b* GAOO and negotiation mandates in particular, no. 34.

83 In cases with very limited importance for the conduct of foreign affairs, a decision of the head of the department concerned may suffice; see no. 108.

84 See no. 128 ff.

85 See BBl 1999 IV 4471, 4488 ff.

86 See BBl 2014 7043 and" 1999 IV 4471, 4490, no. 318.5 ad art. 47bisb para. 3 of the former Parliamentary Procedure Act.

D. Competence of subordinate administrative units[87]

116 Parliament may delegate responsibility for concluding treaties not just to the Federal Council, but also directly to the subordinate administrative units. The Federal Council for its part may sub-delegate its responsibility to a department (Art. 48a para. 1, 1st sentence, GAOA). It may also delegate its competence to a sector or an office where treaties of limited scope are concerned (Art. 48a para. 1, 2nd sentence, GAOA) or if another express legal basis exists to this effect; a general or abstract norm provided for in an ordonnance or a specific individual or collective authorisation in the form of a Federal Council decision is therefore required.

E. Referendum

117 Article 140 paragraph 1 letter b Cst. stipulates that accession to organisations for collective security or to supranational communities must be put to the vote of the Swiss people and the cantons. The federal decree of approval of a treaty establishing Switzerland's accession to such organisations is therefore subject to a mandatory referendum and has to be approved by the double majority of the Swiss people and the cantons. A proposed amendment to the Federal Constitution requiring a mandatory referendum to be held for treaty provisions with constitutional status[88] or provisions that would require amendment to the Constitution in order to be implemented was ultimately unsuccessful, mainly on the grounds that unwritten constitutional law already requires mandatory referendums in such rare circumstances.[89]

118 With regard to the optional referendum on treaties, Article 141 paragraph 1 letter d Cst. stipulates that if 50,000 citizens eligible to vote or any eight cantons request it within 100 days of the official publication of the enactment, the following treaties shall be submitted to a vote of the Swiss people: treaties that (1) are of unlimited duration and may not be terminated, (2) provide for accession to an international organisation, or (3) contain important legislative provisions or whose implementation requires the enactment of federal legislation.[90]

119 The question of knowing whether a treaty provides for accession to an international organisation, whether it can be denounced or if its implementation requires the adoption of federal laws is relatively straightforward in principle. However, knowing whether it contains important legislative provisions often requires more in-depth analysis. Pursuant to Article 22 paragraph 4 ParlA, provisions are regarded as being legislative if they impose obligations or confer rights or responsibilities in general and abstract terms and with directly binding effect. Important pursuant to Article 141 paragraph 1 letter d no. 3 Cst. are provisions, which, in domestic law, have to be enacted, in view of Article 164 paragraph 1 Cst., in the form of a federal law.

120 Article 141a Cst. provides Parliament with the opportunity to incorporate constitutional (in the case of a mandatory referendum) or legal (if the federal decree is subject to optional

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87 For details, see ACLFA 70.69 (2006 IV), C.2.

88 In particular, provisions that affect the catalogue of fundamental rights, involve a transfer of powers vested in the Confederation and the cantons or alter the general organisational rules and procedures of the authorities (BBl 2020 1221).

89 BBl 2020 1195 and www.parliament.ch → Item: 20.016.

90 Since 2003, the Federal Council has recommended to Parliament that standard agreements should not repeatedly be put to optional referendums (no. 43; see BBl 2003 5903, 5910). However, it moved away from this line in 2016 by recommending that the delegation of powers to conclude treaties should be incorporated within legislation.

referendum) modifications concerning the implementation of the treaty into the federal decree approving a treaty.[91]

121 A popular ballot is organised if a mandatory referendum is provided for or if the call for an optional referendum succeeds. The Federal Council is only authorised to ratify the treaty if the treaty is accepted in the ballot. A treaty rejected in a referendum cannot be ratified and does not therefore enter into force for Switzerland. Provisional application must be terminated where applicable.[92]

F. Competence for denouncing or suspending a treaty

122 The rules governing powers to approve treaties also apply to denunciation. However, depending on the legal basis, denunciation, like treaty amendments, may not be undertaken by the authority that approved it.[93] However, the Federal Council has the competence to suspend a bilateral treaty, on the basis of Article 184 paragraph 1 Cst., and if the competence to conclude a treaty lies with a department, a sector or an office, this administrative unit also has the competence to suspend it. These principles apply whether Switzerland is acting unilaterally or by joint agreement with a partner.

123 If it is necessary for Parliament to approve the denunciation of a treaty, the Federal Council may, if the matter is particularly urgent, denounce the treaty in order to safeguard essential national interests. The Federal Council must consult the relevant parliamentary committees before denouncing a treaty and will refrain from doing so if both of the committees are opposed to this course of action.[94]

G. Annual report to Parliament

124 In accordance with Article 48a paragraph 2 GAOA, the Federal Council presents the Federal Assembly with a report each year on the treaties concluded, amended or terminated by it, a department, a sector or federal office. The drafting of this annual report is coordinated by the Treaty Section of the DIL which collects the information provided by the departments responsible. Parliament thereby regularly acknowledges, by means of brief statements, all treaties, amendments and terminations not submitted to it by dispatch for approval.

125 This report enables Parliament to examine, for each treaty, whether it comes under the competence of the Federal Council by law. If it deems it does not, it may, through a motion, instruct the Federal Council to submit the treaty in question to it retrospectively. The Federal Council therefore has the opportunity to submit the treaty or modification in question for approval by the Federal Assembly in a separate dispatch or to denounce it as soon as possible. The deposition of a motion requesting the approval of a treaty *a posteriori* by the Federal Assembly does not suspend its application. The treaty continues to apply during the parliamentary procedure. In the event of the rejection of the treaty, it nevertheless has to be denounced at the earliest possible date.

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91 See RIDHA FRAOUA, La mise en œuvre des traités internationaux: portée de l'article 141*a* de la Constitution fédérale in Atelier du droit: mélanges en l'honneur de HEINRICH KOLLER à l'occasion de son 65e anniversaire, Bâle 2006, p. 233 ff.

92 See no. 54; see Art. 7b para. 3 GAOA.

93 See Federal Act of 21 June 2019 on the Authority to Conclude, Amend or Withdraw from International Treaties, which entered into force on 2 December 2019 (AS 2019 3119 ff.). See also no. 109. The Federal Council was previously deemed to have authority to denounce bilateral treaties or withdraw from multilateral treaties pursuant to Article 184 paragraph 1 Cst., see ACLFA 70.69 (2006 IV), F and references.

94 Art. 7b^{bis} paras. 1 and 2 GAOA and Art. 152 para. 3bis letter d and para. 3ter ParlA. See also no. 54 f.

IX. Expression of consent to be bound by a treaty[95]

A. Full signature

126 The full signature expresses a party's consent to be bound by the treaty (Art. 12 VCLT). It is primarily used for certain specific categories of bilateral treaties, in particular in the field of economic, technical or financial cooperation. It of course entails the prior consent of the entity authorised to conclude the treaty under national procedure.

127 Such a process is possible at international level where the treaty provides for it and where it is specified by the powers of the plenipotentiaries. For multilateral treaties, Switzerland rarely uses the definitive signature which includes ratification and has equivalent status to it or to accession in terms of its legal effect.

B. Ratification

128 The ratification is the only means of expressing consent to be bound by a treaty recognised by Swiss constitutional law. A treaty that is not fully signed has to be ratified in principle in order to enter into force. It is sometimes stipulated that the signature takes place subject to ratification (Art. 14 para. 1 VCLT). In Switzerland, competence for ratification lies with the Federal Council (Art. 184 para. 2 Cst.). It generally decides upon ratification of a treaty when deciding on its signature or, if the approval of Parliament is required and ratification is subject to this, when it approves the dispatch to be sent to it.

129 The act through which a party enters into obligations at international level has to be distinguished from approval granted by the authority to which the domestic constitutional system assigns competence to conclude a treaty. In Switzerland, when it does not have direct competence for conclusion, the Federal Council requires the approval of the Federal Assembly (Art. 166 para. 2 Cst.) before formally proceeding with ratification. The approval granted by Parliament provides the Federal Council with authorisation to ratify the treaty. It does not oblige it to do so. Ratification of the treaty by the Federal Council can be communicated to the other party (bilateral treaty) or to the other parties (multilateral treaty) in two ways.

130 The simplest and most frequently used method, with regard to bilateral treaties in any case, consists of informing the partner in writing that the domestic procedures required for the entry into force of the treaty in question have been completed. As a general rule, a simple verbal note referred to as a notification is drawn up for this purpose. This notification can also take the form of another signed document.[96]

131 The traditional and more formal method involves exchanging (bilateral treaty) or submitting to the depositary (multilateral treaty) the ratification instruments in due and proper form (see Arts. 16 and 77 let. d VCLT). In Switzerland, the ratification instrument has to be drawn up in one of the three official languages of the Swiss Confederation, often in French, sometimes in German and rarely in Italian. In a document dated and signed by the President of the Swiss Confederation and the Federal Chancellor, the Federal Council attests that the treaty in question has been duly approved by the competent Swiss authorities, declares its ratification

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95 See Art. 11 VCLT.

96 It must be specified in the treaty, if possible, that it is the date of *receipt* of the last notification that prevails. The DIL, through its Treaty Section, carries out the conclusion procedure for international treaties (Art. 8 para. 3 let. d OrgO-FDFA). In this capacity, it coordinates the deposit of the ratification instruments and provides notification. A representation or office which produces or obtains such notes must send a copy of the Swiss notes and the original notes of the partner to this section with a translation where necessary.

– where applicable with the reservations, declarations and communications made therein – and undertakes to observe it on behalf of the Swiss Confederation.[97]

132 In practice, the Federal Council carries out ratification in the days, weeks or months following the date of the federal decree of approval, the end of the unused referendum period or the date of the popular vote authorising it. It performs the task at the latest within a year of these dates unless extraordinary circumstances require a new Federal Council decision to defer ratification.

C. Acceptance, approval and act of formal confirmation

133 At international level, the consent of a party to be bound by a treaty can be expressed by a different means than ratification. Acceptance and approval are procedures accepted when they are expressly provided for in the treaty text. The legal effects and the procedure to be followed at international level for acceptance or approval are the same as for ratification (Art. 2 para. 1 let. b and Art. 14 para. 2 VCLT).

134 The act of formal confirmation is the act through which an international organisation provides consent at international level to be bound by a treaty.[98] It is equivalent to ratification, which is nevertheless a term reserved for states.

D. Accession

135 When a party has not signed a multilateral treaty, it may, if provided for by the treaty, deposit an instrument of accession. While ratification follows the signature of a treaty, accession (Art. 15 VCLT) is generally a single act. Depending upon the provisions of the treaty, accession is possible for the parties either from the opening of the treaty for signature, from when it can no longer be signed or only after the entry into force of the treaty.

136 Accession to a treaty has to be distinguished from accession to an international organisation. This can take place not just through accession itself to the organisation's constituting treaty but also by the signature followed by the ratification of this constituting act.

E. Succession of states

137 Succession is the substitution of one state (successor) for another (predecessor) with regard to a territory's responsibility for international relations. It can arise as the result of the establishment of the independence of a new state, the unification of states, the separation of states or the transfer of part of a state's territory to another state. The effects of the succession of states on the treaties concluded by the predecessor state and which are applicable to the territory of the successor state are governed by the Vienna Convention of 23 August 1978 on Succession of States in respect of Treaties.[99]

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97 The exchange of ratification instruments may be entered in minutes drawn up in two copies in one of the official languages or in English. The deposit of ratification instruments of a multilateral treaty with a depositary may also be entered in minutes. Switzerland, as a depositary, draws up such minutes where provided for by the treaty. If the treaty does not include such a provision, Switzerland issues an acknowledgement of receipt in the form of a verbal note to the depositing party.

98 See Article 2 paragraph 1 letter b^{bis} of the Vienna Convention of 21 March 1986 on the Law of Treaties between States and International Organisations or between International Organisations (BBI 1989 II 766, 767 f.), ratified by Switzerland but not in force (see BBI 1989 III 1625).

99 This convention (see UNTS no. 33356, volume 1946, p. 3) entered into force on 6 November 1996, but neither signed nor ratified by Switzerland, only applies to around 20 states. Originally resulting from the process of

138 For newly independent states,[100] the Convention establishes the 'tabula rasa (clean slate) principle' (Art. 16 ff.), according to which the new state is not bound to maintain in force any bilateral or multilateral treaty which was applicable to its territory before independence. Treaties concerning boundaries and territorial regimes (Art. 11 f. of the Convention) are generally exceptions to the tabula rasa principle. However, the newly independent state may generally notify its succession, accede to the multilateral treaties which it wishes to maintain, or conclude another agreement to this end with the parties bound by bilateral treaties which were applicable to its territory.

139 In the case of bilateral treaties, Switzerland's practice is to conclude an agreement with the new state, if it consents, in the form of an exchange of notes expressly stating which treaties in force between Switzerland and the predecessor state continue to apply to the newly independent state.[101] This solution enables treaty relations to be maintained with the new state without necessarily having to open negotiations with it on the conclusion of new treaties. With regard to multilateral treaties and bilateral treaties for which no agreement has been reached, a cessation of application to the territory forming the successor state is presumed from the date of independence. In contrast, continuation of application is presumed where this results from conclusive acts.

140 In practice, newly independent states have often made a declaration to the office of the Secretary-General of the UN through which they express their intention to maintain in force, possibly for a period limited to several years, the treaties concluded by the predecessor state. This period enables newly independent states to systematically examine each treaty concluded by the predecessor state.

141 In the event of the unification of two or more states (Art. 31 ff. of the Convention), the principle is the continuation of the treaties, at least for those which do not prohibit automatic accession through succession. In cases of separation, this principle applies to just one state, known as the continuator, which may also retain membership of the international organisations held by the predecessor state provided this is not prohibited by the constituting act. The other state (secession) or the other states (dismemberment) have to request their accession where applicable. With successions concerning one part of a territory which passes from one state to another (Art. 15), the treaties of the predecessor state generally cease to apply in favour of those of the successor state.

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decolonisation after the Second World War, the issue of the succession of states with regard to treaties has given rise to, in Switzerland and elsewhere, a certain degree of legal uncertainty. The general presumption of the continuation of the validity of treaties has been reversed over the years in favour of expiration. Recent practice has put greater emphasis on the will of the new state. Changes of government and fundamental modifications to political, economic and social conditions in a state have no effect on the validity of the treaties. They do not constitute a case of succession of state.

100 This is the case with states formed as a result of decolonisation.

101 This generally concerns all bilateral treaties in force with the predecessor state and which lend themselves to this; revision is nevertheless often carried out at this juncture involving the non-resumption of obsolete treaties or a special mention of the treaties to be renegotiated over the short term.

X. Reservations, declarations and objections[102]

A. Reservation

142 The reservation is a unilateral declaration, regardless of its wording or title, made by one party when it signs, ratifies, accepts or approves a multilateral treaty[103] or accedes to it, with the intention to exclude or modify the legal effect of certain provisions of the treaty in terms of their application to that party (Art. 2 para. 1 let. d and 19 ff. VCLT).

143 In order to reconcile the two conflicting principles of the universality and the integrity of treaties, reservations should be used with restraint. Nevertheless, there has been a shift over the course of the years towards the admissibility of reservations in order to encourage greater participation in treaties (universality). A reservation never contains, for the party which has made it, the legal obligation to eventually remove it, for example, by amending its domestic law.

144 Any reservation has to be made in writing. When it is made at the time of the signature of a treaty concluded subject to ratification, it must, unless the treaty stipulates otherwise, be confirmed upon ratification, either in the instrument itself or in an attached document. A reservation enters into effect on the date of confirmation. Unless expressly stipulated by the treaty, it cannot be made after ratification or accession.[104]

145 A reservation with regard to another party modifies the provisions of the treaty to which the reservation relates for the author of the reservation and reciprocally in its relations with this party. However, the reservation does not modify anything for the other parties in terms of their relations with one another (Art. 21 para. 1 and 2 VCLT).

146 A reservation expressly authorised by a treaty does not generally require any subsequent acceptance by the other parties. The Vienna Convention more generally establishes the principle of tacit acceptance in the event of the silence of the treaty provisions (Art. 20 para. 1). The treaty may nevertheless provide for the requirement of the express acceptance of the reservations. The acceptance then has to be set out in writing. It does not have to be confirmed if it is provided prior to the confirmation of the reservation itself.

B. Declaration

147 Some parties effectively make reservations and head them 'declarations'. These are known as qualified declarations. However, beyond the title alone, the emphasis should be placed on determining the substantive content of the text drawn up. Hence, it is not the heading but the content which determines the qualification. Qualified declarations are treated according to the same rules as reservations.[105]

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[102] On the matter in general, see Guide to Practice on Reservations to Treaties and the commentary on this in Report of the International Law Commission, sixty-third session, 26 April to 3 June and 4 July to 12 August 2011, UN, New York 2011 (A/66/10, pp. 12–51, https://undocs.org/en/A/66/10) and 2012 (A/66/10/Add. 1, https://undocs.org/en/A/66/10/Add.1).

[103] A reservation may in principle only be made for multilateral treaties. A reservation to a bilateral treaty would effectively correspond to a request to reopen negotiations. It suggests that they have not been completed. Clarifications may be appended to bilateral treaties, but they must be agreed by both parties (joint declaration), at least implicitly (unilateral declaration).

[104] On the possible admissibility of late reservations, see, for example, ACLFA 2009.11, p. 215 to 218.

[105] See, for example, ANTHONY AUST, Modern Treaty Law and Practice, 3rd edition, Cambridge 2013, p. 117 ff. and Judgement of the European Court of Human Rights of 29 April 1988, Belilos vs. Switzerland, Series A 132, no. 49.

148 A declaration may consist of an explanation of one party's interpretation of certain treaty provisions. This may also be a qualified declaration, which is equivalent to a reservation. It is often difficult to categorise an interpretative declaration. It is only possible to determine whether a simple or qualified declaration is involved by assessing the specific circumstances.

149 A distinction is therefore made between reservations and qualified declarations, having the legal effect of a reservation, on the one hand, and declarations that do not have the effect of a reservation, or simple declarations, on the other.

150 In the case of the latter, this refers to any declaration made by one party concerning one of the treaty's provisions or the other parties to the treaty. The simple declaration does not result in the exclusion or amendment of the legal effects of particular treaty provisions.

C. Admissibility

151 The evaluation of the admissibility of a reservation or qualified declaration is sometimes a delicate matter and has to be carried out on a case-by-case basis according to the following criteria:
- the reservation must not be prohibited by the treaty (Art. 19 let. a VCLT);
- if the treaty stipulates that only certain reservations may be made, the reservation concerned must be included amongst them (Art. 19 let. b VCLT); if a treaty provides for specific validity requirements for a reservation, these have to be adhered to;
- even when the treaty does not restrict the freedom to make reservations, they must not be incompatible with the object and purpose of the treaty (Art. 19 let. c VCLT);
- the reservation may not contradict the peremptory norms of international law (*jus cogens*).

152 The object and purpose of the treaty are the most difficult criteria to determine. Legal theory scarcely defines these terms but nonetheless states that the object and purpose can be inferred from the title of the treaty, its preamble, an initial provision setting out the object, a provision outlining the main concern of the parties, preparatory works or the general scheme of the treaty.[106] It also suggests various terms that may signal the object and purpose (raison d'être, fundamental principles, 'effectiveness', essence, overall goal or *telos*[107]) and methods to determine the compatibility of a reservation with the object and purpose of a treaty.[108]

D. Objection

153 When one party to a treaty deems that a reservation made by another party does not meet the conditions established by international law, it may raise an objection (Art. 20 ff. VCLT). Unless the treaty stipulates otherwise, a reservation is deemed to be accepted by a party if it does not object. Hence, the absence of an objection to a reservation may therefore be deemed to constitute tacit acceptance.

154 An objection is a unilateral act that aims to modify the legal effect of a reservation. It is a response to the unilateral act of the party making the inadmissible reservation. The legal effect of the objection is to suspend the application of the contentious provisions to some degree in the relations between the two parties. Its political effect is to send out a strong signal in favour of the integrity of the treaties and the strengthening of the effectiveness of international law.

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[106] ALAIN PELLET, Article 19 Convention of 1969 in OLIVIER CORTEN/PIERRE KLEIN (eds.), The Vienna Conventions on the Law of Treaties, Oxford 2011, vol. 1, p. 405 ff., no. 108 ff. p. 447 ff.

[107] Greek term denoting the objective that the parties have sought to achieve through the conclusion of the treaty, its purpose.

[108] PELLET, *op. cit.,* nos. 106 and 115.

155 A party can raise an objection within the period of twelve months from the date on which it received notification of the reservation from the depositary of the treaty concerned or by the date on which it expresses its consent to be bound by the treaty, whichever is later (Art. 20 para. 5 VCLT). The objection to a reservation must be made in writing. If a reservation is made at the time of signature, an objection already made to this reservation does not need to be reiterated after confirmation, at the time of ratification, of the reservation itself.

E. Withdrawal

156 Unless the treaty stipulates otherwise, a reservation or an objection can be withdrawn at any time. The consent of the party which accepted the reservation is not required for withdrawal. The withdrawal from a reservation or an objection has to be made in writing. It does not have retroactive effect.

157 Unless the treaty stipulates otherwise or unless agreed otherwise, the withdrawal of a reservation takes effect vis-à-vis another contracting party once it has received notification and the withdrawal of an objection to a reservation takes effect once the party which made the reservation has received notification of the withdrawal.

F. Competences in Switzerland

158 Switzerland adopts a rather restrictive practice in terms of making reservations and attempts, as far as possible, to adopt treaties in their entirety. The Federal Council proposes and formulates reservations. The Federal Assembly, where applicable, examines them in the context of the treaty approval procedure. It may amend or reject reservations or propose others. The text of the reservations is set out in full in the federal decree. The Federal Council is bound by the decision of the Federal Assembly. It will include the text of the reservations in the ratification instrument or in an annexed note or in the notification of the completion of the procedures. The same applies to declarations.

159 A withdrawal of or an amendment to reservations can often be equated with a modification of a treaty, including in terms of national procedures. The Federal Assembly, which has authorised the Federal Council to ratify a treaty with specific reservations, generally remains competent for deciding whether to withdraw a reservation unless it has delegated this competence to the Federal Council. The Federal Council is therefore only competent for deciding upon the withdrawal of reservations where it possesses the competence for amending the treaty concerned or, in application of Article 7a paragraphs 2 to 4 of the GAOA, when these reservations and their withdrawal are of limited scope.

160 The competence for making an objection to a reservation or withdrawing it generally lies with the Federal Council on the basis of Article 184 paragraph 1 Cst. The Federal Council may delegate this competence at departmental level, which it generally does for the withdrawal of an objection. For a long time, Switzerland exercised restraint in making objections to reservations that were inadmissible under international law. However, it has raised twenty such objections since 2010.[109]

[109] Switzerland will, in particular, make an objection when human rights and international humanitarian law are involved. It will take the position of other states into account, but aims to ensure consistency and impartiality in its practice. For an objection to be raised in good time (see no. 155), Switzerland must assess whether a reservation is permitted when the depository of a treaty that is binding on Switzerland notifies the reservation or when considering whether to ratify or accede to a treaty where reservations have previously been made.

XI. Publication of treaties

A. National publication[110]

a. Official Compilation

161 With regard to international law, the following are published in the Official Compilation of Federal Legislation (AS)[111] if they are binding upon Switzerland:[112]
a. treaties and international law decisions which are submitted to referendum pursuant to Article 140 paragraph 1 letter b Cst. or subject to referendum pursuant to Article 141 paragraph 1 letter d Cst.;
b. other treaties and international law decisions laying down legal rules or authorising the enactment of legislative provisions.[113]

162 Treaties and decisions of minor importance[114] are not published in the AS, unless they affect individuals' rights and obligations, or it is necessary to publish them for reasons of legal certainty or to ensure transparency (Art. 2 PublO).[115] Under very specific conditions some treaties and decisions can be published in the AS only by reference (Art. 5 PublA and 13 to 16 PublO). Unpublished treaties, except those that are classified,[116] are still generally available to the public on request.

163 Publication of the texts to be published has to take place at least five days before their entry into force. Those whose date of entry into force is still not known at the time of their approval are published as soon as this date is known (Art. 7 para. 1 and 2 PublA). Treaties applied provisionally before their entry into force are published in the AS as soon as the decision on their provisional application has been taken (Art. 42 para. 5 PublO).[117] It is the duty of the offices responsible to provide the texts for publication in good time, translated, where necessary, into the official languages of the Swiss Confederation, through the Official Publications Centre OPC of the Federal Chancellery.

164 The legal obligations arising from the texts apply from the time of their publication (Art. 8 para. 1 PublA).[118] However, whether a treaty is published or not has no effect on its validity in international law.

165 In principle, treaties are published concurrently in Switzerland's official languages, i.e. German, French and Italian.[119] The multilateral treaties often have an original version at least in French.

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110 The Federal Chancellery is primarily competent for these matters.

111 *Amtliche Sammlung des Bundesrechts (AS); Recueil officiel du droit fédéral (RO); Raccolta ufficiale del diritto federale (RU).*

112 Art. 3 para. 1 PublA.

113 The Federal Council may decide that treaties and decrees that are not legislative in nature still be published in the AS (Art. 3 para. 2 PublA; see also Art. 1 of the Ordinance of 7 October 2015 on the Compilations of Federal Legislation and the Federal Gazette; PublO; SR *170.512.1*).

114 See Art. 7a para. 2 to 4 GAOA, no. 115.

115 Treaties with a period of validity of less than six months are published in the AS once the term has been extended to exceed six months (Art. 3 PublO).

116 See no. 172 f.

117 If the treaty repeals a previous agreement also published (see no. 53), this is removed from the SR.

118 Since 2016, the electronic versions of legal texts have precedence in Switzerland; the version of the AS published on the online platform, which is available to the public, is therefore authoritative (Art. 1*a* and 15 para. 2 PublA; see BBI 2014 6993; PIERRE TERCIER/CHRISTIAN ROTEN, La Loi fédérale sur les recueils du droit fédéral et la Feuille fédérale, RSJ 111/2015, p. 113 to 121).

119 Art. 14 para. 1 PublA; for the exceptions to this, see para. 2.

For bilateral treaties that are to be published, the competent offices generally have to request an authentic version in an official language.[120] The treaties and international law decisions specify which version is authoritative (Art. 15 para. 3 PublA). The publication in the AS indicates whether the text of the treaty is an original version or a translation. In contrast to domestic law, only the original text is authentic. Hence there is only equivalence of authority between the treaty texts published for languages that are authentic versions.

b. Classified Compilation

166 The Classified Compilation of Federal Legislation (SR)[121] is a consolidated collection of Swiss law classified by subject area and updated at regular intervals (Art. 11 PublA). With regard to international law, it contains the international law decisions and treaties published in the AS.

167 The SR is also published in the three official languages. Texts of particular importance or international interest may be published in other languages, especially English (Art. 14 para. 6 PublA). The classification adopted for domestic law is decimal; for international law it is identical but is preceded by a zero.

c. Federal Gazette

168 Federal decrees concerning the approval of treaties providing for accession to collective security organisations or supranational communities as well as those subject to referendum (Art. 13 para. 1 let. d and e PublA) are among those published in the Federal Gazette (Bundesblatt, BBl).[122] When the Federal Assembly receives a dispatch relating to a treaty or an international law decision which has to be adopted, the text and dispatch are published concurrently in the BBl (Art. 21 PublO).

d. Electronic publications

169 The AS, SR and BBl are published online.[123] They may be obtained in printed form (Art. 16 PublA).

170 The DIL keeps up to date a list which is as complete as possible of all the treaties concerning Switzerland using a database accessible on the internet.[124] This is a compilation of information about the treaties in force for Switzerland or which it has signed, as well as other important non-binding treaties and instruments. It enables searches to be carried out by entering text, key words, states, international partner organisations, the dates on which the treaty was concluded or the subject matter. The database also mentions treaties not published by Switzerland whose texts are generally available from the DIL. In some cases, it contains details which are not included in the official publications, such as, where applicable, the title in English and the depositary. The information is regularly updated but there is no guarantee of its completeness or accuracy; only information in the AS is authoritative.[125]

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120 See no. 67.

121 *Systematische Sammlung des Bundesrechts (SR); Recueil systématique du droit fédéral (RS); Raccolta sistematica del diritto federale (RS).*

122 *Bundesblatt (BBl); Feuille fédérale (FF); Foglio federale (FF).*

123 www.admin.ch → federal law (*Bundesrecht, droit federal, diritto federale*) or, specifically, www.fedlex.admin.ch/fr/oc for the AS, www.fedlex.admin.ch/en/cc for the SR and www.fedlex.admin.ch/fr/fga for the BBl.

124 https://www.fedlex.admin.ch/en/treaty.

125 See no. 164.

171 The Federal Chancellery also publishes a directory of all EU legal texts applying to Switzerland (Art. 27 let. c PublO).[126]

B. Classified treaties

172 If a treaty is to be classified as confidential or secret,[127] it is advisable to include a provision in the treaty text to that end. Otherwise, it will be necessary to prove by other means that the parties agreed on this and approved it using their respective national procedures. The Federal Council seldom enters into classified treaties.

173 Obviously, classified treaties and decrees under international law are not published (see Art. 6 para. 1 PublA) or mentioned in the report to Parliament.[128] However, the Control Delegation must be informed on an annual basis.[129]

C. International registration

174 At international level, the office of the UN Secretary-General publishes in the United Nations Treaties Series (UNTS), which currently includes over 3,000 volumes,[130] all treaties concluded by a member of the UN and registered with it,[131] which amounts to over 250,000 treaties and related actions, along with treaty texts in the authentic language version(s) and translations in English or in French.[132] Multilateral treaties are registered by the organisation or the state that is the depositary. In the absence of a specific clause on this matter, the designation of a depositary mandates it to register the treaty on behalf of the parties.[133]

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126 See www.fedlex.admin.ch/fr/sector-specific-agreements.

127 See Ordinance of 4 July 2007 on the Protection of Federal Information (IPO), SR *510.411*.

128 See no. 124 f.

129 The Federal Council submits a list to it once a year which has been updated by the Federal Chancellery to keep the departments informed (Art. 5*c* GAOO).

130 Searches can be carried out from the UN's Treaty Collection (http://treaties.un.org) at https://treaties.un.org/Pages/AdvanceSearch.aspx?tab=UNTS&clang=_en. This collection has, since 1946, followed on from the 205 volumes of the League of Nations Treaty Series (1920–44).

131 See Art. 102 of the United Nations Charter of 26 June 1945 (SR *0.120*), which provides that no party to a treaty which has not been registered may invoke that treaty or agreement before any organ of the United Nations. Yet it seems that this principle has hardly ever been applied (see ICJ, judgment of 1 July 1994, Qatar v. Bahrain, Case Reports 1994, no. 29 p. 122 and AUST, *op. cit.*, p. 303 and references). Incidentally, a number of UN members do not register their bilateral treaties.

132 The registration request must be accompanied by an electronic copy of the full text in all the languages, and indicate the date and place of the signature as well as the date and method of entry into force. Switzerland did not register its bilateral treaties before joining the UN in 2002 and has had difficulty doing so since, as the UN has declined to register a number of treaties that refer to important old treaties entered into after 1945 which have not yet been registered.

133 Art. 77 and 80 VCLT.

D. National registration and archiving

175 The treaties deposited in the Federal Archives pass through the DIL.[134] The originals constituting the Swiss versions of bilateral treaties, treaties that have been duly signed electronically, the certified copies of multilateral treaties and the originals of multilateral treaties of which Switzerland is the depositary are deposited from their entry into force in the Federal Archives by the Treaty Section of the DIL. It will have already registered them in its database beforehand.[135]

176 In the case of bilateral treaties, the full powers of signature documents,[136] i.e. a copy of the Swiss powers and the original of the partner's powers, and, for treaties which enter into force by means of notification of the completion of the required procedures, a copy of the Swiss note and the original of the partner's note, have, where applicable, to be forwarded for archiving along with the Swiss original.[137] The copies of these documents for the requirements of the representations and offices have to be produced prior to their forwarding to the DIL.

177 It is the responsibility of the competent offices to immediately inform the Treaty Section of the DIL about any treaty entered into, amended or denounced by Switzerland. For the purposes of registration, publication, where applicable, and then archiving, it has to receive, once the signature has been provided, the Swiss original copy or duly signed electronic copy of all bilateral treaties, a certified copy of all multilateral treaties generally obtained from the depositary upon conclusion and any amendment(s) or denunciation.

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[134] See Art. 4 para. 3 of the Archiving Ordinance of 8 September 1999 (ArchO; SR *152.11*). Pursuant to Art. 8 para. 3 let. d OrgO-FDFA, the DIL manages documentation relating to the treaties. According to the instructions of 28 September 1999 regarding the obligation to make documents available and to transfer documents to the Federal Archives (see www.bar.admin.ch/bar/en/home/about-us/the-federal-archives/legal-basis.html), the originals of the treaties and other instruments of international cooperation have to be sent immediately after they have been signed to the DIL which transfers them to the Federal Archives from their entry into force. This also applies to confidential texts, while those classified as secret are retained by the offices responsible.

[135] See no. 170.

[136] See no. 93 ff.

[137] See no. 130. Also see Annex D. These documents will be accompanied, if necessary, by a translation.

XII. Application and interpretation of treaties

A. International law and domestic law[138]

178 The Swiss Confederation and the cantons shall respect international law (Art. 5 para. 4 Cst.). When Switzerland concludes a treaty, it ensures that its international commitments are in line with domestic law or amends this in conformity with international law. If a conflict does arise, the authority concerned must first endeavour to resolve this by interpreting domestic law in conformity with the treaty. If a conflict with a federal act cannot be resolved in this way, the Swiss authorities and courts, in practice, generally give primacy to international law. Subsequent constitutional law which is directly applicable and federal acts through which the Federal Assembly has voluntarily departed from international law are exceptions to this principle.[139] Even in the latter scenario, the international norms on the protection of human rights generally take precedence over federal acts.[140] The same applies to the peremptory norms of international law (*jus cogens*, see Art. 139 para. 3, 193 para. 4 and 194 para. 2 Cst.; see also Art. 53 VCLT), which also take precedence over the Federal Constitution. Opinions of legal commentators differ regarding conflicts between international law and the Federal Constitution; the Federal Supreme Court has not determined the issue.[141]

179 International law, when it enters into force for Switzerland, automatically acquires validity and binding force under the Swiss legal system. This is the theory of monism which, in contrast to that of dualism, does not require a constituting act of national law, adoption or transformation to give the international norm validity under the domestic system.[142]

180 International law does not expressly establish the primacy of international law over national law. However, Article 27 of the Vienna Convention provides that a party may not invoke the provisions of its internal law as justification for its failure to perform a treaty. This rule does not apply to provisions of national law of fundamental importance concerning the power to conclude treaties.

B. Application

a. *Ratione personae*

181 The validity of treaties under Swiss law has to be distinguished from direct applicability. Although the provisions of treaties automatically become valid under Swiss law, this does not necessarily mean that they can be directly applied to a specific case. Where necessary, implementing provisions have to be drawn up. If implementing legislation is not required, the norms are referred to as self-executing.[143]

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[138] On the issue in general, see the report on the relationship between domestic law and international law in Switzerland, FDFA, 2nd amended edition, Bern 2018, publication available in German, French and Italian at www.fdfa.admin.ch → FDFA → Publications; see also Reports of the Federal Council on the relationship between international law and national law dated 5 March 2010 (BBl 2010 2067), 30 March 2011 (BBl 2011 3401) and 12 June 2015 (www.parliament.ch → Item: 13.3805).

[139] See Decisions of the Swiss Federal Supreme Court 99 Ib 39; see also Decision 146 V 87, consid. 8.2 and 8.3.

[140] See Decisions 139 I 16, consid. 5, 138 II 532, consid. 5.1, 136 II 241, consid. 16.1, 125 II 417, consid. 4d.

[141] See Dispatch on the Self-Determination Initiative, BBl 2017 5027, 5040 ff., 5044 f. and references to the Report of 5 March 2010, BBl 2010 2067.

[142] See, for example, Decisions of the Swiss Federal Supreme Court 147 I 308, consid. 4.3, 137 I 305, consid. 3.2.

[143] These are norms intended to be immediately applied by the state authorities and to directly bind private persons. They have to be sufficiently specific in contrast to programmatic norms which have to be fleshed out by the legislator before becoming sources of law and obligations for private persons (see, for example, Decisions of the Swiss Federal Supreme Court 145 I 308 consid. 3.4.1, 140 II 185 consid. 4.2).

182 If the parties to two multilateral treaties governing the same subject are not the same, in relations between a party to the two treaties and a party to just one of these treaties, the treaty to which the two are party governs their rights and obligations (Art. 30 para. 4 VCLT). In principle, the treaties place obligations on and authorise only the contracting parties. They do not have legal effects on third parties (*res inter alios acta*; *pacta tertiis nec nocent nec prosunt*). However, there are treaties that create rights or obligations for third parties which then have to consent to them (Art. 34 ff. VCLT).

b. *Ratione temporis*

183 The principle of the non-retroactivity of treaties is well established (Art. 28 VCLT). A treaty can therefore only enter into force after the completion of the full conclusion process in line with international law and the domestic law of the parties.[144] The entry into force is therefore never prior to the treaty's date of signature. However, the parties may wish to have all or parts of the treaty take effect earlier than the date of entry into force,[145] or even, in exceptional circumstances and for some types of treaties, on a date which precedes signature (see Art. 28 VCLT). They must then agree upon this.

184 In the case of successive treaties, a subsequent treaty generally prevails over the previous treaty (Art. 30 para. 3 and Art. 59 para. 1 VCLT). When a treaty stipulates that it is subject to a previous or subsequent treaty or that it should not be deemed incompatible with the other treaty, the provisions of that treaty will prevail (Art. 30 para. 2 VCLT).

185 The application of a treaty may be suspended owing to its provisions or by consent of the parties (Art. 57 VCLT). The application of a multilateral treaty may also be suspended by agreement between two or several parties only where this possibility is provided for by the treaty itself or provided it is not incompatible with the object and purpose of the treaty. The other parties to the treaty must be notified (Art. 58 VCLT).[146] Suspension, like denunciation or withdrawal, may also be the result of a breach of the treaty under certain material conditions (Art. 60 VCLT) and formal grounds (Art. 65 to 68 VCLT).

c. *Ratione materiae*

186 A treaty is executed when the performance and counter-performance stipulated have been completed in full. It then becomes without object, while formally remaining in force. A treaty has to be executed in its entirety. Like ratification or provisional application, denunciation, withdrawal or suspension cannot generally be partial unless the treaty stipulates otherwise. The principle of the inseparability of treaty provisions is therefore established (Art. 44 VCLT), separability being deemed an exception.

C. Modification

187 Any treaty can in principle be amended by the parties (Art. 39 VCLT).[147] The amendment of a bilateral treaty is carried out, where the text is silent, according to the same procedure as that followed for the conclusion. It can take the simplified form of an exchange of letters or notes.

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144 Some treaties make a distinction, for practical reasons, between their date of entry into force and the commencement of their effective application. This is the case in most agreements concerning fiscal matters so that the same system is applied to the entirety of a 'fiscal year', or some treaties with the EU, often with the aim of ensuring commencement of application coordinated with the member states. This distinction should nevertheless be avoided as far as possible for reasons of legal certainty and simplification.

145 For provisional application, see Art. 25 VCLT and no. 53 ff.

146 Also see no. 62.

147 On domestic competence to decide in Switzerland, see no. 109 *in fine*.

188 The amendment of a multilateral treaty is more complicated. Any modification proposal drawn up by a contracting party must, unless stipulated otherwise, be communicated to all the other contracting parties which are entitled to decide on the matter and to become parties to the amended treaty. However, the amending agreement does not bind the parties to the treaty which do not become parties to this agreement. Any party which consents to be bound by the treaty after the entry into force of the amending agreement is expected to become a party to the amended treaty. However, it is considered a party to the non-amended treaty in relation to any party to the treaty not bound by the amending agreement (Art. 40 f. VCLT).

189 Some treaties provide for – generally for the amendment of technical annexes – a special amendment procedure which does not require the express consent of all parties in order to favour, as far as possible, the application of a single text. In order for an amendment to enter into force, it may be sufficient for it to be accepted by a simple or qualified majority of the parties or that it is not objected to by a certain number of parties. This latter procedure is known as 'opting out' or 'contracting out'. If an amendment proposal is valid, the parties have a period within which to object to it. Depending on the wording provided for, all the parties can, for example, be bound by the amendment if the number of objections made does not reach the minimum stipulated or all the parties which did not raise an objection within the period provided for can be bound by the amendment, at least in their relations with the other parties which did not object.[148]

D. Invalidity

190 A treaty is invalid in particular when the consent of the parties has been vitiated, namely when the will expressed does not correspond to the joint and actual intention of the parties. The manifest violation of a provision of domestic law on the competence to conclude treaties (Art. 46 VCLT), error, fraud, corruption and coercion (Arts. 48 to 52 VCLT) are reasons for invalidity.

191 The invalidity of the treaty, depending upon the circumstances, will be invoked from its conclusion with *ex tunc* effect or its annulment, with *ex nunc* effect, upon invocation of the grounds of invalidity. In the first scenario, if the reestablishment of the *status quo ante* is no longer possible, the invalidity includes the obligation to remedy the damage suffered. Invalidity is also provided for when a treaty conflicts with a peremptory norm of general international law (*jus cogens*; Art. 53 VCLT).

E. Termination

192 Many bilateral treaties are concluded for a limited duration. The text of the treaty itself consequently governs the conditions and procedures of its termination. This takes place either by means of the mere passage of time, the fulfilment of a resolutory condition or under a denunciation provision. Multilateral treaties are rarely concluded for a specific duration. This is why they generally contain provisions on their revision.

193 The other main means of terminating treaties are (Arts. 54 to 64 VCLT) the mutual consent of the parties, the conclusion of a new treaty on the same subject, the renunciation of the rights conferred by the treaty, the establishment of a derogating customary provision resulting in the

[148] The competent authority in Switzerland for approving the conclusion of such treaties has to be at least that which will be competent for the approval of amendments likely to be adopted in this way. Furthermore, as this procedure sometimes dispenses with formal domestic approval of such amendments which is required in principle, the Swiss delegation participating in the negotiations on such amendments or requested to approve them must have a formal mandate (see no. 34 ff.) from the competent authority.

termination of the treaty through desuetude (non-use over time), the emergence of a situation making execution impossible, the substantial violation of the treaty by one of the parties, a fundamental change of circumstances (*clausula rebus sic stantibus*) or the emergence of a new peremptory norm of general international law (*jus cogens*).[149]

F. Interpretation

194 The interpretation aims to determine the precise meaning of a treaty provision. Articles 31 to 33 of the Vienna Convention, which contain reasonably detailed rules on the interpretation of treaties, are deemed customary law. Article 31 paragraph 1 stipulates that a treaty must be interpreted in good faith[150] in accordance with the ordinary meaning given to the terms of the treaty (literal interpretation) in their context (systematic) and in the light of its object and purpose (teleological[151]). The importance of the subsequent practice of the parties should also be underlined (Art. 31 para. 3 VCLT).

195 Consideration should firstly be given to the natural and ordinary meaning of the terms of the treaty. Where they have a clear and precise meaning according to their usual definition and general context at the time of the conclusion of the treaty, it is not necessary to deviate from their natural meaning and to use other means of interpretation.

196 Secondary and subsidiary status is therefore given to preparatory works (historical interpretation) and other supplementary means of interpretation (Art. 32 VCLT). Recourse to supplementary means should only be made for the purposes of confirmation or if the interpretation, based on the natural and ordinary meaning of the terms of the treaty, leads to results that are clearly different from those intended by the parties. The circumstances of the treaty's conclusion and the analysis of the joint will of the parties are part of these supplementary means.

* * *

149 For the concept, see decision of the Swiss Federal Supreme Court of 23 January 2008 (2A.783/2006, consid. 8), which was, however, overturned by the decision dated 6 July 2018 (2F-21/2106) involving a request for review.

150 Also see Art. 26 VCLT.

151 It is often equated with the principle of effectiveness: it requires the interpreter to adopt the option from various possibilities which enables the anticipated effect of the norm concerned to be achieved.

ANNEX A - Names of international instruments, classification

International treaties

Importance of the act	English	French	German	Italian
	Treaty	Traité	Vertrag	Trattato
	Convention	Convention	Übereinkommen	Convenzione
	Agreement	Accord	Abkommen	Accordo
	Protocol	Protocole	Protokoll	Protocollo
+	Additional protocol	Protocole additionnel	Zusatzprotokoll	Protocollo aggiuntivo
	Pact	Pacte	Pakt	Patto
	Charter	Charte	Charta	Carta
	Constitution	Constitution	Verfassung/Konstitution	Costituzione
	Constitutive act	Acte constitutif	Gründungsakte	Atto costitutivo
	Statute	Statut	Statut / Satzung	Statuto
	Concordat	Concordat	Konkordat	Concordato
	Arrangement	Arrangement	Vereinbarung	Intesa (accordo)
	Exchange of letters	Echange de lettres	Briefwechsel	Scambio di lettere
	Exchange of notes	Echange de notes	Notenaustausch	Scambio di note
	Act	Acte	Akt	Atto
	Agreed minutes	Protocole d'accord	Vereinbarung	Protocollo d'accordo
	Additional agreement	Avenant	Zusatzabkommen	Accordo aggiuntivo
	Modification	Modification	Änderung	Modifica
–	Amendment	Amendement	Änderung	Emendamento
	Regulation	Règlement	Reglement, Verordnung	Regolamento
	Rules	Règles	Regeln	Norme

Other instruments

	Memorandum of understanding (MoU)	Mémorandum d'entente	Verständigung / Absprache	Memorandum d'intesa
	Statement of intent	Déclaration d'intention	Absichtserklärung	Dichiarazione d'intenti
	Letter of intent (LoI)	Lettre d'intention	Absichtserklärung	Lettera d'intenti
	Joint declaration	Déclaration conjointe	Gemeinsame Erklärung	Dichiarazione comune
	Modus vivendi	Modus vivendi	Modus vivendi	Modus vivendi
	Recommendation	Recommandation	Empfehlung	Raccomandazione
	Resolution	Résolution	Resolution	Risoluzione
	Decision	Décision	Beschluss	Decisione
	Minutes	Procès-verbal	Protokoll / Niederschrift	(Processo) verbale

ANNEX B - Terminological suggestions for treaties and non-binding acts

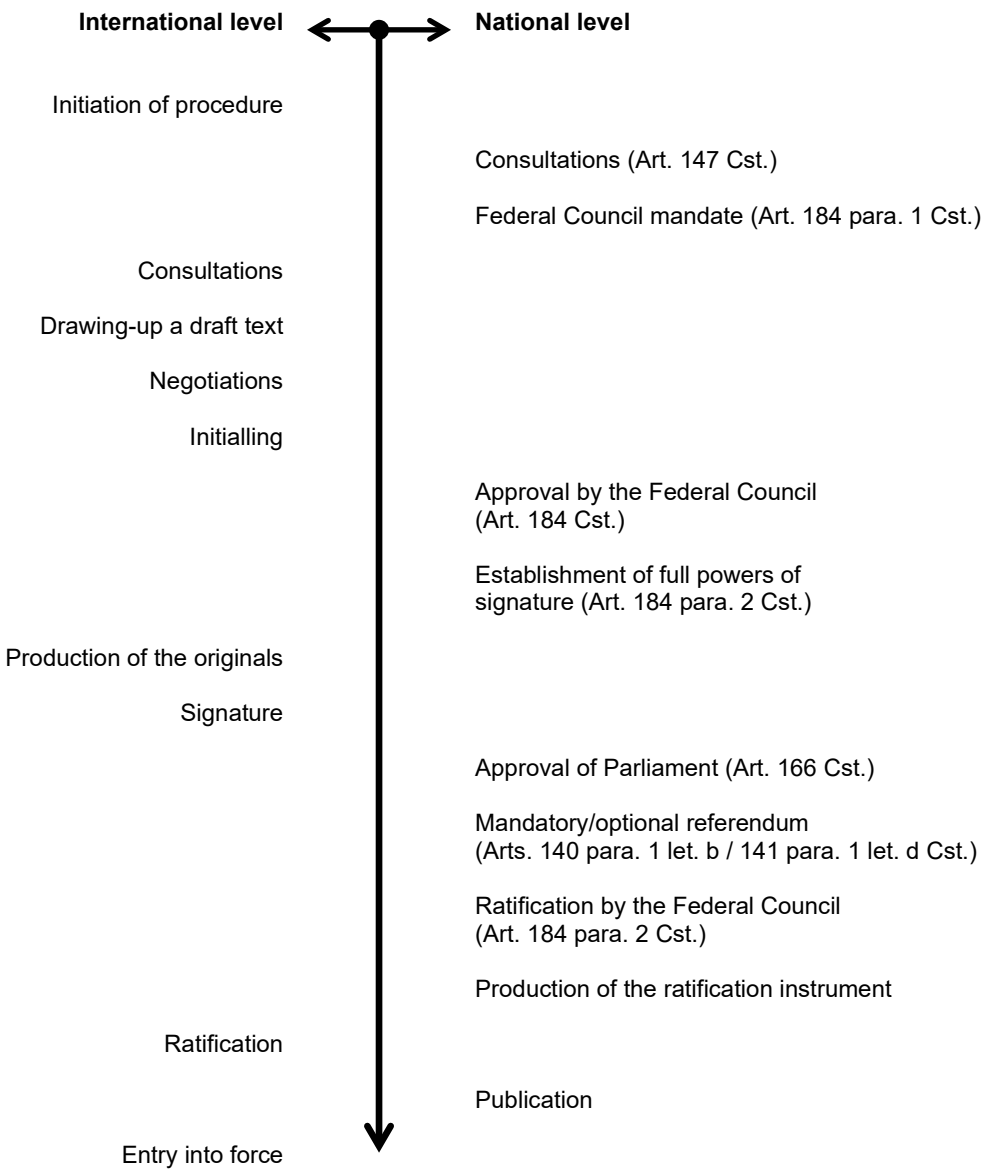
Comparative table[152]

TREATIES **TRAITES** **VERTRÄGE** **TRATTATI**	**NON-LEGALLY BINDING INSTRUMENTS** **INSTRUMENTS JURIDIQUEMENT NON CONTRAIGNANTS** **RECHTLICH NICHT BINDENDE VEREINBARUNGEN** **STRUMENTI GIURIDICAMENTE NON VINCOLANTI**
shall (will[153]) **doit (ou verbe au présent ou au futur)** **hat…zu, ist…zu, muss** **deve**	**may, could, should** **peut, pourrait, devrait** **kann, könnte, soll** **può, potrebbe, dovrebbe** **wishes (will)** **souhaite** **wünscht** **desidera** **intends** **a l'intention** **beabsichtigt** **ha intenzione**
agreement – obligation, undertaking – right accord – obligation, engagement – droit Abkommen – Pflicht, Verpflichtung – Recht accordo – obbligo, impegno – diritto	understanding – task – benefit entente – tâche – bénéfice Absprache – Aufgabe – Nutzen intesa – compito – beneficio
agree, concur, consent être d'accord, convenir, consentir übereinkommen, zustimmen, vereinbaren concordare, convenire, acconsentire	understand, declare, aim, strive – it is expected s'entendre, déclarer, viser, tendre – il est attendu sich verständigen, erklären, anstreben – es wird erwartet accordarsi, dichiarare, tendere – ci si aspetta
State party – party État partie – partie Vertragspartei – Partei Stato parte – parte	Government – participant, side, partner – signatory Gouvernement – participant, partenaire – signataire Regierung – Teilnehmer Seite, Partner – Unterzeichner Governo – Partecipante, partner – firmatario
preamble préambule Präambel preambolo	introduction introduction Einleitung introduzione
article – clause article – clause Artikel – Klausel articolo – clausola	paragraph, section paragraphe, section Abschnitt, Sektion paragrafo, sezione
condition, term – rule condition – règle Bedingung – Regel condizione – regola	provision – modality disposition – modalité Bestimmung – Modalität disposizione – modalità
enter into force entrer en force, en vigueur in Kraft treten entrare in vigore	come into effect, take effect prendre effet wirksam werden avere efficacia
authentic – authoritative authentique – officiel beglaubigt – amtlich autentico – ufficiale	equally valid de même valeur gleichwertig di pari valore
done – concluded fait – conclu geschehen – abgeschlossen fatto – concluso	signed signé unterzeichnet firmata

[152] Partially taken, for English, from AUST, *op. cit.*, p. 23, 369 ff. and 429.

[153] 'Will' should be avoided or used with caution; this term is deemed legally binding by the United States whereas it is the form not deemed legally binding by the United Kingdom.

ANNEX C - Schematic overview of the procedure for the conclusion of a treaty[154]



[154] The steps outlined are not all necessarily followed or may be followed at a different time:

- national consultations and conferral of the Federal Council mandate may, where required, occur at a later date (no. 33 ff.);
- certain international steps, such as initialling, which is always optional (no. 90 f.), and the 'alternat' system do not apply to multilateral treaties;
- it is possible for a multilateral treaty not to be signed; ratification is then often called accession;
- the full powers are not required for heads of state, heads of government, ministers for foreign affairs or sometimes, on the basis of long practice, for heads of mission or accredited representatives (Art. 7 para. 2 VCLT);
- there are numerous exceptions in practice to the principle of the submission of treaties to Parliament (Art. 166 para. 2 Cst.);
- the treaty is only submitted for referendum if specific conditions are met (Art. 140 f. Cst.);
- the ratification decision by the Federal Council is taken if possible, subject to parliamentary approval, at the same time as the adoption of the treaty;
- many treaties are not published (Art. 3 PublA and Art. 1 to 3 PublO).

ANNEX D - Aide-mémoire for the handwritten signature of treaties and other bilateral instruments[155]

- Bilateral instruments are drawn up in duplicate (two **originals**), a Swiss original which mentions Switzerland first (Agreement between Switzerland and…; Swiss signature on the left) and the partner's original which mentions the partner first (Agreement between… and Switzerland; Swiss signature on the right).

- Each original contains the text of the instrument in all of its original **languages**. The language versions are compiled in an order which may differ depending upon the original: for Switzerland French, German or Italian appear first.

- The Swiss **materials** (paper, binders, pieces of cord and practical guidance) are obtained from the Treaty Section of the DIL, FDFA. The Swiss original is printed on paper provided by Switzerland and the partner's original on paper provided by the partner. The most important agreements are placed in a binder and bound by a piece of cord. For other agreements, the pages may be placed in a binder with a clip or a basic cardboard folder, but must then be stapled together.

- In principle, each partner prepares its own original. However, the author of a language version generally produces the text for both originals. If the **printing** of the different language versions is nevertheless carried out by the partner in whose country the instrument is signed, the other partner must provide its paper to that partner. In any event, it must be verified before signature that each original contains the same text and that the language versions are identical in terms of content.

- By way of exception, **wax seals** may be affixed to treaties, only upon request by the partner concerned and once the two originals and all language versions have been checked, at the ministry of foreign affairs in the host state where the treaty is signed (in Bern, no later than the day before the signature at the Treaty Section which possesses FDFA seals). For Switzerland, the seal of the department/office of the head of delegation or, if abroad, that of the embassy may be used.

- In the case of treaties only, the **full powers** are exchanged before signature. Only heads of state, heads of government and ministers of foreign affairs are not required to present this document.

- Each party first **signs** its own original in all the languages before signing the other original and taking its own away.

Documents to forward to the DIL/FDFA upon signature or receipt

The Treaty Section is informed immediately and receives the following as soon as possible:

1. **The original of the instrument (Swiss original)**. The offices only retain the original if the given text is non-legally binding, does not originate from the FDFA and has not been approved by the Federal Council. All copies for the requirements of the representations or offices have to be made before delivering the original to the Treaty Section.

2. In addition, for treaties:
- **the original of the partner's full powers,** with a translation where required;
- for treaties that enter into force upon notification of completion of the required procedures (notification is always undertaken by or on the instructions of the Treaty Section), **a copy of the Swiss note and the original of the partner's note**, with a translation where required;
- **a copy of the legal basis for concluding the agreement** (e.g. decision by the Federal Council or proposal and decision by the head of department or head of office).

Bern, March 2023

[155] For any further information, to obtain materials or for sending original copies, the contact details are: FDFA, DIL, Treaty Section, Federal Palace North Wing, Kochergasse 10, 3003 Bern, Switzerland, dv.staatsvertraege@eda.admin.ch, tel. +41 58 484 50 66.

ANNEX E - Final clauses of a treaty. Examples of provisions

Final provisions of a multilateral treaty[156]

Art. 81 Signature
The present Convention shall be open for signature by all States Members of the United Nations […] as follows: until 30 November 1969, at the Federal Ministry for Foreign Affairs of the Republic of Austria, and subsequently, until 30 April 1970, at United Nations Headquarters, New York.

Art. 82 Ratification
The present Convention is subject to ratification. The instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Art. 83 Accession
The present Convention shall remain open for accession by any State belonging to any of the categories mentioned in art. 81. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Art. 84 Entry into force
1. The present Convention shall enter into force on the thirtieth day following the date of deposit of the thirty-fifth instrument of ratification or accession.
2. For each State ratifying or acceding to the Convention after the deposit of the thirty-fifth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification or accession.

Art. 85 Authentic texts
The original of the present Convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

In witness whereof the undersigned Plenipotentiaries, being duly authorised thereto by their respective Governments, have signed the present Convention.

Done at Vienna, this twenty-third day of May, one thousand nine hundred and sixty-nine. *(Signatures)*

Final provisions of a bilateral treaty[157]

Art. 37 Settlement of disputes
Any dispute arising out of the interpretation, application or implementation of the provisions of this Treaty shall be resolved through diplomatic channels […].

Art. 38 Amendment
This Treaty may be amended at any time by mutual consent of the Contracting Parties. Such an amendment shall enter into force by the same procedure as applicable for the entry into force of this Treaty.

Art. 39 Entry into force and termination
1. The Contracting Parties shall notify each other in writing about the completion of their respective domestic requirements for the entry into force of this Treaty. The Treaty shall enter into force on the sixtieth day after the date of the receipt of the latter notification.
2. Either Contracting Party may terminate this Treaty at any time by giving notice in writing to the other through diplomatic channels. The Treaty shall cease to have effect six months after the date of the receipt of that notification.
[…].

IN WITNESS WHEREOF the undersigned, being duly authorised thereto by their respective governments, have signed this Treaty.

DONE in duplicate at Bern on the fourth day of February 2019 in English, Indonesian and German, all the texts being equally authentic. In case of any divergence of interpretation, the English text shall prevail.

For the Swiss Confederation:
(Signatures)

For the Republic of Indonesia:

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156 Taken from the Vienna Convention of 23 May 1969 on the Law of Treaties (VCLT; SR *0.111*).

157 Taken from the Treaty on Mutual Legal Assistance in Criminal Matters between the Swiss Confederation and the Republic of Indonesia (SR *0.351.942.7*).

ANNEX F - Competence in Switzerland to conclude an international instrument[158]

Nature of the text. In order to determine the competence to conclude any international text in Switzerland, the nature of the text (international treaty or non-legally binding instrument) must first be *agreed* with the partners and *formulated* accordingly.

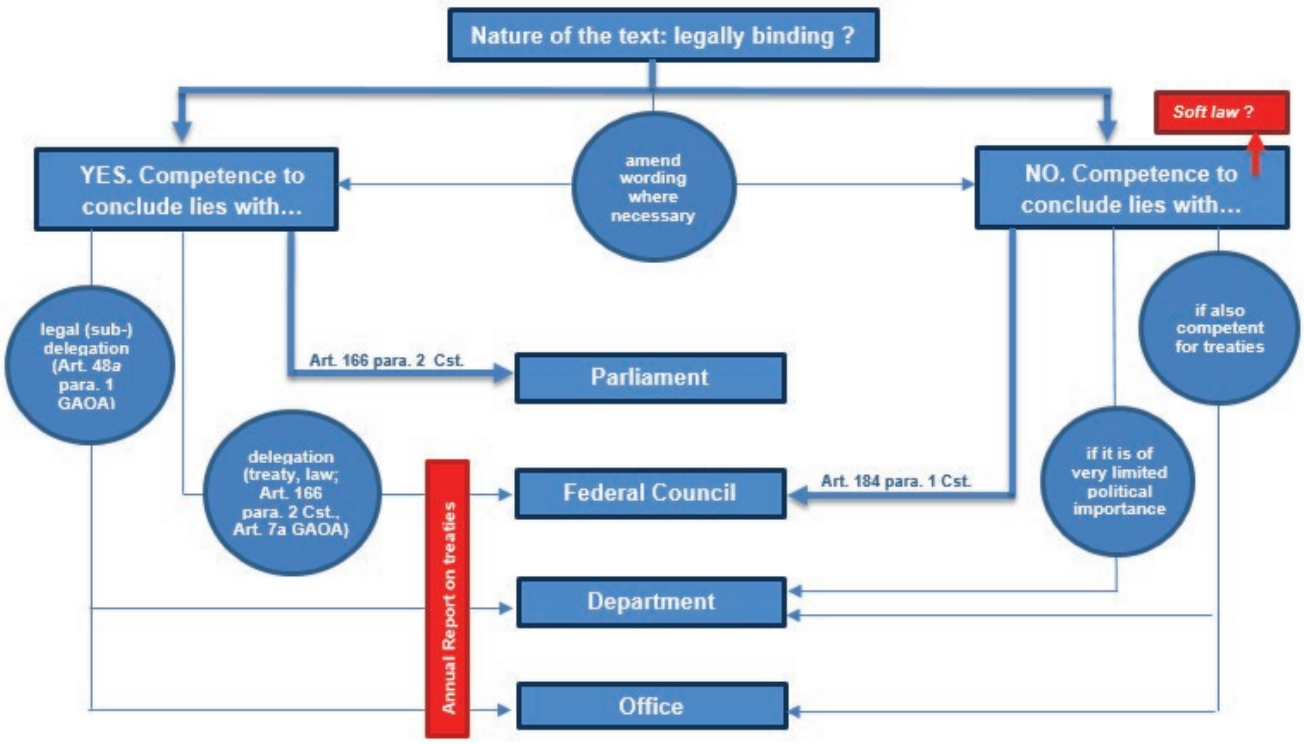
→ **International treaty.** If the text provides for the Confederation to enter into legally binding obligations, *Parliament is generally empowered* to conclude the treaty. However, the Federal Council, a department or an office has the authority to conclude the treaty insofar as such power has been delegated to them by law.

⚠ Any treaty that is not submitted to Parliament must be included in the annual Report on treaties.

→ **Non-legally binding instrument.** The text states clearly that the partners do not intend to create any legal obligation. The *Federal Council will generally be empowered* to conclude the instrument. A department may conclude a non-legally binding instrument if it is of very limited importance to Swiss foreign policy. Otherwise, the departments and offices are only empowered to conclude such instruments if the power to conclude also treaties in the area concerned has been delegated to them by law.

⚠ It is always important to check whether the text comprises soft law (see the soft law guide).[159]

The competent authority in Switzerland must approve the draft text before final signature or approval at international level.



[158] See too ACLFA 70.69 (2006 IV). Modifications and denunciations follow the same rules.

[159] See no. 23.

ANNEX G - Reference works

AUST, ANTHONY, *Modern Treaty Law and Practice*, 3rd ed., University Press, Cambridge 2013

CORTEN, OLIVIER/KLEIN, PIERRE (eds), *The Vienna Conventions on the Law of Treaties: A Commentary,* 2 volumes, University Press, Oxford 2011
CORTEN, OLIVIER/KLEIN, PIERRE (dir.), *Les Conventions de Vienne sur le droit des traités. Commentaire article par article*, 3 volumes, Bruylant, Brussels 2006

DÖRR, OLIVER/SCHMALENBACH, KIRSTEN (eds), *Vienna Convention on the Law of Treaties: A Commentary,* 2nd ed., Springer, Berlin and Heidelberg 2018

VILLIGER, MARK E., *Commentary on the 1969 Vienna Convention on the Law of Treaties,* Martinus Nijhoff Publishers, Leyde and Boston 2009

TABLE OF CITED LAWS

SR *101* – Federal Constitution of the Swiss Confederation of 18 April 1999 (Cst.)
*Art. **5 para. 4**: no. 178*
*Art. **48**: note 9*
*Art. **54 para. 1**: no. 26, 109*
*Art. **55 para. 3**: no. 27*
*Art. **56**: no. 28 f.*
*Art. **139 para. 3**: no. 178*
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*Art. **172 para. 3**: no. 28*
*Art. **184 para. 1**: no. 34, 108, 112, 122 f., 160*
*Art. **184 para. 2**: no. 110, 113, 128*
*Art. **186 para. 3**: no. 28*

SR *138.1* – Federal Act of 22 December 1999 on Participation of the Cantons in the Foreign Policy of the Swiss Confederation (CPFPA)
no. 27
*Art. **7**: no. 27*

SR *152.11* – Ordinance of 8 September 1999 to the Archiving Act (Archiving Ordinance, ArchO)
*Art. **4 para. 3**: note 134*

SR *170.512* – Federal Act of 18 June 2004 on the Compilations of Federal Legislation and the Federal Gazette (Publications Act, PublA)
*Art. **1a**: note 118*
*Art. **3**: note 154*
*Art. **3 para. 2**: note 113*
*Art. **5**: no. 162*
*Art. **6**: no. 173*
*Art. **7 para. 1 and 2**: no. 163*
*Art. **8**: no. 164*
*Art. **11**: no. 166*
*Art. **13 para. 1**: no. 168*
*Art. **14 para. 1**: note 119*
*Art. **14 para. 6**: no. 167*
*Art. **15 para. 2**: note 118*
*Art. **15 para. 3**: no. 165, note 54*
*Art. **16**: no. 169*

SR *170.512.1* – Ordinance of 17 November 2004 on the Compilations of Federal Legislation and the Federal Gazette (Publications Ordinance; PublO)
*Art. **1**: notes 113, 154*
*Art. **2**: no. 162*
*Art. **3**: note 115*
*Art. **13 to 16**: no. 162*
*Art. **21**: no. 168*
*Art. **27 let. c**: no. 171*
*Art. **42 para. 5**: no. 163*

SR *171.10* – Federal Act of 13 December 2002 on the Federal Assembly (Parliament Act, ParlA)
*Art. **22 para. 4**: no. 119*
*Art. **24 para. 2**: note 79*
*Art. **152 para. 3**: no. 34*
*Art. **152 para. 3**: note 29*
*Art. **152 para. 3bis**: note 46*
*Art. **152 para. 3bis and 3ter**: note 94*

SR *172.061* – Federal Act of 18 March 2005 on the Consultation Procedure (Consultation Procedure Act, CPA)
*Art. **2**: note 28*
*Art. **3 and 3a**: note 27*

SR *172.010* – Federal Act of 21 March 1997 on the Organisation of the Government and the Administration (GAOA)
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*Art. **7a para.2**: no. 114*
*Art. **7a para. 2–4**: no. 159, notes 80, 114*
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*Art. **48a para. 1**: no. 116*
*Art. **48a para. 2**: no. 124*
*Art. **61c and 62**: note 24*

SR *172.010.1* - Ordinance of 25 November 1998 on the Organisation of the Government and the Federal Administration (GAOO)
*Art. **5b**: notes 29, 82*
*Art. **5c**: note 129*
*Art. **27o to 27t**: note 24*

SR *172.211.1* – Organisation Ordinance of 20 April 2011 for the Federal Department of Foreign Affairs (OrgO-FDFA) *Art. **8 para. 3**: notes 58, 96, 134*

SR *441.1* – Federal Act of 5 October 2007 on the National Languages and Understanding between the Linguistic Communities (Languages Act, LangA)
*Art. **13**: note 52*

SR *441.11* – Ordinance of 4 June 2010 on the National Languages and Understanding between the Linguistic Communities (Languages Ordinance, LangO)
*Art. **5**: note 52*

SR *510.411* – Ordinance of 4 July 2007 on the Protection of Federal Information (IPO)
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SR *946.201* – Federal Act of 25 June 1982 on International Trade Measures
*Art. **10 para. 2 and 3**: note 81*

SR *0.111* – Vienna Convention of 23 May 1969 on the Law of Treaties (VCLT)
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*Art. **29**: no. 58*
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*Art. **81 ff.**: note 156*

SR *0.120* – Charter of the United Nations of 26 June 1945
*Art. **102 para. 1**: note 131*

Vienna Convention of 21 March 1986 on the Law of Treaties between States and International Organisations or between International Organisations (BBl 1989 II 766)
*Art. **2 para. 1**: note 98*

Vienna Convention of 23 August 1978 on Succession of States in Respect of Treaties (UNTS No. 33356, volume 1946, p. 3)
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*Art. **11 f.**: no. 138*
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