Codebook

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Flexibility Provisions

8.01 Exceptions and safeguards

* Includes exceptions for the entire agreement, or for some specific commitment.
* Excludes provisions that affirm that the Parties can go beyond their obligations

8.01.01 Exceptions and safeguards to preserve human health

1968 African Convention on the Conservation of Nature, art. 17(1): “The provisions of this Convention shall not affect the responsibilities of Contracting States concerning: [...] (b) for the protection of public health”.

8.01.02 Exceptions and safeguards on trade grounds

1973 CITES, art. XIV(2): “2. The provisions of the present Convention shall in no way affect the provisions of any domestic measures or the obligations of Parties deriving from any treaty, convention, or international agreement relating to other aspects of trade [...].”

8.01.03 Exceptions and safeguards on grounds of security, or force majeure

1979 EC-Canada fishing agreement, art VII(3): “The provisions of this Article shall not affect access to the ports of either Party in cases of distress, medical emergency or force majeure.”

8.01.04 Exception for indigenous peoples

1973 Agreement on the conservation of polar bears, art 1: “Subject to the provisions of Articles II and IV any Contracting Party may allow the taking of polar bears when such taking is carried out: [...] by local people using traditional methods [...]”

8.01.05 Exception for warships or military

1974 Convention on protection of marine environment of the Baltic Sea, art. 4(4): “4. The present Convention shall not apply to any warship naval auxiliary, military aircraft or other ship and aircraft owned or operated by a State and used, for the time being, only on governmental non-commercial service.”

8.01.06 Exception for scientific or research purposes

1973 Agreement on the conservation of polar bears, art. III(I)(a): “Subject to the provisions of Articles II and IV any Contracting Party may allow the taking of polar bears when such taking is carried out [...] for bona fide scientific purposes [...]”

8.01.07 Exception for intellectual property (IP) or confidentiality

2003 Convention on sustainable management of Lake Tanganyika, art 21: “1. La présente Convention ne doit pas porter préjudice aux droits et obligations des Etats contractants [...] pour protéger les informations relatives aux données personnelles, à la propriété [...]”

8.01.08 Other justification for exceptions and safeguards

1992 Convention on biological diversity, art 22(1): “The provisions of this Convention shall not affect the rights and obligations of any Contracting Party [...] except where the exercise of those rights and obligations would cause a serious damage or threat to biological diversity.“

8.02 Reservations

* “Reservations” are understood as in s. 19 sq. of the Vienna Convention on the Law of Treaties (VCLT, 1969). Reservations are a particular kind of action in general treaty law. Any provision “reserving” something (e.g. “reserving” a right) does not necessarily constitute a “reservation” or allows for “reservations”.
* In provisions concerning the modes and conditions for acceptance of a treaty by a Party (e.g. signature, ratification, accession), the expression “signature with reservation in respect of ratification” (signature sous reserve de ratification) is NOT related to the notion of “reservation” as in section 19 sq. VCLT.
* If some provisions of the agreement allow Parties to make a declaration excluding the application of that provision, but the agreement explicitly states these are not reservations, then such provisions is excluded.
* Generic provisions asking the depositary to notify other members of reservations received are excluded.

8.02.01 Right of the Parties to make reservations

8.02.01.01 General or unspecified reservations to the main agreement

2009 Agreement on the Central Asian and Caucasus Regional Fisheries and Aquaculture Commission, art 13(4): “Acceptance of this Agreement may be made subject to reservations in accordance with the general rules of public international law as reflected in the provisions of Part II, Section 2 of the Vienna Convention on the Law of Treaties of 1969.”

8.02.01.02 Reservations to the annexes

1973 CITES, art XXIII(2): “Any State may, on depositing its instrument of ratification, acceptance, approval or accession, enter a specific reservation with regard to: (a) any species included in Appendix I, II or III; or (b) any parts or derivatives specified in relation to a species included in Appendix III.”

8.02.01.03 Reservations to specific provisions

1998 Convention on the Protection of the Environment through Criminal Law, art 3(4): “Each Party may [...] by a declaration addressed to the Secretary General of the Council of Europe, declare that paragraphs 1 c and 2 of this article, in part or in whole, shall not apply.”

8.02.01.04 Territorial reservations

2001 International Convention On Civil Liability For Bunker Oil Pollution Damage, art 7 (15) : “A State may, at the time of ratification, acceptance, approval of, or accession to this Convention, or at any time thereafter, declare that this article does not apply to ships operating exclusively within the area of that State referred to in article 2(a)(i).”

8.03 Notification, validity period and withdrawal

8.03.01 Mandatory notification period

* Refers to the minimal time Parties have to send a notification of withdrawal to other Parties.

8.03.01.03 Notification time is less than 12 months and at least 6 months.

1996 Agreement on cooperation and coordination in plant sanitation and quarantine matters between Argentine and Panama, art. 17: “This Agreement shall be of unlimited duration. However, either Party may denounce it by providing written notice to the other Party. Such denunciation shall take effect six (6) months after the said notification.”

8.03.01.04 Notification time is less than 6 months

1984 Agreement between the Government of Spain and the Government of the Republic of Seychelles concerning maritime fishing, art 14: “ [...] If the Agreement is not terminated by one of the Parties, by giving six months' notice before the date of expiry of this five-year period, it shall remain in force [...]”

8.03.02 Minimum validity period

* Period of time in which Parties cannot withdraw from the agreement.
* Excludes validity periods that can be denounced.

8.03.02.03 Validity period is less than 5 years and at least 3 years

1975 Convention On Co-Operation With Respect To Marine Fishing Between the Government of Spain and the Government of the Republic of Senegal, art 12: “This Convention shall be valid for a period of four years and shall be automatically renewed, unless denounced by one of the Contracting Parties.”

8.03.02.04 Validity period is less than 3 years

2000 Framework Agreement on cooperation in the field of maritime fishing between Argentine and Morocco, art. 7 : “This Agreement shall last for two years from the date of its entry into force and shall remain in force for additional two-year periods unless denounced. [...]”

8.03.03 Partial withdrawal of the agreement

* Includes withdrawal from clauses of annexes.
* Allows Parties to withdraw from a part of the agreement.
* Allows Parties to withdraw a part of their territory out of the treaty.
* Allows Parties to withdraw temporarily from the agreement.

1977 Working Environment Convention, art.19.1: “A Member which has ratified this Convention may denounce it, in whole or in respect of one or more of the categories of hazards referred to in Article 2 thereof [...]”

8.03.05 Other forms of withdrawal

* Refers to measures that provide for the possibility of withdrawal in a non-traditional manner (i.e. apart from the basic possibility of a Party to withdraw from an agreement it signed).
* Includes measures permitting the end of the agreement by the Parties without any more details on conditions and delays for denunciation or termination.
* Includes termination of an agreement by the commission created for its implementation.
* Includes measures providing that a protocol is considered denounced if the head agreement is denounced (in the case a convention and its protocol can only be denounced jointly).
* Includes the termination of the agreement in case of non-conformity or dispute.
* Excludes the suspension of the agreement or the forced withdrawal of a Party due to its non-conformity or following some dispute

1953 Constitution of the European Commission for the Control of Foot and Mouth Disease, art.18(1): “This Constitution shall be terminated by a decision of the Commission taken by a three-fourths majority of the membership of the Commission.”

8.03 Fixed duration

8.04.01 Possible renewal/extension of the duration of the agreement

* Includes norms on the fixed duration of the agreement when there is a possible renewal of this duration.
* Includes whether the renewal has a fixed term or not, as long as the agreement has a fixed duration.
* The renewal can be automatic or tacit or at the request of the Parties.

1996 Agreement on cooperation between the Government of the French Republic and the Government of the Kingdom of Morocco in the field of environment, art 10: “This Agreement shall enter into force on the date of its signature. It shall be concluded for a period of five years and shall be automatically renewable for similar periods”

8.04.02 Non-renewal of the duration of the agreement

* Includes norms on the fixed duration (X number of years, or X deadline, or X event).
* Excludes when there is a possible renewal of the duration (see 8.04.01).

1996 Subsidiary Agreement between the Government of Australia and the Government of Japan concerning tuna long-line fishing, art 9: “This Subsidiary Agreement shall enter into force on signature and shall remain in force until 31 October 1996.”

Collective Body

* An intergovernmental body punctually brings together representatives of governments/administrations/Parties. They could be cabinet level members, representatives, designees, officials, contact points or civil servants.
* The body can take various form, including an international commission, an assembly, a conference of the Parties, or a committee. It might not even have a name.
* When an organization comprising several institutions/bodies is created, code the main organization in 12.02.01/12.02.02 and the creation of its components in other appropriate norms (its secretariat in 12.01.01/12.01.02, its subsidiary bodies in 12.02.03/12.02.04, etc.).
* Excludes the mere periodic consultation of Parties, if no specific institution (with functions, powers or mandate) is created (see 9.03 or 9.12).

12.02.01 Creation of a new intergovernmental body

* Includes dispositions related to the creation of a new intergovernmental body.
* Must include all members states. If it does not require representatives from all member states, it is excluded (see 12.02.03).
* Includes holding of ordinary and special meetings if functions, powers, locations, periodicity or mandate is established. The mere mention of ordinary meetings is not sufficient (see 9 instead).
* Excludes norms on forms, methods, structure, functions and modification of the structure of the intergovernmental body (see 12.02.02).
* Excludes the designation of an already existing intergovernmental body (see 12.02.02).
* Excludes the creation of a mechanism for compliance, a commission or an expert committee for dispute settlement, arbitration or mediation (see 13 instead).

1996 Treaty between India and the Bangladesh on sharing of the Ganges waters at Farakka, art IV: “A Committee consisting of representatives nominated by the two Governments in equal numbers (hereinafter called the Joint Committee) shall be constituted following the signing of this Treaty.”

12.02.02 Existing intergovernmental body

1958 Agreement concerning water-economy questions between the government of the Federal people’s Republic of Yugoslavia and the Government of the people’s Republic of Bulgaria, Statute of the Yugoslav-Bulgarian Water-Economy Commission, art 1 : “The functions and terms of reference of the Commission shall comprise all matters placed within its competence by the Agreement concerning water-economy questions [...]”

12.02.03 Creation of a subsidiary body

* Includes dispositions related to the creation of a subsidiary body.
* Includes the creation of an institution (e.g., a working group) where it is not required to have representatives of all member states.
* Can be plenipotentiary or not. If the body created explicitly mentions that it does not require all members to participate, it is considered as a subsidiary body (see 12.02.03).
* Excludes intergovernmental body where all member states must participate (see 12.02.01).
* Excludes norms on forms, methods, structure, functions and modification of the structure of the subsidiary body (see 12.02.04).

2012 Agreement for the establishment of the African Risk Capacity (ARC) Agency, art 11: “There shall be such subsidiary or affiliated entities of the ARC Agency as the Conference of the Parties may decide it is necessary to establish for the purposes of carrying out the functions of the ARC Agency.”

Issue-areas

. The subjects are based on the categorisation and the data of IEADB and from Jörg Balsiger and Lorris Germann from the University of Geneva. The methodology used to generate these subjects was an automated search for the first keywords appearing in the title and preamble of treaties. Our team separated or combined subjects so that each subject category contains a sensible number of agreements. We therefore created ten mutually exclusive subjects. For some agreements, no subject were assigned by IEADB or Geneva team. We took care of attributing a subject to these treaties. Part of the following definitions are from the IEADB:

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| Subjects | Definitions |
| Energy  | This category seeks to capture agreements that address all types of energy production, including nuclear energy. Treaties dealing with nuclear energy safety and accidents were included. Agreements linked with nuclear weapons are excluded (see Weapons and environment) as well as agreements linked with radioactive pollution or wastes (see Pollution). This category includes also agreements dealing with hydroelectricity and hydroelectric dams. Agreements on “dams”, if their use is not strictly reserve for the making of energy, were excluded (see Freshwater resources).  |
| Weapons and environment | This category seeks to capture agreements that address nuclear weapons free zone or test ban, as well as agreements dealing with chemical and bacteriological weapons. |
| Pollution | This category seeks to capture agreements related to all forms of pollution, whether affecting air, land, oceans, or freshwater systems at regional or global scales. This includes agreements dealing with climate change, ozone layer depletion and disposal of wastes of all sorts. Agreements dealing with radioactive wastes and radioactive pollution are included as well, just as agreements dealing with contamination from industrial accidents and other manmade accidents, such as oil spills (except nuclear accidents, see Energy). |
| Freshwater | This category seeks to capture agreements related to regulation or protection of lakes and rivers. It excludes agreements dealing with the pollution of freshwater resources (see Pollution) or its use for hydroelectricity (see Energy). Is also excludes agreements linked to fisheries in these lakes or rivers (see Fish). |
| Fish | This category seeks to capture all agreements related to fish and fisheries management. It also includes agreements aiming to conserve species of fishes. It only includes agreements dealing with the fishing of fishes, shells and crustaceans (crabs, lobsters, and prawns for example) and not for the fishing of mammals and the taking of marine reptiles (see Conservation of species and biodiversity). “Marine living resources” are not sufficient to be considered as fishes (see Conservation of species and biodiversity instead). |
| Agriculture | This category seeks to capture agreements related to agriculture, farming, sanitary and veterinary issues or animal health field. It includes agreements dealing with invasive insects and plants, as well plant protection. Agreements dealing with plant genetic resources and modifications are included. |
| Conservation of species and biodiversity | This category seeks to capture agreements that address the conservation and protection of species of animals (except fishes, see Fish), endangered or not. It also includes the protection of wildlife and of marine living resources. Agreements against poaching or regulating hunting are also included. Furthermore, this category capture agreements about forest conservation (including forest fires issues), and agreements on forestry and timber. It also includes agreements about the protection of biodiversity.  |
| Habitat and ocean | This category seeks to capture agreements related to particular ecosystems, including the ocean. With respect to ocean protection, agreements related to ocean exploration and ocean science are also included. This category also includes agreements on land, drought and desertification. It also includes agreements on wetlands, protected areas and natural reserves or sanctuaries. Furthermore, it captures agreements protecting entire regions (e.g. Amazonian region). Agreements on protected areas “and biodiversity” are included (and not in Conservation of species and biodiversity). Agreements dealing with fisheries in the ocean are excluded (see Fish). |
| General environmental cooperation  | This category seeks to capture agreements related to efforts to conserve, manage, preserve, and protect natural resources or environment in general. It includes agreements on environmental impact assessments and prior notification procedures, as they apply to the environmental in general. This category includes agreements dealing with general “nature conservation” and bilateral agreements on “environmental cooperation”. It includes agreements dealing with natural disaster management, except for forest fires management (see Conservation of species and biodiversity). This category also includes agreements containing provisions dealing with many subjects, without one subject clearly standing out (for example, agreements calling for cooperation in agriculture, water management, protection of biodiversity and fishing). |
| Others  | This category seeks to capture all agreements that do not fit in other subjects. It includes notably agreements on environmental health and other very specific issues. |