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Conclusion and Entry into Force of Treaties

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Although the Convention does not apply to unwritten agreements or to agreements concluded by or with international organizations, it asserts that the legal force of such other agreements or the application to them of any of the rules of international law to which they are subject independently of the Convention is not affected (Article 3).

The non-retroactivity feature (Article 4) is of substantial importance because it avoids the possibility of reopening old international disputes. This is especially true with regard to long-standing boundary disputes.

PART II—CONCLUSION AND ENTRY INTO FORCE OF TREATIES

The rules in this part are primarily technical. Section 1 relates to such matters as Full Powers or other evidence of authority; adoption and authentication of texts; and the means of expressing consent to be bound by a treaty (Articles 7–17).

Article 18 sets forth rules governing the obligation of States not to defeat the object and purpose of a treaty prior to its entry into force. That obligation is limited to (a) States that have signed a treaty or exchanged ad referendum instruments constituting a treaty, until such time as they make clear their intention not to become a party, and (b) States that have expressed consent to be bound, pending entry into force and provided such entry into force is not unduly delayed. This rule is widely recognized in customary international law.

Part 2 of Section II sets forth the rules on reservations to treaties (Articles 19–23). The articles reflect flexible current treaty practice with regard to multilateral treaties as generally followed since World War II. The earlier traditional rule on reservations had been that in order for a State to become party to a multilateral treaty with a reservation the unanimous consent of the other parties was required. That rule has given way in practice to a more flexible approach, particularly after the International Court of Justice in 1951 handed down its Advisory Opinion on Reservations to the Genocide Convention. The Court's opinion in the case stated, "The reserving State can be regarded as being a party to the Convention if the reservation is compatible with the object and purpose of the Convention." The compatibility rule has been incorporated in Article 19 of the Convention. It applies in those cases where the reservation is not expressly excluded by the terms of the treaty.

The right of other States to object to a reservation and to refuse treaty relations with the reserving State is maintained in Article 20. That article