

Process Questions

- How are Amendments agreed?
- How will they enter into force?
- Will any parts be applied provisionally before that happens?
- Who serves as Depositary?

Adoption: Article XIII, Paragraph 1

“Any **Contracting Party** or the **Commission** may **propose** amendments to this Convention. The Director-General of the Food and Agriculture Organization of the United Nations shall transmit a certified copy of the text of any proposed amendment to all the Contracting Parties.”

- The **proposal** of amendments can be made by a Contracting Party (or Contracting Parties) or the Commission
- Convention simply says any such proposal is circulated by the Depositary to Contracting Parties so they may consider moving forward with ratification or acceptance

Adoption

Process of creating and agreeing to a “proposal” could go several ways

- Commission agrees on a set of amendments pursuant to a **Commission decision** made during an annual meeting in the usual way
- Commission convenes a **Conference of Plenipotentiaries** of the Contracting Parties who adopt a protocol containing the amendments and any related decisions related to procedure
- A **CP or group of CPs submit the amendments** to the Depositary for circulation
- No strict rule established either in the Convention or general international law

Adoption

Commission Decision

- Convention is silent about **adoption** of proposal for amendment at the Commission level
- Presumption could be that **normal decision-making procedures** would apply
- Adoption as a Commission decision is consistent with how several other RFMOs have formalized amendments
- **Related issues on process**, like provisional application, would also need to be agreed by the Commission per usual procedures

Adoption

Conference of Plenipotentiaries of the Contracting Parties

- Process used two previous times the Convention was amended
- In both of those cases, the Conference served both to negotiate and adopt the proposals for amendment in the form of a Protocol
- Protocol included proposal for amendment and process points
- Requires separate meeting with participation by a quorum: at least 2/3 of all Contracting Parties
- CP representatives must come with "Full Power" to sign Protocol

Entry into Force: Article XIII, Paragraph 1

“Any amendment **not involving new obligations shall take effect for all** Contracting Parties on the thirtieth day after its acceptance by three-fourths of the Contracting Parties.”

- Commission decision if involves new obligations or not
- Once ratification threshold met, is in effect **for all whether or not they have ratified yet**

Entry into Force: Article XIII, Paragraph 1

“Any amendment **involving new obligations shall take effect for each** Contracting Party accepting the amendment on the ninetieth day after its acceptance by three-fourths of the Contracting Parties and thereafter for each remaining Contracting Party upon acceptance by it.”

- Once ratification threshold is met, it enters into force and **only those that have ratified are bound**
- After that, becomes in effect for others **only as they complete** their ratification/acceptance processes
- Results in different provisions applying to different Parties for a time

Entry into Force: Article XIII, Paragraph 1

“Any amendment **considered by one or more** Contracting Parties to involve new obligations shall be deemed to involve new obligations and shall take effect accordingly.”

- If no consensus that amendments do not involve new obligations, then they are treated under the rule for amendments involving new obligations
- Could be understood to imply that that procedures for entry into force other than that set out in the previous sentence (i.e. entry into force upon $\frac{3}{4}$ parties' acceptance but only for those who have ratified) require consensus

Entry into Force:

Paris Protocol:

- Required **all** CPs to approve before entry into force, not just three-quarters, then entered into force for all

Madrid Protocol:

- Extended entry into force after ratification threshold met: 90 days versus 30
- Alternate requirements for number of ratifications or acceptances: specification of additional requirement that all developed CPs must have ratified, even if three-quarters threshold otherwise met
- Novel provision to allow request to suspend entry into force from those other than developed CPs

Entry into Force: Vienna Conv. on the Law of Treaties

- Article 24 (Entry into force), paragraph 4:

“The provisions of a treaty regulating the authentication of its text, the establishment of the consent of States to be bound by the treaty, the manner or date of its entry into force, reservations, **the functions of the depositary** and other matters arising necessarily before the entry into force of the treaty apply from the time of the adoption of its text.”

- Article 25 (Provisional application), paragraph 1:

“A treaty or a part of a treaty is **applied provisionally** pending its entry into force if:

(a) the treaty itself so provides; or

(b) the negotiating States have **in some other manner** so agreed.”

Key Decision Points

- Proposal made per Commission decision or Protocol adopted by Conference of Plenipotentiaries?
- Article XIII process for entry into force: New obligations/No new obligations?
- Alternative entry into force provisions?
- Different process and provisions for different issues?
- Provisional application?
- If Depositary is changed, which one undertakes the process to circulate amendments and receive CP approvals?