EXPLANATORY NOTE ON THE GENERAL LEGAL TERMS USED IN THE LEGAL DATA BASE

In order to have a global view of the legal terms containing in the legal database, this legal index\(^1\) aims at providing a comprehensive and useful reference for the readers.

- **Agreement**: The Vienna convention on the law of treaties 1969, the article 1(a) lays it down that for its purposes “treaty” means an international agreement concluded between states in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation. In a restricted sense, the term “agreement” means an agreement intended to have an obligatory character but usually of a less formal or significant nature than a treaty or convention. Like treaties and conventions, agreements in this sense may be concluded between heads of state, between states or governments.

- **Guidelines**: In international law, instruction of an international body of an international organization to one another.

- **Memorandum of understanding**: A memorandum of understanding is an international instrument of a less formal kind, often setting out operational arrangements under a framework international agreement or otherwise dealing with technical or detailed matters.

\(^1\) All the definitions come from the Black Law Dictionary, Brian A. Garner, West Group, 1996 and Parry and Grant Encyclopaedic Dictionary of International Law, Oceana Publication, Inc, 1988
It will typically be in the form of a single instrument signed by the governments concerned, recording their understandings as to matters of fact or their future conduct, but in such a way as to reflect an intention on their part not to enter into a legally binding agreement upon the matters covered or otherwise to create legal rights and obligations for themselves.

A memorandum of understanding has political or moral force, but is not legally binding.

So, it is not an international convention but an administrative agreement concluded by the representatives at the plenipotentiaries’ conference. Therefore, a memorandum cannot assume a responsibility neither be subject to a legal remedy.

Where a memorandum of understanding does not constitute an international agreement it will not be subject to the obligation of registration under article 102 of the charter and may accordingly remain confidential to the participating governments.

- **Model law:** A law drafted and proposed as guidelines legislation for the states to borrow from or adapt to suit their individual needs

- **Protocol:** A summary of a document or treaty.

  This term “usually denotes a treaty amending, or supplemental to another treaty. The term “protocol” is also used in the expression “protocol of signature” of a treaty or statute or regime to which it is appended. In the law of treaties, it is an additional act.

- **Resolution:** A formal expression of an official body’s opinion or decision.

  Many international organization use this term to describe the non-binding acts of theirs organs, generally referred to as recommendation.
EXPLANATORY NOTE ON LEGAL TERMS USED IN THE TREATY-MAKING PROCESS

All international maritime Conventions follow the same treaty-making process. Legal terms used in the legal data base denoted various stages in the status of participation to international agreements. These legal-technical terms are based on the Law of treaties contained in the 1969 Vienna Convention on the Law of Treaties.

So, to provide easier reference for readers, some basic explanations of terms used in the data base are here provided.

After the successful negotiations of a treaty, there are often several stages required before the treaty enters into force:

- **Adoption**: is the formal act by which the form and content of a proposed treaty text are established. As a general rule, the adoption of the text of a treaty takes place through the expression of the consent of the states participating in the treaty-making process. As a rule, however, adoption does not yet mean a consent of a state to be bound by a treaty (art.9 of Vienna Convention).

- **Signature**: The terms signature, ratification, acceptance, approval or accession refer to some of the methods by which a State can express its consent to be bound by a treaty. So, the signature may sometimes be definitive, meaning that it establishes the consent of the state to be bound by the treaty. This is usual in most bilateral treaties. For multilateral treaties, however, the signature is as a rule not definitive, meaning that the treaty is subject to ratification, acceptance, or approval in order to enter into force. Although in those cases the signature does not establish the consent to be bound, it is a means of authentication.
and expresses the willingness of the signatory state to continue the treaty-making process (i.e. to proceed to ratification, acceptance, or approval). It also creates an obligation to refrain, in good faith, from acts that would defeat the object and the purpose of the treaty (art.18 (a) Vienna Convention).

- **Ratification**: defines an international act whereby a state indicates its consent to be bound to a treaty if the parties intended to show their consent by such an act. In the case of multilateral treaties the usual procedure is for the state to notify the depositary of its ratification; the depositary keeps all parties informed of the situation regarding ratifications. The institution of ratification grants states the necessary time-frame to seek the required approval for the treaty on the domestic level and to enact the necessary legislation to give domestic effect to that treaty (art.14 Vienna Convention).

- **Acceptance or approval**: has the same legal effect as ratification and consequently expresses the consent of a state to be bound by a treaty. In the practice of certain states, acceptance and approval have been used instead of ratification when, at a national level, constitutional law does not require the treaty to be ratified by the head of state (art.14 Vienna Convention).

- **Entry into force**: of an international treaty does not necessarily coincide with ratification of the treaty (acceptance, approval) by individual states. It is common for multilateral treaties to provide for a fixed number of states to express their consent for entry into force. Some treaties provide for additional conditions to be satisfied, e.g. by specifying that a certain category of states must be among the consenters. The treaty may also provide for an additional time period to elapse after the required number of countries have expressed their consent or the conditions have been satisfied. A treaty enters into force for those states
which gave the required consent. A treaty may also provide that, upon certain conditions having been met, it shall come into force provisionally (art.24 Vienna Convention).

- **Accession**: is the act whereby a state accepts the offer or the opportunity to become a party to a treaty already negotiated and signed by other states. It has the same legal effect as ratification. Accession usually occurs after the treaty has entered into force. The conditions under which accession may occur and the procedure involved depend on the provisions of the treaty; a treaty might provide for the accession of all other states or for a limited and defined number of states (art.15 of Vienna Convention).

- **Amendment**: Nevertheless, technology and techniques in the shipping industry change very rapidly. So, conventions need to be kept up to date. For example, the International Convention for the Safety of Life at Sea (SOLAS) was amended 30 times until now. The amendments for the first conventions came into force only after a percentage of Contracting States, usually two-third, had accepted them. This percentage requirement in practice led to long delays in bringing amendments into force. To remedy the situation a new amendment procedure was devised in the International Maritime Organization (IMO): a procedure involving the “tacit acceptance” of amendments by States. Instead of requiring that an amendment shall enter into force after being accepted by, for example, two third of the Parties, the “tacit acceptance” procedure provides that an amendment shall enter into force at a particular time unless before that date, objections to the amendments are received form a specified number of Parties.
In order to have a comprehensive view of the treaty-making process, an explanatory picture is drawn up below:

ADOPTION OF A CONVENTION

For bilateral treaties:
SIGNATURE

For multilateral treaties:
SIGNATURE SUBJECT TO RATIFICATION, ACCEPTANCE OR

ACCEPTANCE/ APPROVAL OR RATIFICATION

ENTRY INTO FORCE
Art.24 of Vienna Convention

ACCESSION
Art.15 of Vienna Convention

AMENDMENT
Art 39 of Vienna Convention