



CENTER for INTERNATIONAL
ENVIRONMENTAL LAW

Non-Party Trade Provisions in Multilateral Environmental Agreements

Key Elements for Consideration in the Context of a Treaty to End Plastic Pollution

Introduction

Multilateral environmental agreements (MEAs) aim to address environmental issues of global concern by creating uniform and streamlined approaches and rules that apply to all parties.

Treaties serve as agreements between two (or more) States that enter into an agreement, thus creating specific obligations and rights for those parties. It is generally recognized that a treaty does not create either obligations or rights for a third, non-party State without its consent. Obligations only arise for a third State if that State expressly accepts that obligation in writing.¹ The more States become party to any specific agreement, the greater the chances for the agreement to become effective. Conversely, States that are not party to an agreement can also create specific challenges for its effectiveness.

Therefore, it is common for treaties, including MEAs, to include so-called non-party provisions. These provisions typically set out how a party to a treaty should interact with ‘non-party’ States, promote the ratification of the agreement and deal with the specific challenges presented by non-parties. While all provisions aim to support the efficacy of a treaty, non-party provisions take various forms. The most commonly used are provisions that:

- Require parties to encourage non-parties to become parties; and
- Impose trade restrictions on parties in their dealing with non-parties, unless those non-parties conform to the requirements of the relevant treaty (non-party trade provisions).

Plastic pollution is an issue of global concern and every step along the life cycle of plastics entails global supply chains. The future treaty to end plastic pollution will thus require non-party provisions to be truly effective. It should incentivize ratification by the greatest number of countries possible, create a level playing field, and avoid providing benefits for non-parties (also referred to as ‘free-riders’). Because of global supply chains, developing non-party provisions, specifically around trade issues, is paramount.

Some States have recognized this importance by including non-party trade provisions in their pre-session submission for the second session of the Intergovernmental Negotiating Committee (INC-2) to develop an international legally binding instrument on plastic pollution, including in the marine environment.²

This brief provides an introduction to trade provisions involving non-parties. The Annex includes specific examples from other MEAs.

Benefits from Non-Party Trade Provisions: Incentivize Ratification and Avoid Free Riding

Two questions are among the key challenges in developing and adopting MEAs.³ First, how to create incentives for non-parties to join the treaty? Second, how to prevent non-parties from benefiting from not being parties to the treaty, or enjoying environmental gains achieved through other parties' commitments without making similar efforts themselves? MEAs, including the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES),⁴ the Montreal Protocol on Substances that Deplete the Ozone Layer (the Montreal Protocol),⁵ and the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (the Basel Convention),⁶ show that non-party trade provisions provide effective responses to these challenges while at the same time facilitating enforcement and compliance and increasing the effectiveness of the treaty.

Providing incentives to take obligations ensures broader participation in a treaty regime. As an example, the Montreal Protocol includes trade provisions that preclude Parties from trading in substances with non-parties.⁷ Accordingly, the Montreal Protocol became the first international environmental treaty in history to achieve universal ratification, with 196 Parties.⁸

Non-party trade provisions discourage free riding and ensure compliance with a treaty. Regardless of how a particular MEA addresses the import and export of a substance or product, one of the fundamental challenges that needs to be addressed is whether and through what mechanisms parties may engage with non-parties in trading in treaty-covered goods.

Prohibiting or restricting the trade of materials or products banned or covered by an MEA is important. However, if a treaty does not include trade measures that relate to non-parties, there is an economic incentive for non-parties to increase production and trade with parties or other non-parties. This can result in damaging the competitiveness of the industries in the signatory States, decreasing the search for less damaging alternatives, and negatively impacting the overall effectiveness of the treaty.⁹

Trade bans or restrictions with non-parties prevent parties from circumventing treaty obligations through import and export with non-parties, incentivizing non-parties to implement the treaty regime de facto.

Non-Party Trade Provisions: Trade Bans and Restrictions

Both developed and developing countries have long asked to include trade-related measures, including non-party trade provisions,¹⁰ in MEAs. For instance, during the Montreal Protocol negotiations, a number of developed countries supported trade-related measures as a necessary way to achieve the goals of the agreement.¹¹ During the negotiation of the Cartagena Protocol on Biosafety to the Convention on Biological Diversity (Cartagena Protocol), developing countries viewed trade-related measures as the 'teeth' that would guarantee a strong instrument to meet their needs and concerns.¹²

Trade-related measures often play an important role in supporting other MEA provisions, including the phaseout of certain substances. Non-party trade measures mirror trade measures applicable between parties and generally imply trade bans, prohibitions, and restrictions. As an example, the Montreal Protocol bans exports of controlled substances to non-parties unless the non-party demonstrates that it is in compliance with the Protocol.¹³ It also stipulates that Parties must not provide incentives, such as subsidies and credits to non-parties for the export of controlled substances.¹⁴ These provisions ensure that the same measures are applied to Parties and non-parties, thus strengthening the treaty's effectiveness.

Some MEAs provide that trade prohibitions can be lifted if the non-party demonstrates, and the parties agree, that the non-party is in compliance with MEA provisions. For example, because Parties to the Basel Convention could circumvent their obligations under the Convention by shipping waste to non-parties, the Basel Convention includes a general prohibition on the export and import of covered wastes between Parties and non-parties.¹⁵ However, Article 11 of the Basel Convention provides an exception. It allows Parties to enter into separate agreements with Parties or non-parties that establish minimum environmental standards equivalent to those set by the treaty. It states that those agreements must “not derogate from the environmentally sound management of hazardous wastes and other wastes as required by this Convention” and “shall stipulate provisions which are not less environmentally sound than those provided for by this Convention, in particular, taking into account the interests of developing countries.”¹⁶

MEAs can also adopt a tiered approach, restricting trade to varying degrees with parties and non-parties. As an example, CITES restricts trade depending on the ecological status of the species.¹⁷ Three Appendices to the Convention outline taxa for which varying degrees of trade controls apply. Each set of controls represents a degree of strictness proportionate to the degree of danger that arises from over-exploitation through international trade.¹⁸ The trade controls are implemented through a system of export and import permits and other trade-related certificates.¹⁹ Regarding non-parties, CITES allows trade with non-parties, provided that the non-party issues comparable documentation that substantially conforms with the Convention’s requirements.²⁰

Parties can — and should — develop robust control mechanisms through treaty provisions to close emerging loopholes. Once again, CITES is notable because it provides a critical example of a Convention of the Parties taking action to strengthen its regime in response to an emerging need. The Parties revisited the original provision because wildlife traders found mechanisms to use non-parties as conduits to ‘legalize’ otherwise prohibited trade.²¹ In response, Parties declared that they would accept “comparable documentation” from a non-party only if the non-party provided information to the Secretariat about its competent authorities and scientific institutions.²² Parties have come to define this requirement to avoid loopholes and to ensure that a registration is formally done with the CITES Secretariat.²³ In this regard, the main difference between the Basel Convention and CITES is that the CITES Secretariat exercises a certain form of control on the level of compliance of control measures implemented. The absence of such a provision in the Basel Convention represents a weakness in its implementation. It can allow Parties and non-parties to circumvent both the text and spirit of the treaty.

World Trade Organization (WTO) members have previously entered into international agreements containing non-party trade provisions (all the MEAs mentioned above include WTO members). The General Agreement on Tariffs and Trade (GATT) or other WTO agreements do not prohibit the possibility for MEAs to include non-party trade provisions. However, it is important to note that non-party trade provisions shall mirror trade measures applicable between Parties. The contrary could lead to implementing measures being considered discriminatory or protectionist, which is prohibited under the GATT.

Key Conclusions and Considerations for the Plastics Treaty

Issues surrounding trade will play a major role in negotiations to advance the future global plastics treaty. Ahead of INC-2, many States included non-party trade provisions as part of their recommendations for core obligations.²⁴ Negotiators need to consider how to resolve the relationship with non-parties.

Key Conclusions

- MEAs contain various forms of non-party provisions. Usually, non-party provisions require parties to encourage non-parties to become parties (e.g., the Cartagena Protocol) or impose trade restrictions on parties in their dealing with non-parties, unless those non-parties conform to the requirements of the relevant treaty.
- Non-party trade provisions are key to ensuring enforcement and incentivizing ratification of MEAs. Those provisions normally ensure the effectiveness of other provisions by requiring parties to ban or prohibit trade with non-parties of materials or products that the treaty bans or restricts.
- When a non-party trade provision is established, a treaty can allow trade with non-parties of those materials or products under very strict circumstances. For example, if non-parties can demonstrate that the non-party can apply and enforce standards equivalent to those established by a treaty to ensure the same level of protection of human health and the environment established by the treaty.
- World Trade Organization (WTO) rules do not impede States from adopting non-party trade provisions in MEAs. Non-party trade provisions should mirror trade measures between parties.

Additional considerations for the future plastics treaty

- If the future plastics treaty contains a production ban or phaseout requirements for certain polymers, additives, or plastic products, there should be a ban or restriction on trade of such substances, materials or products between Parties and non-parties (see further information in CIEL's first plastics treaty trade brief).
- To better address the very significant risks and universally shared impacts of free ridership in the context of the plastics trade, negotiators should also consider the complete prohibition of the import from any non-party State of plastic precursors, materials, products, and wastes that fall within the scope of the treaty.
- To guarantee compliance with non-party trade provisions, it will be essential for the Secretariat of the treaty to be given authority to exercise a certain form of control on the implementation of Party to non-party provisions.
- Below is a list of examples of non-party trade-related provisions in international agreements and other examples of provisions that aim to encourage non-parties to become parties.

Annex

Examples of Multilateral Environmental Agreement Provisions on Parties–Non–Parties

Key:

Blue	Non-party trade-related provisions
Green	Provisions that encourage the ratification or implementation of the treaty by non-parties

Instrument	Provision(s)
<u>Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)</u>	<p>Article X Trade with States not party to the Convention “Where export or re-export is to, or import is from, a State not a Party to the present Convention, comparable documentation issued by the competent authorities in that State which substantially conforms with the requirements of the present Convention for permits and certificates may be accepted in lieu thereof by any Party.”</p>
<u>Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal</u>	<p>Article 4 General Obligations “5. A Party shall not permit hazardous wastes or other wastes to be exported to a non-Party or to be imported from a non-Party.”</p> <p>Article 6 Transboundary Movement between Parties “1. The State of export shall notify, or shall require the generator or exporter to notify, in writing, the channel of the competent authority of the State of export, the competent authority of the States concerned of any proposed transboundary movement of hazardous wastes or other wastes. Such notification shall contain the declarations and information specified in Annex V A, written in a language acceptable to the State of import. Only one notification needs to be sent to each State concerned.</p> <p>[...]</p> <p>10. The notification and response required by this Article shall be transmitted to the competent authority of the Parties concerned or to such governmental authority as may be appropriate in the case of non-Parties.”</p>

Instrument	Provision(s)
<p><u>Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal</u></p>	<p>Article 7 Transboundary Movement from a Party through States which are not Parties “Paragraph 1 of Article 6 of the Convention shall apply mutatis mutandis to transboundary movement of hazardous wastes or other wastes from a Party through a State or States which are not Parties”.</p> <p>Article 11 Bilateral, Multilateral and Regional Agreements “1. Notwithstanding the provisions of Article 4 paragraph 5, Parties may enter into bilateral, multilateral, or regional agreements or arrangements regarding transboundary movement of hazardous wastes or other wastes with Parties or non-Parties provided that such agreements or arrangements do not derogate from the environmentally sound management of hazardous wastes and other wastes as required by this Convention. These agreements or arrangements shall stipulate provisions which are not less environmentally sound than those provided for by this Convention in particular taking into account the interests of developing countries.”</p> <p>Article 25 Secretariat Protocol on Liability and Compensation for Damage Resulting from Transboundary Movements of Hazardous Wastes and their Disposal, which was adopted at the Fifth Conference of Parties (COP-5) on 10 December 1999</p> <p>“(f) Encourage non-Parties to attend the Meetings of the Parties as observers and to act in accordance with the provisions of the Protocol;”</p>
<p><u>Montreal Protocol and the Vienna Convention on Substances that Deplete the Ozone Layer</u></p>	<p>Article 4 Control of trade with non-Parties “1. Within one year of the entry into force of this Protocol, each Party shall ban the import of controlled substances from any State not party to this Protocol.</p> <p>2. Beginning on 1 January 1993, no Party operating under paragraph 1 of Article 5 may export any controlled substance to any State not party to this Protocol.</p> <p>3. Within three years of the date of the entry into force of this Protocol, the Parties shall, following the procedures in Article 10 of the Convention, elaborate in an annex a list of products containing controlled substances. Parties that have not objected to the annex in accordance with those procedures shall ban, within one year of the annex having become effective, the import of those products from any State not party to this Protocol.</p> <p>4. Within five years of the entry into force of this Protocol, the Parties shall determine the feasibility of banning or restricting, from States not party to this Protocol, the import of products produced with, but not containing, controlled substances. If determined feasible, the Parties shall, following the procedures in Article 10 of the Convention, elaborate in an annex a list of such products. Parties that have not objected to it in accordance with those procedures shall ban or restrict, within one year of the annex having become effective the import of those products from any State not party to this Protocol.</p>

Instrument	Provision(s)
<p><u>Montreal Protocol and the Vienna Convention on Substances that Deplete the Ozone Layer and London Amendments to the Montreal Protocol, Arts. 4.2., 2 bis; Copenhagen Amendments to the Montreal Protocol art 4, 2 ter).</u></p>	<p>5. Each Party shall discourage the export, to any State not party to this Protocol, of technology for producing and for utilizing controlled substances.</p> <p>6. Each Party shall refrain from providing new subsidies, aid, credits, guarantees or insurance programmes for the export to States not party to this Protocol of products, equipment, plants or technology that would facilitate the production of controlled substances.</p> <p>7. Paragraphs 5 and 6 shall not apply to products, equipment, plants or technology that improve the containment, recovery, recycling or destruction of controlled substances, promote the development of alternative substances, or otherwise contribute to the reduction of emissions of controlled substances.</p> <p>8. Notwithstanding the provisions of this Article, imports referred to in paragraphs 1, 3 and 4 may be permitted from any State not party to this Protocol if that State is determined, by a meeting of the Parties, to be in full compliance with Article 2 and this Article, and has submitted data to that effect as specified in Article 7.</p> <p>Article 7 Reporting of Data</p> <p>1. Each Party shall provide to the secretariat, within three months of becoming a Party, statistical data on its production, imports and exports of each of the controlled substances for the year 1986, or the best possible estimates of such data where actual data are not available.</p> <p>2. Each Party shall provide statistical data to the secretariat on its annual production (with separate data on amounts destroyed by technologies to be approved by the Parties), imports, and exports to Parties and non-Parties, respectively, of such substances for the year during which it becomes a Party and for each year thereafter. It shall forward the data no later than nine months after the end of the year to which the data relate.</p> <p>Article 12 Secretariat</p> <p>“e) encourage non-Parties to attend the meetings of the Parties as observers and to act in accordance with the provisions of this Protocol;</p> <p>(f) Provide, as appropriate, the information and requests referred to in subparagraphs (c) and (d) to such non-Party observers;</p>

**Minamata Convention
on Mercury**

Article 3 Mercury supply sources and trade:

“6. Each Party shall not allow the export of mercury except:

(a) To a Party that has provided the exporting Party with its written consent, and only for the purpose of:

(i) A use allowed to the importing Party under this Convention; or

(ii) Environmentally sound interim storage as set out in Article 10; or

(b) To a non-Party that has provided the exporting Party with its written consent, including certification demonstrating that:

(i) The non-Party has measures in place to ensure the protection of human health and the environment and to ensure its compliance with the provisions of Articles 10 and 11; and

(ii) Such mercury will be used only for a use allowed to a Party under this Convention or for environmentally sound interim storage as set out in Article 10.

7. An exporting Party may rely on a general notification to the Secretariat by the importing Party or non-Party as the written consent required by paragraph 6. Such general notification shall set out any terms and conditions under which the importing Party or non-Party provides its consent. The notification may be revoked at any time by that Party or non-Party. The Secretariat shall keep a public register of all such notifications.

8. Each Party shall not allow the import of mercury from a non-Party to whom it will provide its written consent unless the non-Party has provided certification that the mercury is not from sources identified as not allowed under paragraph 3 or paragraph 5 (b).

9. A Party that submits a general notification of consent under paragraph 7 may decide not to apply paragraph 8, provided that it maintains comprehensive restrictions on the export of mercury and has domestic measures in place to ensure that imported mercury is managed in an environmentally sound manner. The Party shall provide a notification of such decision to the Secretariat, including information describing its export restrictions and domestic regulatory measures, as well as information on the quantities and countries of origin of mercury imported from non-Parties. The Secretariat shall maintain a public register of all such notifications. The Implementation and Compliance Committee shall review and evaluate any such notifications and supporting information in accordance with Article 15 and may make recommendations, as appropriate, to the Conference of the Parties.”

Instrument	Provision(s)
<p><u>Cartagena Protocol on Biosafety to the Convention on Biological Diversity</u></p>	<p>Article 3 Use of Terms “(k) (...) for the purposes of Articles 17 and 24 transboundary movement extends to movement between Parties and non-Parties”</p> <p>Article 24 Non-Parties “1. Transboundary movements of living modified organisms between Parties and non-Parties shall be consistent with the objective of this Protocol. The Parties may enter into bilateral, regional and multilateral agreements and arrangements with non-Parties regarding such transboundary movements.</p> <p>2. The Parties shall encourage non-Parties to adhere to this Protocol and to contribute appropriate information to the Biosafety Clearing-House on living modified organisms released in, or moved into or out of, areas within their national jurisdictions.”</p>
<p><u>Agreement On Port State Measures To Prevent, Deter And Eliminate Illegal, Unreported And Unregulated Fishing (PSMA)</u></p>	<p>Article 23: Non Parties to this Agreement “1. Parties shall encourage non-Parties to this Agreement to become Parties thereto and/or to adopt laws and regulations and implement measures consistent with its provisions.</p> <p>2. Parties shall take fair, non-discriminatory and transparent measures consistent with this Agreement and other applicable international law to deter the activities of non-Parties which undermine the effective implementation of this Agreement.”</p>
<p><u>United Nations Fish Stock Agreement (UNFSA)</u></p>	<p>Article 17 Non-members of organizations and non-participants in arrangements “1. A State which is not a member of a subregional or regional fisheries management organization or is not a participant in a subregional or regional fisheries management arrangement, and which does not otherwise agree to apply the conservation and management measures established by such organization or arrangement, is not discharged from the obligation to cooperate, in accordance with the Convention and this Agreement, in the conservation and management of the relevant straddling fish stocks and highly migratory fish stocks.</p> <p>2. Such State shall not authorize vessels flying its flag to engage in fishing operations for the straddling fish stocks or highly migratory fish stocks which are subject to the conservation and management measures established by such organization or arrangement.</p> <p>3. States which are members of a subregional or regional fisheries management organization or participants in a subregional or regional fisheries management arrangement shall, individually or jointly, request the fishing entities referred to in article 1, paragraph 3, which have fishing vessels in the relevant area to cooperate fully with such organization or arrangement in implementing the conservation and management measures it has established, with a view to having such measures applied de facto as extensively as possible to fishing activities in the relevant area. Such fishing entities shall enjoy benefits from participation in the fishery commensurate with their commitment to comply with conservation and management measures in respect of the stocks.</p>

Instrument	Provision(s)
<p><u>United Nations Fish Stock Agreement (UNFSA)</u></p>	<p>4. States which are members of such organization or participants in such arrangement shall exchange information with respect to the activities of fishing vessels flying the flags of States which are neither members of the organization nor participants in the arrangement and which are engaged in fishing operations for the relevant stocks. They shall take measures consistent with this Agreement and international law to deter activities of such vessels which undermine the effectiveness of subregional or regional conservation and management measures”</p> <p>Article 21: Subregional and regional cooperation in enforcement “2. States shall establish, through subregional or regional fisheries management organizations or arrangements, procedures for boarding and inspection pursuant to paragraph 1, as well as procedures to implement other provisions of this article. Such procedures shall be consistent with this article and the basic procedures set out in article 22 and shall not discriminate against non-members of the organization or non-participants in the arrangement. Boarding and inspection as well as any subsequent enforcement action shall be conducted in accordance with such procedures. States shall give due publicity to procedures established pursuant to this paragraph.”</p> <p>Article 33: Non-parties to this Agreement “1. States Parties shall encourage non-parties to this Agreement to become parties thereto and to adopt laws and regulations consistent with its provisions.</p> <p>2. States Parties shall take measures consistent with this Agreement and international law to deter the activities of vessels flying the flag of non-parties which undermine the effective implementation of this Agreement.”</p> <p>Article 36: Review conference “1. Four years after the date of entry into force of this Agreement, the Secretary-General of the United Nations shall convene a conference with a view to assessing the effectiveness of this Agreement in securing the conservation and management of straddling fish stocks and highly migratory fish stocks. The Secretary-General shall invite to the conference all States Parties and those States and entities which are entitled to become parties to this Agreement as well as those intergovernmental and non-governmental organizations entitled to participate as observers.”</p> <p>ANNEX I Standard Requirements For The Collection And Sharing Of Data Article 2: Principles of data collection, compilation and exchange “(d) States should agree, within the framework of subregional or regional fisheries management organizations or arrangements, or otherwise, on the specification of data and the format in which they are to be provided, in accordance with this Annex and taking into account the nature of the stocks and the fisheries for those stocks in the region. Such organizations or arrangements should request non-members or non-participants to provide data concerning relevant fishing activities by vessels flying their flag;”</p>

Instrument	Provision(s)
<p><u>International Tropical Timber Agreement (ITTA)</u></p>	<p>Article 16: Admission of Observers “The Council may invite any member or observer State of the United Nations which is not party to this Agreement, or any organization referred to in Article 15 interested in the activities of the Organization, to attend as observers the sessions of the Council.”</p>
<p><u>International Plant Protection Convention (IPPC)</u></p>	<p>Article XVII Ratification and adherence “2. As soon as this Convention has come into force in accordance with Article XXII it shall be open for adherence by non-signatory states and member organizations of FAO. Adherence shall be effected by the deposit of an instrument of adherence with the Director-General of FAO, who shall notify all contracting parties.”</p> <p>Article XVIII Non-contracting parties “The contracting parties shall encourage any state or member organization of FAO, not a party to this Convention, to accept this Convention, and shall encourage any non-contracting party to apply phytosanitary measures consistent with the provisions of this Convention and any international standards adopted hereunder.”</p>
<p><u>Nagoya Protocol On Access To Genetic Resources And The Fair And Equitable Sharing Of Benefits Arising From Their Utilization To The Convention On Biological Diversity</u></p>	<p>Article 24 Non-Parties “The Parties shall encourage non-Parties to adhere to this Protocol and to contribute appropriate information to the Access and Benefit-sharing Clearing-House.”</p>
<p><u>Nagoya – Kuala Lumpur Supplementary Protocol On Liability And Redress To The Cartagena Protocol On Biosafety</u></p>	<p>Article 3 Scope “7. Domestic law implementing this Supplementary Protocol shall also apply to damage resulting from transboundary movements of living modified organisms from non-Parties.”</p>

Instrument	Provision(s)
<p><u>Stockholm Convention on Persistent Organic Pollutants</u></p>	<p>Article 3 – Measures to reduce or eliminate releases from intentional production and use</p> <p>“2. Each Party shall take measures to ensure:</p> <p>(a) (...)</p> <p>(b) That a chemical listed in Annex A for which any production or use specific exemption is in effect or a chemical listed in Annex B for which any production or use specific exemption or acceptable purpose is in effect, taking into account any relevant provisions in existing international prior informed consent instruments, is exported only:</p> <p>(i) (...);</p> <p>(iii) To a State not Party to this Convention which has provided an annual certification to the exporting Party. Such certification shall specify the intended use of the chemical and include a statement that, with respect to that chemical, the importing State is committed to:</p> <p>a. Protect human health and the environment by taking the necessary measures to minimize or prevent releases;</p> <p>b. Comply with the provisions of paragraph 1 of Article 6; and</p> <p>c. Comply, where appropriate, with the provisions of paragraph 2 of Part II of Annex B.</p> <p>The certification shall also include any appropriate supporting documentation, such as legislation, regulatory instruments, or administrative or policy guidelines. The exporting Party shall transmit the certification to the Secretariat within sixty days of receipt.”</p>
<p><u>Rotterdam Convention On The Prior Informed Consent Procedure For Certain Hazardous Chemicals And Pesticides In International Trade</u></p>	<p>Article 18 Conference of the Parties</p> <p>“7. The United Nations, its specialized agencies and the International Atomic Energy Agency, as well as any State not Party to this Convention, may be represented at meetings of the Conference of the Parties as observers. Any body or agency, whether national or international, governmental or nongovernmental, qualified in matters covered by the Convention, and which has informed the Secretariat of its wish to be represented at a meeting of the Conference of the Parties as an observer may be admitted unless at least one third of the Parties present object. The admission and participation of observers shall be subject to the rules of procedure adopted by the Conference of the Parties”.</p>

Instrument	Provision(s)
<p>Draft agreement under the United Nations Convention on the Law of the Sea on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction (BBNJ) (Not entered into force)</p>	<p>Preambular paragraph: “Recalling that the legal status of non-parties to the Convention or any other related agreements is governed by the rules of the law of treaties,”</p> <p>Article 4 Relationship between this Agreement and the Convention and relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies: “3. The legal status of non-parties to the Convention or any other related agreements with regard to those instruments is not affected by this Agreement.”</p> <p>Article 56 Non-parties to this Agreement “Parties shall encourage non-parties to this Agreement to become Parties thereto and to adopt laws and regulations consistent with its provisions”</p>

Endnotes

1. The term 'non-party' broadly refers to a State that has not ratified, acceded or otherwise become a party to an international agreement.
2. See for e.g., pre-session submissions for INC-2 of Cook Islands, Ecuador, Georgia, EU, HAC, Monaco, Norway.
3. United Nations Environment Programme, Trade-related measures and Multilateral Environmental Agreements, p. 28.
4. CITES, Art. X.
5. Montreal Protocol, Art 4.
6. Basel Convention, Art. 4.5.
7. UNEP, Vienna Convention and its Montreal Protocol's contribution towards the 2030 Agenda and Sustainable Development Goals (2017), available at https://sdgs.un.org/sites/default/files/documents/14291MontrealProtocol_7April2017.pdf: "Non-party trade provisions: Parties that have ratified the Protocol and its amendments may not trade in controlled substances with states that are yet to ratify it. This creates an incentive for countries to promptly join the Protocol and its amendments. The provisions are applied in a flexible way to ensure that all parties adhere to them without compromising their economic performance."
8. Australian Government, Department of Climate Change, Energy, the Environment and Water, Universal ratification of the Montreal Protocol (2009), available at <https://www.dcceew.gov.au/environment/protection/ozone/publications/universal-ratification-montreal-protocol#:~:text=In%20September%202009%2C%20East%20Timor,and%20success%20of%20the%20agreement:> "In September 2009, East Timor ratified the Montreal Protocol, making it the first international environmental treaty to achieve complete ratification - a truly remarkable effort that reflects the universal acceptance and success of the agreement."; for list of ratifications see UN Treaty Collection, Montreal Protocol https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=XX-VII-2-a&chapter=27&clang=_en.
9. United Nations Environment Programme, Trade-related measures and Multilateral Environmental Agreements, p. 27.
10. United Nations Environment Programme, Trade-related measures and Multilateral Environmental Agreements, p. 27.
11. United Nations Environment Programme, Trade-related measures and Multilateral Environmental Agreements, p. 27.
12. United Nations Environment Programme, Trade-related measures and Multilateral Environmental Agreements, p. 27.
13. Montreal Protocol, Art. 4.
14. Montreal Protocol, Art 4.6. Parties still can export technology or provide subsidies for products plants, or technology for the containment, recovery, recycling or destruction of controlled substances for the development of alternative substances, or for other emissions reduction measures, Art 4.7.
15. Basel Convention, Arts. 4(5), 7.
16. Basel Convention, Art. 11.
17. CITES, Arts. II, III, IV, V.
18. United Nations Environment Programme, Trade-related measures and Multilateral Environmental Agreements, p. 10.
19. CITES, Resolutions of the Conference of the Parties, (Proceedings of the Ninth Meeting of the Conference of the Parties, 1994), Conference Resolution 9.5, para. b, p. 49, accessible at <https://cites.org/sites/default/files/eng/cop/09/E9-Res.pdf>.
20. CITES, Art. X.
21. Chris Wold, Multilateral Environmental Agreements and the GATT: Conflict and Resolution?, (Environmental Law, Vol. 26, No. 3, 1996), p. 898.
22. CITES, Resolutions of the Conference of the Parties, (Proceedings of the Ninth Meeting of the Conference of the Parties, 1994), Conference Resolution 9.5, para. b, p. 49, accessible at <https://cites.org/sites/default/files/eng/cop/09/E9-Res.pdf>.
23. CITES, Art. X.
24. See for e.g., pre-session submissions for INC 2 of Cook Islands, Ecuador, Georgia, EU, HAC, Monaco, Norway.

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