Federal states and international organisations: a short comparison of their amending rules with the European Union

NOTE

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Federal states and international organisations:

A short comparison of their amending rules with the European Union

Abstract
This comparative note looks at the legal provisions ruling the amendment of the founding documents of federal states and international organisations and compares them to Art. 48 of the Treaty on European Union. The European Union is the only political organisation requiring a double unanimous decision, firstly when signing a revising treaty and, secondly, when ratifying it in the Member States. The new rules proposed for the entry into force of the European Stability Mechanism treaty indicate that EU leaders, at least in selected policy fields, are in the process of changing their views on the usefulness of the "mutual agreement" rule.

Keywords: treaty revision, federal states, international law
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1. BACKGROUND

International law scholars usually identify four crucial stages of treaty development: the negotiation process, signature or accession, ratification and compliance.\(^1\) While the question of "compliance" has found a unique answer in the form of EU constitutionalism and the primacy of EU law, the other three stages are very similar in both an international public law and an EU context. Negotiating treaty reform in the EU is subject to more or less the same quandaries as preparing the amendment of an international treaty. This has apparently led the Heads of state or government to opt for a Schengen-like 17+9 international treaty model at their last summit on 8/9 December 2011.

Even before, the constitutional "fatigue" of the post-Lisbon period had given way to a renewed scrutiny of the constitutional obstacles jeopardizing an effective reaction of the European Union to tackle the financial crisis. New projects are being ventilated almost every other week, in different countries and across political parties. Although some central questions such as the creation of common European instruments of refinancing public debt remain widely contested, there emerges a growing consensus that the Lisbon Treaty cannot be the ultimate answer and that piecemeal reform such as the modification of Art. 136 TFEU is insufficient to control the outfall of the financial crisis on Member States’ fiscal and sovereign debt situation.

Any revision of the European treaties requires to surmount two unanimity hurdles: first the draft treaty has to be signed by all Member State representatives, thus being transformed into a proper treaty. Before entering into force, this treaty is subject to ratification which has to take place in all Member States according to their national constitutional requirements. The double possibility for a single Member State to veto treaty change has caused well-known problems over the past 20 years. In addition, the Czech problem in 2009 has demonstrated that the final signature by the Head of State, required not only in the Czech Republic, is an international act necessary even after a legislative chamber’s approval, or that of the people voting by referendum. The German President also withheld his signature until the Federal Constitutional Court had declared the Lisbon Treaty compatible with the Basic Law.

Therefore, there is no lack of legal and political literature demanding and explaining steps to overcome this very high threshold for a future evolution of the European constitutional set-up.\(^2\) The Committee on Constitutional Affairs has of course dealt with these questions at regular intervals.\(^3\) It envisages to invite the President of the European Commission to explain the Commission’s latest positions and proposals as concerns the necessary treaty changes and the preferred method of implementing them.\(^4\) For the moment, it seems likely

\(^1\) Jeffrey S. Lantis, The life and death of international Treaties: double-edged diplomacy and the politics of ratification in comparative perspective; *International Politics* 43, 24 - 52, 2006; p. 25.


\(^3\) See among many others Parliament’s resolution on the Constitutionalisation of the treaties (rapporteur: Olivier Duhamel), OJ C 197 of 12.07.2001, p. 111.

\(^4\) Already in 2000 the European Commission commissioned the Robert Schuman Centre for Advanced Studies of the European University Institute to draw up a report on the reorganization of the Treaties. The report was divided into two parts, the second of which sets out a study of possible alternatives to the revision procedure of the Treaties. For one, the study questions the need for unanimity in the ratification process. Secondly, proposals for a diversification of the future revision procedures of the Treaty are made, providing a number of mechanisms with varying degrees of flexibility, according to the subject matter to be reformed (Yves Mény
that contrary to the amendment of Art. 136 TFEU undergoing ratification such future revision would require the convocation of a Convention (cf. Art. 48 (3) TEU). It would perhaps be feasible to add the problem of veto powers during the ratification process to the agenda of such a Convention.

The Committee on Constitutional Affairs has therefore asked the Policy Department to examine the situation in two different types of polity having close resemblance with the constitutional structure of the European Union, i.e. federal states and international treaty-based organisations. While both changes to the constitution of a federal state and changes to the basic document of an international organisation (sometimes also called constitution) cannot be simply transferred to the context of a confederation of sovereign Member States, they certainly deliver some normative and practical criteria for assessing the appropriateness of the current provisions governing the reform of the EU treaties.

2. A REVIEW OF SELECTED STATES AND ORGANISATIONS

The federal states and international organisations chosen for this brief review are:

<table>
<thead>
<tr>
<th>Federal States</th>
<th>International Organisations</th>
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<tbody>
<tr>
<td>United States of America</td>
<td>General provisions (Vienna Convention)</td>
</tr>
<tr>
<td>Federal Republic of Germany</td>
<td>Council of Europe</td>
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<tr>
<td>Swiss Confederation</td>
<td>United Nations: Charter</td>
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<tr>
<td>Kingdom of Belgium</td>
<td>--, Security Council</td>
</tr>
<tr>
<td>[Dominion of] Canada</td>
<td>International Monetary Fund</td>
</tr>
<tr>
<td>Commonwealth of Australia</td>
<td>North Atlantic Treaty Organisation</td>
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<tr>
<td>Federative Republic of Brazil</td>
<td>International Labour Organisation</td>
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<tr>
<td>Republic of India</td>
<td>World Health Organisation</td>
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<tr>
<td>Republic of South Africa</td>
<td>World Trade Organisation</td>
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</table>

The table attached at the end of the note (Annex 1) provides summary information on the rules governing constitutional or treaty change in these polities. A further Annex 2 gives some quotations of the legal provisions in each of these systems.

A cursory glance at both federal states and international treaty organisations confirms the obvious fact that neither states nor organisations impose upon themselves constraints as unbending as those of Art 48 TEU. All federal states provide for some qualified majority in one or two parliamentary chambers for changing the constitution. Amendments to the US Constitution apply once ratified by three quarters of the states. In Germany and Belgium, two thirds of both Houses of Parliament are required to ratify a constitutional amendment. Canada needs two thirds of the provinces representing more than half the population. In Australia, a simple majority of both chambers and a simple majority in a referendum suffice for ratification. The Indian constitution provides for a simple majority in both Houses if two thirds of Members vote.

The differences between these countries lie basically in the mechanisms governing the relations between the political bodies involved in the procedure. As is to be expected in federal states these mechanisms strike a balance between the different levels of government and parliamentary representation. In other words, they combine and weigh the interests of the state as a whole and those of its component regions. In some countries referendums also involve the individual citizens. A few constitutions provide for a small list of cardinal principles which are deemed to be protected from any future changes (cf. notably the so-called eternity clause of the German Grundgesetz at Art. 79(3)).

On the other hand, international organisations and their founding treaties are subject to the general rules laid out in the Vienna Convention on the Law of Treaties; especially those concerning "amendment and modification of treaties" (part IV). The core of these rules is the principle that "every state possesses the capacity to conclude treaties". This becomes manifest in formulas appearing in several articles of the Vienna Convention, such as "... unless the treaty otherwise provides or the parties otherwise agree" or, more particularly, "... as provided in the treaty or consented by all parties".

Yet almost all organisations examined here provide for instruments of treaty change and its ratification. Amendments to the United Nations treaty enter into force once two thirds of the states have ratified along with all permanent members of the Security Council. The Council of Europe, International Labour Organisation, World Health Organisation and World Trade Organisation provide for entry into force of treaty amendments once two thirds of the signatory states have ratified them. The IMF statutes require three fifths of the states, representing also 85 per cent of the (financially) weighted votes. Only the North Atlantic Treaty Organisation, while having a rule on treaty "review" (if any Member State requests, Member States "consult together for the purpose of reviewing the Treaty"), has no formal provision for ratifying treaty amendments. In view of the context of other provisions it is likely that ratification would need to take place in all Member States. For instance, accession of new members requires unanimity. However, the original NATO Treaty entered into force as soon as the ratifications of the majority of the signatories, including the ratifications of Belgium, Canada, France, Luxembourg, the Netherlands, the UK and the US, had been deposited.
3. CONCLUSION

The comparative review of rules applying to constitutional change and treaty amendment sheds some light on the particular legal status of the European Union. While based on an international public law treaty like other international organisations, the Union has developed an "autonomous legal order", as was notably established in a number of landmark decisions of the European Court of Justice. This legal system provides for a binding hierarchy of norms, many of which are adopted by majority decisions. Very few international organisations dispose of an infra-constitutional legal system having such a density and power of regulation in socio-economic and other fields of policy-making.

While such an intensity of the internal legal order makes the Union resemble federal polities, its limitation of powers, in the sense of policy areas subject to EU legislation, reminds us of the specialised character of international organisations. Their founding documents usually provide for a well demarcated and not too general arena of activities (agriculture, trade, or mutual defence arrangements) which clearly distinguish them from the all-encompassing purview of federal (and other) states, which usually claim full competence to (re-)define their law-making powers and fields of regulation. Interestingly, the most complicated rules for treaty change to be found here among international organisations are those of the WTO, a policy-making organisation with potentially deep effects on the domestic socio-economic life of its members.

Any proposal for modification of Art 48 TFEU, therefore, has to take into account the intermediate character of the European Union, between a federal state (or, less problematic, polity) and an international organisation. Probably the core problem deterring Member States to provide for easier ratification of treaty revisions is a fear that this might lead to what some scholars have called "competence creep", a slow but inevitable extension of the Union's competencies. Some authors hence propose to introduce a super-qualified majority at both the IGC and the ratification stage. If this appears overly sanguine, in a time of calls for "more Europe" in order to tackle the public debt and bank crises, worries about further transfers of powers may give way to a more proactive strategy seeking to realise the common interests of the European Union. More specifically, a continuing application of the unanimity rule during the drafting and signing stage, although certainly making compromises more difficult to achieve, could convince Member State governments to give in to some qualified majority rule at the ratification stage.

At the European Council of 8/9 December 2011 the heads of state or government have indeed proposed groundbreaking innovations concerning the ratification of the European Stability Mechanism (ESM) treaty, as well as with respect to future mechanisms of decision-making in the ESM framework. Apparently inspired by IMF rules, they announced that the future ESM would enter into force as soon as Member States representing 90 % of the capital commitments have ratified it. Once in force, voting rules in the ESM will be changed to include a so-called "emergency procedure". The mutual agreement (unanimity) rule will be replaced by a qualified majority of 85 % in case the Commission and the ECB conclude that an urgent decision related to financial assistance is needed.

Finally, there is no doubt that supplementary reforms of the Convention method and steps to create a closer liaison between a Convention and the subsequent IGC, as well as

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5 For example, H. Bribosia 2009, op.cit., p. 15/16.
7 Ibid., paragraph 15.
between members of the Convention and national parliaments, would contribute greatly to a more European approach to treaty reform. But such topics are beyond the scope of this short review of constitutional provisions and would merit a separate analysis.
### 4. Overview

#### 4.1. Treaty revision in the European Union

<table>
<thead>
<tr>
<th>Article(s), legal basis</th>
<th>Essential elements</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Initiative/proposal</strong></td>
<td>Proposals can be submitted by a Member State, the European Parliament or the European Commission. The Council of Ministers submits them to the European Council and notifies member states. The President of the European Council convenes an inter-governmental conference. The treaty revision must be accepted by all Member States.</td>
</tr>
<tr>
<td><strong>Ratification of amendments</strong></td>
<td>Member States according to their constitutional arrangements.</td>
</tr>
<tr>
<td><strong>Entry into force</strong></td>
<td>When ratified by all Member States.</td>
</tr>
<tr>
<td><strong>Institutions involved</strong></td>
<td>Representatives of Member States (IGC), if Convention: plus European Council, EP, Commission, national Parliaments</td>
</tr>
<tr>
<td><strong>Comments</strong></td>
<td>Some special amendments (e.g., simplified treaty revisions or legislative procedures) can be adopted by the European Council unanimously.</td>
</tr>
</tbody>
</table>
### 4.2. Provisions for the initiation and entry into force of revisions of the constitutions of federal states

<table>
<thead>
<tr>
<th>Article(s), legal basis</th>
<th>Essential elements</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Initiative/proposal</td>
</tr>
<tr>
<td><strong>United States of America</strong></td>
<td>V, Constitution</td>
</tr>
<tr>
<td><strong>Federal Republic of Germany</strong></td>
<td>79, Basic Law</td>
</tr>
<tr>
<td>Country</td>
<td>Reference</td>
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</tr>
<tr>
<td><strong>Swiss Confederation</strong></td>
<td>192-195, Constitution</td>
</tr>
<tr>
<td><strong>Kingdom of Belgium</strong></td>
<td>195, 197, Grondwet/ Constitution</td>
</tr>
<tr>
<td><strong>Dominion of Canada</strong></td>
<td>38, 41, 46, 49, Constitution</td>
</tr>
</tbody>
</table>

In fact, only 2/3s of 2/3s of MPs could be sufficient to pass constitutional amendments (in the extreme, appr. 45% of component members of Parliament). Some provisions cannot be amended during one regency.
<table>
<thead>
<tr>
<th>Commonwealth of Australia</th>
<th>128, Constitution</th>
<th>A proposal amending the constitution must be passed by an absolute majority of each House of the Parliament and the proposed law shall be submitted in each State and Territory to the electors.</th>
<th>If in a majority of the States a majority of the electors approve and if a majority of all the electors also approve, the amending law shall be presented for the Queen's assent.</th>
<th>Parliament and state assemblies, People, Queen</th>
<th>In case of disagreement between both Houses the electorate may decide. A State can block any amendment concerning its proportional representation at the federal level.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Federative Republic of Brazil</td>
<td>60, Constitution</td>
<td>The Constitution may be amended on the proposal of at least one-third of the members of the Chamber of Deputies or of the Federal Senate; the President of the Republic; more than one half of the Legislative Assemblies of the units of the Federation, each of them expressing itself by the relative majority of its members.</td>
<td>The proposal shall be discussed and voted upon in each House of the National Congress, in two readings, and it shall be considered approved if it obtains in both readings, 3/5 of the votes of the respective members.</td>
<td>Parliament, President, State assemblies.</td>
<td>Some provisions cannot be amended.</td>
</tr>
<tr>
<td>Republic of India</td>
<td>268, Constitution</td>
<td>An amendment of the constitution may be initiated only by either House of Parliament.</td>
<td>If the Bill is passed in each House by a majority of the total membership and by a majority of not less than 2/3 of the members of that House present and voting.</td>
<td></td>
<td>Special procedure for amendment of the amendment procedure and some other reservations.</td>
</tr>
<tr>
<td>Republic of South Africa</td>
<td>44, 74, Constitution</td>
<td>The National Assembly, through its legislative authority, has the power to amend the Constitution.</td>
<td>The Constitution may be amended by the National Assembly, with a supporting vote of at least 2/3 of its members, or the National Council of Provinces, with a supporting vote of at least six provinces.</td>
<td>Some amendments need to be adopted by the National Assembly and six provinces. Another special procedure for some amendments (75% of members of National Assembly).</td>
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</tbody>
</table>
### 4.3. Provisions for the proposal, signature and entry into force of amendments to statutes of international treaty organisations

<table>
<thead>
<tr>
<th>Articles Legal basis</th>
<th>Essential elements</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Initiative/proposal</strong></td>
<td><strong>Ratification of amendments</strong></td>
</tr>
<tr>
<td><strong>General provisions</strong></td>
<td>States, intergovernmental organisations</td>
</tr>
<tr>
<td>24, 39, 42, 57, 84, Vienna Convention</td>
<td></td>
</tr>
<tr>
<td><strong>Council of Europe</strong></td>
<td>Statute: Proposals for amendment may be made in the Committee of Ministers or in the Parliamentary Assembly</td>
</tr>
<tr>
<td><strong>United Nations: Charter</strong></td>
<td>108, 110, UN Charter</td>
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</tr>
<tr>
<td><strong>Security Council</strong></td>
<td>27, UN Charter</td>
</tr>
<tr>
<td><strong>International Monetary Fund</strong></td>
<td>XXVIII, Articles of Agreement</td>
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<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>Organization</td>
<td>Article/Year</td>
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<tr>
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</tr>
<tr>
<td>North Atlantic Treaty Organisation</td>
<td>10-13, Treaty</td>
</tr>
<tr>
<td>International Labour Organisation</td>
<td>36, Constitution</td>
</tr>
<tr>
<td>World Health Organisation</td>
<td>73, 80, Constitution</td>
</tr>
<tr>
<td>World Trade Organisation</td>
<td>X, XII, XIV, XV, Agreement</td>
</tr>
</tbody>
</table>
5. EXCERPTS FROM FEDERAL CONSTITUTIONS

5.1. United States of America

Article V: the Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress; Provided that [no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article; and that] no State, without its Consent, shall be deprived of its equal Suffrage in the Senate.

Constitutive process

The States of New Hampshire, Massachusetts, Connecticut, Mr. Hamilton from New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina and Georgia. Resolved.

That the preceding Constitution be laid before the United States in Congress assembled, and that it is the Opinion of this Convention, that it should afterwards be submitted to a Convention of Delegates, chosen in each State by the People thereof, under the Recommendation of its Legislature, for their Assent and Ratification; and that each Convention assenting to, and ratifying the Same, should give Notice thereof to the United States in Congress assembled. Resolved, That it is the Opinion of this Convention, that as soon as the Conventions of nine States shall have ratified this Constitution, the United States in Congress assembled should fix a Day on which Electors should be appointed by the States which have ratified the same, and a Day on which the Electors should assemble to vote for the President, and the Time and Place for commencing Proceedings under this Constitution. That after such Publication the Electors should be appointed, and the Senators and Representatives elected: That the Electors should meet on the Day fixed for the Election of the President, and should transmit their Votes certified, signed, sealed and directed, as the Constitution requires, to the Secretary of the United States in Congress assembled, that the Senators and Representatives should convene at the Time and Place assigned; that the Senators should appoint a President of the Senate, for the sole purpose of receiving, opening and counting the Votes for President; and, that after he shall be chosen, the Congress, together with the President, should, without Delay, proceed to execute this Constitution.
5.2. Federal Republic of Germany

Article 79

(1) This Basic Law may be amended only by a law expressly amending or supplementing its text. In the case of an international treaty regarding a peace settlement, the preparation of a peace settlement, or the phasing out of an occupation regime, or designed to promote the defence of the Federal Republic, it shall be sufficient, for the purpose of making clear that the provisions of this Basic Law do not preclude the conclusion and entry into force of the treaty, to add language to the Basic Law that merely makes this clarification.

(2) Any such law shall be carried by two thirds of the Members of the Bundestag and two thirds of the votes of the Bundesrat.

(3) Amendments to this Basic Law affecting the division of the Federation into Länder, their participation on principle in the legislative process, or the principles laid down in Articles 1 and 20 shall be inadmissible.

5.3. Swiss Confederation

Art. 192(2): Unless the Federal Constitution and the legislation based on it provides otherwise, any revision of the Federal Constitution shall be made by the legislative process.

Art. 193 (Total revision): 1 A total revision of the Federal Constitution may be proposed by the People or by either of the two Councils or be decreed by the Federal Assembly. 2 If the initiative emanates from the People or if the two Chambers are unable to agree, the People shall decide on whether a total revision should be carried out. 3 If the People vote for a total revision, new elections shall be held to both Chambers.

Art. 194 (Partial revision): 1 A partial revision of the Federal Constitution may be requested by the People or decreed by the Federal Assembly. 2 The partial revision must respect the principle of cohesion of subject matter and must not violate mandatory provisions of international law. 3 The popular initiative for partial revision must also respect the principle of consistency of form.

Art. 195 (Commencement): The totally or partly revised Federal Constitution shall come into force when it is approved by the People and the Cantons.
5.4. Belgium

Art. 195: The federal legislative power has the right to declare that there are reasons to revise such constitutional provision as it determines.

Following such a declaration, the two Houses are automatically dissolved.

The new Houses make decisions, in common accord with the King, on the points submitted for [constitutional] revision.

In this case, the Houses can only debate provided that at least two thirds of the members who make up each House are present; and no change is adopted unless it is supported by at least two thirds of the votes cast.

Article 197: During a regency, no changes can be made to the Constitution regarding the constitutional powers of the King and Articles 85 to 88, 91 to 95, 106 and 197 of the Constitution.

5.5. Canada

Art. 38

(1) An amendment to the Constitution of Canada may be made by proclamation issued by the Governor General under the Great Seal of Canada where so authorized by:

a) Resolutions of the Senate and House of Commons; and

b) Resolutions of the legislative assemblies of at least two-thirds of the provinces that have, in the aggregate, according to the then latest general census, at least fifty per cent of the population of all the provinces.

(2) An amendment made under subsection (1) that derogates from the legislative powers, the proprietary rights or any other rights or privileges of the legislature or government of a province shall require a resolution supported by a majority of the members of each of the Senate, the House of Commons and the legislative assemblies required under subsection (1).

(3) An amendment referred to in subsection (2) shall not have effect in a province the legislative assembly of which has expressed its dissent thereto by resolution supported by a majority of its members prior to the issue of the proclamation to which the amendment relates unless that legislative assembly, subsequently, by resolution supported by a majority of its members, revokes its dissent and authorizes the amendment.

Art. 41: An amendment to the Constitution of Canada in relation to the following matters may be made by proclamation issued by the Governor General under the Great Seal of Canada only where authorized by resolutions of the Senate and House of Commons and of the legislative assembly of each province:
a) the office of the Queen, the Governor General and the Lieutenant Governor of a province;
b) the right of a province to a number of members in the House of Commons not less than the number of Senators by which the province is entitled to be represented at the time this Part comes into force;
c) subject to section 43, the use of the English or the French language;
d) the composition of the Supreme Court of Canada; and
e) An amendment to this Part.

Art. 46: (1) The procedures for amendment under sections 38, 41, 42 and 43 may be initiated either by the Senate or the House of Commons or by the legislative assembly of a province.

Art. 49: A constitutional conference composed of the Prime Minister of Canada and the first ministers of the provinces shall be convened by the Prime Minister of Canada within fifteen years after this Part comes into force to review the provisions of this Part.

5.6. Australia

Art. 128: The proposed law for the alteration thereof must be passed by an absolute majority of each House of the Parliament, and not less than two nor more than six months after its passage through both Houses the proposed law shall be submitted in each State and Territory to the electors qualified to vote for the election of members of the House of Representatives.

But if either House passes any such proposed law by an absolute majority, and the other House rejects or fails to pass it, or passes it with any amendment to which the first-mentioned House will not agree, and if after an interval of three months the first-mentioned House in the same or the next session again passes the proposed law by an absolute majority with or without any amendment which has been made or agreed to by the other House, and such other House rejects or fails to pass it or passes it with any amendment to which the first-mentioned House will not agree, the Governor-General may submit the proposed law as last proposed by the first-mentioned House, and either with or without any amendments subsequently agreed to by both Houses, to the electors in each State and Territory qualified to vote for the election of the House of Representatives.

When a proposed law is submitted to the electors the vote shall be taken in such manner as the Parliament prescribes. But until the qualification of electors of members of the House of Representatives becomes uniform throughout the Commonwealth, only one-half the electors voting for and against the proposed law shall be counted in any State in which adult suffrage prevails.

And if in a majority of the States a majority of the electors voting approve the proposed law, and if a majority of all the electors voting also approve the proposed law, it shall be presented to the Governor-General for the Queen's assent.

No alteration diminishing the proportionate representation of any State in either House of the Parliament, or the minimum number of representatives of a State in the House of Representative, or increasing, diminishing, or otherwise altering the limits of the State, or in any manner affecting the provisions of the Constitution in relation thereto, shall become law unless the majority of the electors voting in that State approve the proposed law.
5.7. Brazil

Article 60: the Constitution may be amended on the proposal of:

- at least one-third of the members of the Chamber of Deputies or of the Federal Senate;
- the President of the Republic;
- More than one half of the Legislative Assemblies of the units of the Federation, each of them expressing itself by the relative majority of its members.

Paragraph 2 - The proposal shall be discussed and voted upon in each House of the National Congress, in two readings, and it shall be considered approved if it obtains in both readings, three-fifths of the votes of the respective members.

Paragraph 3 - An amendment to the Constitution shall be promulgated by the Directing Boards of the Chamber of Deputies and the Federal Senate with the respective sequence number.

Paragraph 4 - No proposal of amendment shall be considered which is aimed at abolishing:

- the federative form of State;
- the direct, secret, universal and periodic vote;
- the separation of the Government Powers;
- individual rights and guarantees.

5.8. India

Art. 268(2)

An amendment of this Constitution may be initiated only by the introduction of a Bill for the purpose in either House of Parliament, and when the Bill is passed in each House by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting.

Provided that if such amendment seeks to make any change in—(a) article 54, article 55, article 73, article 162 or article 241, or (b) Chapter IV of Part V, Chapter V of Part VI, or Chapter I of Part XI, or (c) any of the Lists in the Seventh Schedule, or (d) the representation of States in Parliament, or (e) the provisions of this article, the amendment shall also require to be ratified by the Legislatures of not less than one-half of the States by resolutions to that effect passed by those Legislatures before the Bill making provision for such amendment is presented to the President for assent.
5.9. South Africa

44. National legislative authority

The national legislative authority as vested in Parliament - confers on the National Assembly the power - i.e. to amend the Constitution;

[...]

74. Bills amending the Constitution

Section 1 and this subsection may be amended by a Bill passed by - the National Assembly, with a supporting vote of at least 75 per cent of its members; and the National Council of Provinces, with a supporting vote of at least six provinces.

Chapter 2 may be amended by a Bill passed by - the National Assembly, with a supporting vote of at least two thirds of its members; and the National Council of Provinces, with a supporting vote of at least six provinces.

Any other provision of the Constitution may be amended by a Bill passed - by the National Assembly, with a supporting vote of at least two thirds of its members; and also by the National Council of Provinces, with a supporting vote of at least six provinces, if the amendment -

- relates to a matter that affects the Council;
- alters provincial boundaries, powers, functions or institutions; or
- Amends a provision that deals specifically with a provincial matter.
6. **EXCERPTS FROM INTERNATIONAL TREATIES**

6.1. **Vienna Convention on the Law of Treaties**

**Article 24: Entry into force**

1. A treaty enters into force in such manner and upon such date as it may provide or as the negotiating States may agree.
2. Failing any such provision or agreement, a treaty enters into force as soon as consent to be bound by the treaty has been established for all the negotiating States.

**Article 39: General rule regarding the amendment of treaties**

A treaty may be amended by agreement between the parties. The rules laid down in Part II [entry into force] apply to such an agreement except insofar as the treaty may otherwise provide.

**Article 42: Validity and continuance in force of treaties**

2. The termination of a treaty, its denunciation or the withdrawal of a party, may take place only as a result of the application of the provisions of the treaty or of the present Convention. The same rule applies to suspension of the operation of a treaty.

**Article 57: Suspension of the operation of a treaty under its provisions or by consent of the parties**

The operation of a treaty in regard to all the parties or to a particular party may be suspended:

a) in conformity with the provisions of the treaty; or
b) At any time by consent of all the parties after consultation with the other contracting States.

**Article 84: Entry into force of the Convention**

1. The present Convention shall enter into force on the thirtieth day following the date of deposit of the thirty-fifth instrument of ratification or accession.

Article 41 Statute

Proposals for the amendment of this Statute may be made in the Committee of Ministers or, in the conditions provided for in Article 23*, in the Consultative Assembly.

The Committee shall recommend and cause to be embodied in a protocol those amendments which it considers to be desirable.

An amending protocol shall come into force when it has been signed and ratified on behalf of two-thirds of the members.

Notwithstanding the provisions of the preceding paragraphs of this article, amendments to Articles 23 to 35, 38 and 39 which have been approved by the Committee and by the Assembly shall come into force on the date of the certificate of the Secretary General, transmitted to the governments of members, certifying that they have been so approved. This paragraph shall not operate until the conclusion of the second ordinary session of the Assembly.

Resolution adopted by the Committee of Ministers at its 8th Session, May 1951:

Powers of the Committee of Ministers (Article 15 of the Statute)

The conclusions of the Committee may, where appropriate, take the form of a convention or agreement. In that event the following provisions shall be applied:

– The convention or agreement shall be submitted by the Secretary General to all members for ratification;

– Each member undertakes that, within one year of such submission or, where this is impossible owing to exceptional circumstances, within eighteen months, the question of ratification of the convention or agreement shall be brought before the competent authority or authorities in its country;

Statutory Resolution (93) 27 on majorities required for decisions of the Committee of Ministers (1993)

I. Opening of Conventions and Agreements for signature

Decisions on the opening for signature of Conventions and Agreements concluded within the Council of Europe shall be taken by a two-thirds majority of the representatives casting a vote and a majority of the representatives entitled to sit on the Committee, as set out in Article 20.d of the Statute.

* Article 23: The Consultative Assembly may discuss and make recommendations upon any matter within the aim and scope of the Council of Europe as defined in Chapter I. It shall also discuss and may make recommendations upon any matter referred to it by the Committee of Ministers with a request for its opinion. The Assembly shall draw up its agenda in accordance with the provisions of paragraph a above. In so doing, it shall have regard to the work of other European intergovernmental organisations to which some or all of the members of the Council are parties. The President of the Assembly shall decide, in case of doubt, whether any question raised in the course of the session is within the agenda of the Assembly.
II. Partial Agreements

In accordance with the Statutory Resolution on Partial and Enlarged Agreements decisions authorising certain member States to pursue an activity as a Partial Agreement shall be taken by a **two-thirds majority** of the representatives casting a vote and a **majority of the representatives entitled to sit** on the Committee, as set out in Article 20.d of the Statute.

**Article 59 Convention Human Rights**

**Signature and ratification**

1. This Convention shall be open to the signature of the members of the Council of Europe. It shall be ratified. Ratifications shall be deposited with the Secretary General of the Council of Europe.
2. The European Union may accede to this Convention.
3. The present Convention shall come into force after the deposit of **ten** instruments of ratification.
4. As regards any signatory ratifying subsequently, the Convention shall come into force at the date of the deposit of its instrument of ratification.

**Constitutive process**

**Article 42**

This Statute shall be ratified. Ratifications shall be deposited with the Government of the United Kingdom of Great Britain and Northern Ireland.

The present Statute shall come into force as soon as **seven instruments of ratification** have been deposited. The Government of the United Kingdom shall transmit to all signatory governments a certificate declaring that the Statute has entered into force and giving the names of the members of the Council of Europe on that date.

Thereafter each other signatory shall become a Party to this Statute as from the date of the deposit of its instrument of ratification.

**6.3. United Nations**

**Article 108**

Amendments to the present Charter shall come into force for all Members of the United Nations when they have been adopted by a vote of **two thirds of the members** of the General Assembly and ratified in accordance with their respective constitutional processes by two thirds of the Members of the United Nations, including all the permanent members of the Security Council.

**Article 109**

A General Conference of the Members of the United Nations for the purpose of reviewing the present Charter may be held at a date and place to be fixed by a **two-thirds** vote of the members of the General Assembly and by a vote of **any nine members of the**
**Security Council.** Each Member of the United Nations shall have one vote in the conference.

Any alteration of the present Charter recommended by a two-thirds vote of the conference shall take effect when ratified in accordance with their respective constitutional processes by two thirds of the Members of the United Nations including all the permanent members of the Security Council.

If such a conference has not been held before the tenth annual session of the General Assembly following the coming into force of the present Charter, the proposal to call such a conference shall be placed on the agenda of that session of the General Assembly, and the conference shall be held if so decided by a majority vote of the members of the General Assembly and by a vote of any seven members of the Security Council.

**Article 110**

The present Charter shall be ratified by the signatory states in accordance with their respective constitutional processes.

The ratifications shall be deposited with the Government of the United States of America, which shall notify all the signatory states of each deposit as well as the Secretary-General of the Organization when he has been appointed.

The present Charter shall come into force upon the deposit of ratifications by the Republic of China, France, the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland, and the United States of America, and by a majority of the other signatory states. A protocol of the ratifications deposited shall thereupon be drawn up by the Government of the United States of America which shall communicate copies thereof to all the signatory states.

**Statute of the International Court of Justice**

**Article 69**

Amendments to the present Statute shall be effected by the same procedure as is provided by the Charter of the United Nations for amendments to that Charter, subject however to any provisions which the General Assembly upon recommendation of the Security Council may adopt concerning the participation of states which are parties to the present Statute but are not Members of the United Nations.

**Security Council**

**Article 27**

Each member of the Security Council shall have one vote.

Decisions of the Security Council on procedural matters shall be made by an affirmative vote of nine members.

Decisions of the Security Council on all other matters shall be made by an affirmative vote of nine members including the **concurring votes of the permanent members**; provided
that, in decisions under Chapter VI, and under paragraph 3 of Article 52, a party to a dispute shall abstain from voting.

6.4. International Monetary Fund

Article XXVIII - Amendments

a) Any proposal to introduce modifications in this Agreement, whether emanating from a member, a Governor, or the Executive Board, shall be communicated to the chairman of the Board of Governors who shall bring the proposal before the Board of Governors. If the proposed amendment is approved by the Board of Governors, the Fund shall, by circular letter or telegram, ask all members whether they accept the proposed amendment. When three-fifths of the members, having eighty-five percent of the total voting power, have accepted the proposed amendment, the Fund shall certify the fact by a formal communication addressed to all members.

(b) Notwithstanding (a) above, acceptance by all members is required in the case of any amendment modifying:

(i) The right to withdraw from the Fund (Article XXVI, Section 1);

(ii) The provision that no change in a member’s quota shall be made without its consent (Article III, Section 2(d)); and

(iii) The provision that no change may be made in the par value of a member's currency except on the proposal of that member (Schedule C, paragraph 6).

6.5. North Atlantic Treaty Organization

Article 10

The Parties may, by unanimous agreement, invite any other European State in a position to further the principles of this Treaty and to contribute to the security of the North Atlantic area to accede to this Treaty

Article 11

This Treaty shall be ratified and its provisions carried out by the Parties in accordance with their respective constitutional processes. [...] The Treaty shall enter into force between the States which have ratified it as soon as the ratifications of the majority of the signatories, including the ratifications of Belgium, Canada, France, Luxembourg, the Netherlands, the United Kingdom and the United States, have been deposited and shall come into effect with respect to other States on the date of the deposit of their ratifications.

Article 12

After the Treaty has been in force for ten years, or at any time thereafter, the Parties shall, if any of them so requests, consult together for the purpose of reviewing the Treaty, having regard for the factors then affecting peace and security in the North Atlantic area, including the development of universal as well as regional arrangements under the Charter of the United Nations for the maintenance of international peace and security.
Article 13

After the Treaty has been in force for twenty years, any Party may cease to be a Party one year after its notice of denunciation has been given to the Government of the United States of America, which will inform the Governments of the other Parties of the deposit of each notice of denunciation.

6.6. International Labour Organization

Article 36

Amendments to this Constitution which are adopted by the Conference by a majority of two-thirds of the votes cast by the delegates present shall take effect when ratified or accepted by two-thirds of the Members of the Organization including five of the ten Members which are represented on the Governing Body as Members of chief industrial importance in accordance with the provisions of paragraph 3 of article 7 of this Constitution.

6.7. World Health Organization

Article 73

Texts of proposed amendments to this Constitution shall be communicated by the Director-General to Members at least six months in advance of their consideration by the Health Assembly. Amendments shall come into force for all Members when adopted by a two-thirds vote of the Health Assembly and accepted by two-thirds of the Members in accordance with their respective constitutional processes.

Article 80

This Constitution shall come into force when twenty-six Members of the United Nations have become parties to it in accordance with the provisions of Article 79.

6.8. World Trade Organization

Article X: Amendments

1. Any Member of the WTO may initiate a proposal to amend the provisions of this Agreement or the Multilateral Trade Agreements in Annex 1 by submitting such proposal to the Ministerial Conference. [...]

If consensus is not reached at a meeting of the Ministerial Conference within the established period, the Ministerial Conference shall decide by a two-thirds majority of the Members whether to submit the proposed amendment to the Members for acceptance. Except as provided in paragraphs 2, 5 and 6, the provisions of paragraph 3 shall apply to the proposed amendment, unless the Ministerial Conference decides by a three-fourths majority of the Members that the provisions of paragraph 4 shall apply.

3. Amendments to provisions of this Agreement, or of the Multilateral Trade Agreements in Annexes 1A and 1C, other than those listed in paragraphs 2 and 6, of a nature that would alter the rights and obligations of the Members, shall take effect for the Members that have accepted them upon acceptance by two thirds of the Members and thereafter
for each other Member upon acceptance by it. The Ministerial Conference may decide by a three-fourths majority of the Members that any amendment made effective under this paragraph is of such a nature that any Member which has not accepted it within a period specified by the Ministerial Conference in each case shall be free to withdraw from the WTO or to remain a Member with the consent of the Ministerial Conference.

5. Except as provided in paragraph 2 above, amendments to Parts I, II and III of GATS and the respective annexes shall take effect for the Members that have accepted them upon acceptance by two thirds of the Members and thereafter for each Member upon acceptance by it.

[...]

**Article XII: Accession**

1. Any State or separate customs territory possessing full autonomy in the conduct of its external commercial relations and of the other matters provided for in this Agreement and the Multilateral Trade Agreements may accede to this Agreement, on terms to be agreed between it and the WTO. Such accession shall apply to this Agreement and the Multilateral Trade Agreements annexed thereto.

2. Decisions on accession shall be taken by the Ministerial Conference. The Ministerial Conference shall approve the agreement on the terms of accession by a two-thirds majority of the Members of the WTO.

**Article XIV: Acceptance**

This Agreement and the Multilateral Trade Agreements annexed hereto shall enter into force on the date determined by Ministers in accordance with paragraph 3 of the Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations and shall remain open for acceptance for a period of two years following that date unless the Ministers decide otherwise.

**Article XV: Withdrawal**

1. Any Member may withdraw from this Agreement. Such withdrawal shall apply both to this Agreement and the Multilateral Trade Agreements and shall take effect upon the expiration of six months from the date on which written notice of withdrawal is received by the Director-General of the WTO.

**Article XIV Acceptance, Entry into Force and Deposit**

1. This Agreement shall be open for acceptance, by signature or otherwise, by contracting parties to GATT 1947, and the European Communities, which are eligible to become original Members of the WTO in accordance with Article XI of this Agreement. Such acceptance shall apply to this Agreement and the Multilateral Trade Agreements annexed hereto. This Agreement and the Multilateral Trade Agreements annexed hereto shall enter into force on the date determined by Ministers in accordance with paragraph 3 of the Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations and shall remain open for acceptance for a period of two years following that date unless the Ministers decide otherwise. An acceptance
following the entry into force of this Agreement shall enter into force on the 30th day following the date of such acceptance.

2. A Member which accepts this Agreement after its entry into force shall implement those concessions and obligations in the Multilateral Trade Agreements that are to be implemented over a period of time starting with the entry into force of this Agreement as if it had accepted this Agreement on the date of its entry into force.

3. Until the entry into force of this Agreement, the text of this Agreement and the Multilateral Trade Agreements shall be deposited with the Director-General to the CONTRACTING PARTIES to GATT 1947. The Director-General shall promptly furnish a certified true copy of this Agreement and the Multilateral Trade Agreements, and a notification of each acceptance thereof, to each government and the European Communities having accepted this Agreement. This Agreement and the Multilateral Trade Agreements, and any amendments thereto, shall, upon the entry into force of this Agreement, be deposited with the Director-General of the WTO.

4. The acceptance and entry into force of a Plurilateral Trade Agreement shall be governed by the provisions of that Agreement. Such Agreements shall be deposited with the Director-General to the CONTRACTING PARTIES to GATT 1947. Upon the entry into force of this Agreement, such Agreements shall be deposited with the Director-General of the WTO.
DIRECTORATE-GENERAL FOR INTERNAL POLICIES

POLICY DEPARTMENT C
CITIZENS’ RIGHTS AND CONSTITUTIONAL AFFAIRS

Role
Policy departments are research units that provide specialised advice to committees, inter-parliamentary delegations and other parliamentary bodies.

Policy Areas
- Constitutional Affairs
- Justice, Freedom and Security
- Gender Equality
- Legal and Parliamentary Affairs
- Petitions

Documents