

B) ENTRY INTO FORCE OF AMENDMENTS

BACKGROUND:

The usual procedure to amend a Convention (or to amend/add a Protocol) is to create a separate protocol which would include all of the proposed changes (for the purposes of this brief, this is referred to as the amending instrument). This amending instrument would have to be ratified¹ by States Parties to the Convention and would enter into force in accordance with the existing EIF provisions. Unless otherwise specified in the convention, once the minimum number of States Parties have ratified the amending instrument, the changes to the Convention and the Protocols would only be in effect as between those particular States and any other States that subsequently become parties to the Convention and Protocols (in accordance with Article 40 of the Vienna Convention on the Law of Treaties).

However, the CCW specifically states that the amendments shall enter into force in accordance with the EIF provisions in Convention Article 5 and does not restrict this to only those States that have ratified the amending instrument. The effect of this is to override the more general provision contained in the Vienna Convention.

By ratifying the CCW, States Parties have agreed to this amendment mechanism. In addition, as only States Parties to the Convention can vote on or agree to a proposed amendment, once the amendment is accepted, States Parties have made an expression of their will to be bound by that amendment.

Therefore, once the minimum number of States have ratified the amending instrument (in this case, 20 States), the amended Convention will be in effect for all parties.

POSITIONS OF OTHER MAJOR PLAYERS/GROUPS ON THE ISSUE:

The views of other States, except Russia, are unknown.

¹ For the purposes of this briefing, ratification is to include accession, acceptance, approval or adherence.