

MEXICO

A. SUBSTANTIVE ASPECTS

I. Definitions

1. In your practice, do you use the term "non-legally binding agreement"? If so, how do you define it?

In Mexico there is not one specific term for the non-legally binding instruments. In practice, various terms are used, including memorandums of understanding, administrative arrangements, cooperation protocols, understanding letters, joint statement of cooperation or intention, and so many others. Nevertheless, the phrase "*this Instrument is not legally binding*" tends to be included explicitly.

2. If not, what term do you use instead (e.g. arrangements) and how do you define it?

Mexico has the concept of "interinstitutional agreements", which are provided for in the "Ley sobre la Celebración de Tratados" (Law on the Conclusion of Treaties). These agreements are governed by international public law. Therefore, it is necessary to distinguish between instruments with a legally binding nature and those that constitute political commitments without the intention of imposing legal obligations. Thus, the nature of a non-legally binding instrument is determined mainly by its content, scope, language, structure, and purpose, regardless of its denomination.

3. Do you consider "Memoranda of Understanding" to be legally binding or non-legally binding instruments? Or can they be both?

The denomination does not determine the instrument's legal nature. In Mexico, the term "Memorandums of Understanding (Memorándum de Entendimiento)" is used for both non-legally binding and legally binding instruments. In order to clarify their nature and prevent them from being interpreted as legally binding, Mexico has made efforts to standardize the structure and terminology of non-legally binding instruments, regardless of their denomination.

II. Distinction

4. How do you differentiate between treaties, international civil law contracts and non-legally binding agreements?

The distinction is mainly drawn from the Parties' intention, the language used, the instrument's structure, and the content of its provisions.

5. In your view, is there one (or multiple) essential element(s) typically qualifying an agreement as non-legally binding? If so, which one(s)?

In the case of non-legally binding instruments, the Office of the Legal Adviser's practice seeks, *inter alia*:

- Avoid characterizing different language versions as "authentic"; instead, designate them as equally "valid".
- Avoid naming the instrument a "treaty", "agreement" or "convention".
- Avoid structuring the instrument through "articles", preferring "sections", "paragraphs", or "numerals" instead.
- Avoid terms such as "Parties" and "agree", using expressions such as "Participants" or "Signatories" instead.

- Avoid using the verb “shall” (which denotes a strict, imperative, and binding legal obligation) and use the verb “will” (which expresses a political intent or expectation of future conduct devoid of legally binding force) instead. Alternatively, consider using the verb “should” or declarative expressions in the present indicative to ensure the non-binding nature of the instrument.
- Avoid provisions that could be interpreted as legally enforceable obligations, particularly those regarding the allocation of economic resources, intellectual property rights, information protection, the import and export of materials and equipment, or privileges and immunities.
- Avoid dispute settlement clauses since compliance with the instrument is not legally enforceable.
- Avoid expressions stating that the instrument “shall apply” as of an established date or “shall enter into force”; prefer “will be valid” or “will have [specific] duration” instead.

These elements clearly reflect the intention that the instrument will not create international legal obligations.

6. Do you distinguish between “MoUs” and other types of non-legally binding agreements, such as “joint declarations of intent” or “arrangements”? If so, how?

Regarding “MoUs” and “arrangements”, paragraphs are usually included about following up on established commitments, holding consultations, and the instrument's duration. Conversely, “joint declarations” and “letters of intent” use political language and do not provide for follow-up, review of actions, or a specific duration.

7. If you distinguish between different types of non-legally binding agreements, do you have different internal rules applying to them?

This distinction stems from the Office of the Legal Adviser's practice, since there are currently no applicable formal rules.

8. Do you distinguish between the type of non-legally binding agreement concluded with international organisations or States? Do you have different rules applying to non-legally binding agreements depending on whether the other side is a State or an international organisation?

Mexican practice does not distinguish between non-legally binding agreements with international organisations or States. The same criteria apply to both. It is recognized that cooperation instruments may be concluded with different institutional counterparties and that their denomination and structure may vary according to the counterpart's practice and the circumstances of each instrument. Consequently, the non-binding nature of these instruments is primarily determined by their content and intention.

III. Competence

9. Who, within your State/International Organisation, has the competence to sign a non-legally binding agreement?

Mexican authorities and institutions may enter into cooperation agreements with foreign counterparts and international organisations, provided that they act within the scope of their respective areas of expertise and the non-binding nature of the agreement is clearly established.

According to Article 124 of the Mexican Constitution, the States of the Federation may regulate matters not expressly reserved to the Federal Government. Therefore, through their local authorities, the States are empowered to enter into non-legally binding instruments on these topics.

10. For States: Are sub-national territorial units like single federal states, provinces, municipalities or public agencies competent to conclude their own non-legally binding agreements?

YES

For International Organisations: Are bodies/specialized agencies competent to conclude their own non-legally binding agreements (or can they sign non-legally binding agreements on behalf of the entire organisation)?

Although this question is not directed at States, it is worth noting that Mexico has entered into non-binding agreements with international organisations, their subsidiary bodies, and their specialized agencies.

IV. (Indirect) Legal Effects

11. Do you consider non-legally binding agreements capable of producing (indirect) legal effects, for example as preparatory acts for/in connection with a legally binding instrument or as interpretative guidance for such binding instruments? Would you consider non-legally binding agreements under certain circumstances as a prerequisite of a binding instrument of international law?

Non-legally binding agreements may function as introductory steps or an initial approach to initiate cooperation between participants. In that sense, these instruments can lead to the conclusion of legally binding instruments at a future stage determined by the participants, should they wish to undertake activities that entail obligations. However, they are not a legal prerequisite for concluding a binding instrument under international law.

B. PROCEDURAL ASPECTS

V. Choice of Instrument

12. What factors influence or determine your decision whether to opt for a legally binding or non-binding agreement? For instance, do you sign non-legally binding agreements to facilitate the conclusion of a legally binding agreement in the future or do you conclude non-legally binding agreements in situations in which a legally binding agreement cannot be reached with the involved sides?

The choice between a legally binding and a non-legally binding instrument depends on the nature and purpose of the intended cooperation, the participating institutions' intentions, and the obligations assumed. In Mexico, it is crucial to determine if the instrument contains provisions that could create legal obligations. If the institutions intend only to establish a framework for understanding or cooperation without generating enforceable legal obligations, they will use a non-legally binding instrument and expressly reflect this intent through its structure and language. Consequently, non-legally binding instruments are used both to facilitate future binding agreements and as a viable alternative when a formal legally binding agreement cannot be reached.

13. Who, within your State/international organisation, ultimately decides whether to conclude a treaty or a non-legally binding agreement?

In accordance with the "Guía para la Conclusión de Tratados y Acuerdos Interinstitucionales en el Ámbito Internacional según la Ley sobre la Celebración de Tratados" ("Guide for the Conclusion of Treaties and Inter-Institutional Agreements in the International Sphere pursuant to the Law on the

Conclusion of Treaties”), prepared by the Office of the Legal Adviser, the general criteria to determine whether a matter is the subject of a treaty are as follows:

- a) the matter falls within the competence of the Federal Legislative Power;
- b) it involves the nation as a whole;
- c) it affects the national territory;
- d) it affects the legal sphere of individuals;
- e) it expands or modifies existing legislation;
- f) financial obligations are incurred that pledge the credit of the nation, and
- g) the matter to be agreed upon could be challenged or enforced before the Judicial power.

Accordingly, Mexican authorities are empowered to decide on the entering into non-legally binding agreements for any matters falling outside of these criteria.

14. What are the main differences in your internal procedure when concluding a non-legally binding agreement or a binding treaty?

The main differences in the internal procedure depend on the legal nature of the instrument:

- For legally binding treaties: The procedure is highly formal and centralized. It requires the clearance from all involved authorities (at both at the federal and state levels, where applicable), a legal opinion on the merits issued by the Office of the Legal Adviser of the Ministry of Foreign Affairs, and approval from the Office of the Legal Counsel to the Federal Executive. The treaty must be signed by the head of the Federal Executive or by the Minister of Foreign Affairs. In all other cases, the issuance of full powers is required. The treaty must be approved by the Senate of the Republic prior to subsequent ratification and entry into force.
- For non-legally binding agreements: The procedure is administrative and decentralized. It does not require a presidential signature, full powers, or legislative approval. The promoting authority directly enters into the instrument directly within its scope of competence.

VI. Formal Assessment¹ of Non-legally Binding Agreements

For States:

15. In your State, is there a mandatory centralised formal assessment of non-legally binding agreements concluded by any government ministry?

No, there is an obligation to inform the Ministry of Foreign Affairs whenever a legally binding instrument is to be concluded. According to the Ministry’s internal guidelines, however, the Office of the Legal Adviser may issue an opinion to any authority intending to enter into a non-legally binding agreement.

16. If so, what Ministry/body performs this formal assessment?

According to the Ministry’s internal guidelines, the Office of the Legal Adviser at the Ministry of Foreign Affairs is responsible for performing this assessment. To this end, the Office of the Legal Adviser is divided into three areas: one focused on instruments signed with North America and Europe, one focused on instruments signed with the Global South, and one focused on multilateral instruments.

17. At what time in the process of concluding a non-legally binding agreement is the formal assessment carried out?

¹ In this section, “formal assessment” refers to the internal procedure for checking the formal criteria of a draft agreement to ensure it is clearly identifiable as non-legally binding.

After the participants have negotiated the text, and upon request by the participating Mexican authority, the Office of the Legal Adviser issues the corresponding opinion.

18. If sub-national territorial units/bodies or specialized agencies are competent to conclude non-legally binding agreements (cf. question 9), are such agreements subject to the same formal assessment applicable for agreements of the (federal) government/international organisation?

Yes. According to Mexican practice, non-legally binding agreements made by sub-national territorial units (e.g., states of the Federation and municipalities) or local public agencies undergo the same assessment process as those of the federal government. Consequently, when an interested sub-national Mexican authority requests it, the Office of the Legal Adviser of the Ministry of Foreign Affairs is authorized to conduct the assessment and issue the corresponding opinion.

19. Do you have an internal standard/written guidance for formally assessing non-legally binding agreements, i.e. a law, a directive or internal guidelines?

Yes, the Office of the Legal Adviser of the Ministry of Foreign Affairs primary uses the "Guía para la Conclusión de Tratados y Acuerdos Interinstitucionales en el Ámbito Internacional según la Ley sobre la Celebración de Tratados" ("Guide for the Conclusion of Treaties and Inter-Institutional Agreements in the International Sphere pursuant to the Law on the Conclusion of Treaties") as the primary written guidance. While this internal document primarily outlines the mandatory thresholds for binding treaties, it also ensures the mandatory thresholds for binding treaties, it also ensures that non-legally binding agreements do not inadvertently create legal obligations and that their language strictly reflects their non-binding nature.

20. How do you ensure all relevant actors are aware of the requirement of a centralised formal assessment of a non-legally binding agreement?

The Office of the Legal Adviser at the Ministry of Foreign Affairs periodically holds training workshops for Mexican authorities to share guidelines and practices related to non-legally binding agreements.

21. How do you ensure that non-legally binding agreements are, in fact, submitted for the centralised formal assessment procedure?

Since the assessment of non-legally binding agreements is not a statutory requirement, compliance is primarily ensured through the self-interest of the promoting authorities in obtaining legal certainty. Mexican authorities actively seek the legal guidance from the Office of the Legal Adviser at the Ministry of Foreign Affairs to avoid inadvertently assuming binding international responsibilities. Furthermore, constant inter-institutional coordination and regular dissemination of guidelines effectively incentivize submission of these instruments are, in fact, submitted for review.

22. Does the responsible ministry/body provide guidance to other (government) departments and agencies on best practices with respect to non-legally binding agreements (e.g. workshops, information materials on how to properly draft and conclude non-legally binding agreements)?

Yes. As previously noted, the Ministry of Foreign Affairs, through the Office of the Legal Adviser, provides all Mexican authorities with comprehensive guidance on best practices. This is primarily accomplished through disseminating the "Guía para la Conclusión de Tratados y Acuerdos Interinstitucionales en el Ámbito Internacional según la Ley sobre la Celebración de Tratados" ("Guide for the Conclusion of Treaties and Inter-Institutional Agreements in the International Sphere pursuant to the Law on the Conclusion of Treaties"), which outlines proper drafting and procedural standards. The Office of the Legal Adviser also regularly conducts specialized training workshops and provides direct, case-by-case legal advice to ensure that non-legally binding agreements are properly drafted and executed at all levels of government.

<u>For International Organisations:</u>
23. If such a process exists, please describe the regular process of formal assessment of non-legally binding agreements within your organisation. NA
VII. Democratic Review/Parliamentary Participation
<u>For States:</u>
24. Is your legislature notified or consulted about the conclusion of non-legally binding agreements? If so, does parliament need to be involved for any non-legally binding agreement or are there limitations (eg only for politically significant agreements)? Who determines whether such requirements are fulfilled? The legislature is not involved in executing non-legally binding agreements. Due to their non-binding nature, these instruments do not require legislative approval or oversight.
25. If so, at what stage of the process is the legislature usually involved? NA
26. Does your parliament or other legislative have a right to monitor and/or review non-legally binding agreements? NA
27. If legislative participation is provided for, does the legislature have a (legal) remedy if it perceives a violation of its right to be consulted/to participate? NA
<u>For International Organisations:</u>
28. In case you have an internal directive/guideline on how to conclude non-legally binding agreements, has this document been approved by the member States/a statutory organ of the organisation? NA
VIII. Signature and Format
29. Is there a formal procedure to authorise the signature of a non-legally binding agreement? No, under Mexican practice, there is no formal procedure to authorize the signature of a non-legally binding agreement. However, as previously noted, Mexican promoting authorities must ensure that they are acting within the scope of their respective jurisdiction. They may also request a technical opinion from the Office of the Legal Adviser before executing the non-legally binding agreement.
30. Do the signatures of the non-legally binding agreement in question necessarily have to be on the same document? In accordance with Mexican practice, "MoUs", "arrangements", and "letters of intent" generally incorporate signatures on the same document. Conversely, "joint declarations" are occasionally adopted without signatures.
31. Do you allow for electronic signature of your non-legally binding agreements? If so, are there certain requirements concerning what type of electronic signature is acceptable? Do

you accept the electronic transmission of non-binding agreements instead of the exchange of physical copies? Yes. According to Mexican practice, electronic signatures of non-legally binding agreements are acceptable if all parties agree to them. There are no rigid domestic legal requirements for a specific type of electronic signature for these agreements, so, scanned signatures transmitted via PDF are accepted. Furthermore, electronically transmitting these non-legally binding agreements is widely accepted instead of exchanging physical copies, as long as it reflects the participants' consensus.
32. <u>For States:</u> Do you always require non-legally binding agreements to be set in your own language or do you also accept them exclusively in the partner's language / in English (or any other "neutral" language)? In Mexican practice, instruments must be written in the language of each participant. When three languages are involved, the English text usually prevails for interpretation purposes. The Office of the Legal Adviser ensures that these versions are designated as equally "valid" rather than "authentic", in strict congruence with the non-binding nature of the instrument. <u>For International Organisations:</u> What language do you usually require for the text of your non-legally binding agreements? NA
33. Do you have any formal requirements exclusively for concluding non-legally binding agreements? (e.g. using a special kind of paper only for non-legally binding agreements) No, under Mexican practice, there are no formal or material requirements, such as the use of a special paper, for executing non-legally binding agreements. The distinction between binding treaties and non-legally binding agreements depends entirely on their scope, structure, and language rather than any distinctive physical support or administrative formalities.
IX. Registration and Publication
34. Do you have a (digital) register/archive/database for all non-legally binding agreements signed by your country? No, under Mexican legislation, only "Interinstitutional Agreements" (Acuerdos Interinstitucionales) are required to be registered, archived or databased. These agreements are legally binding. Since there is no statutory obligation to register non-legally binding agreements, a registry, archive or database does not exist. Consequently, each Mexican promoting authority maintains its own registry, archive or database of the non-legally binding agreements.
35. If so, what entity keeps the non-legally binding agreement after signature? Not applicable. As mentioned in response to question 34, each Mexican promoting authority is responsible for safeguarding the non-legally binding agreements they execute.
36. Do you publish your non-legally binding agreements and are they openly accessible? No, there is no mandatory requirement for official publication. Each Mexican promoting authority is responsible for managing its own non-legally binding agreements and decides whether to make its documents accessible on its website.
37. Are there certain reasons (confidentiality, security, etc.) why non-legally binding agreements can be withheld from central registration/storage or (if applicable) publication? If so, which ones?

Since there is no central registration, storage, or publication system for non-legally binding agreements, these instruments are not “withheld” from a database. Instead, access to these instruments is governed by access to information regulations. Under these regulations, a Mexican promoting authority may classify an instrument as “confidential” or “reserved” for reasons related to national security, public safety, personal data protection, or the preservation of ongoing international negotiations.

X. Education/Training

38. How do you disseminate information internally regarding the differences between binding and non-legally binding agreements? For example, are there regular workshops or training sessions with the units drafting non-legally binding agreements? Are there certain standard forms (“Model MoU”), which units can use as a drafting aid?

Yes. As previously noted, the Ministry of Foreign Affairs, through the Office of the Legal Adviser, regularly holds specialized training workshops and briefing sessions to share the criteria for distinguishing between binding and non-legally binding agreements. While the “Guía para la Conclusión de Tratados y Acuerdos Interinstitucionales en el Ámbito Internacional según la Ley sobre la Celebración de Tratados” (“Guide for the Conclusion of Treaties and Inter-Institutional Agreements in the International Sphere pursuant to the Law on the Conclusion of Treaties”) does not contain standardized forms or text templates, it serves as indispensable reference tool. It provides the substantive criteria that the Mexican authorities must adhere to ensure that an instrument's content remains strictly non-binding.

C. GENERAL OBSERVATIONS ON STATE PRACTICE (AND WAY FORWARD)

39. What, in your view, is the main benefit of using non-legally binding agreements? What is your main concern?

The main benefit of non-legally binding agreements is that they enable Mexican authorities to cooperate with their counterparts in a flexible manner without assuming international legal obligations. This flexibility is useful for establishing cooperative understandings and mechanisms that can adapt to the needs of the participating authorities and to the legal practices of their respective jurisdictions. However, a main concern regarding these instruments is the risk of imprecise or ambiguous drafting. For example, if a non-binding text inadvertently incorporates mandatory terminology, the distinction between political commitments and international legal obligations could become blurred, creating unintended legal expectations.

40. In recent years, have you been concluding an increased number of non-binding international agreements? If so, why do you think this is the case?

The execution of non-legally binding instruments is a practice that has developed significantly over the last two decades. This growth is due, in part, to the increasing need for government institutions to establish flexible and expeditious cooperation mechanisms with their foreign counterparts.

However, international practice is not uniform. Some countries have developed rules and specific criteria for these types of instruments, while others are still incorporating these practices to the extent permitted by their domestic laws. In Mexico, this evolution has underscored the need to standardize the structure and terminology of non-legally binding instruments. This is particularly important because the same term, such as “Memorandum de Entendimiento”, can refer to both non-legally binding agreements and binding treaties.