Participation in Multilateral Treaties Deposited with the UN Secretary-General

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Treaty Section
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Depository Mandate:
The Treaty Section carries out the Secretary General’s Role as Depositary

- **SG is designated as Depositary of over 560 multilateral treaties,**
  **including:**
  - Multilateral Agreement for the Establishment of an International Think Tank for Landlocked Developing Countries (New York, 24 September 2010);
  - Customs Convention on Containers (Geneva, 2 December 1972);
  - United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea (New York, 11 December 2008);
  - Customs Convention on the Temporary Importation of Commercial Road Vehicles (Geneva, 18 May 1956);
Secretary General’s Role as Depositary

- The SG is responsible for ensuring the proper execution of all treaty actions relating to a treaty and is guided by:
  - Article 77 of the VCLT 1969
  - The provisions of the relevant treaty (final clauses)
  - The practice of the SG which predates the VCLT and has evolved since (Summary of Practice)
  - Resolutions of the GA and other UN organs
  - Customary international law

- The Treaty Section provides advice and assistance relating to the conclusion of treaties, particularly their final clauses
- The TS also provides interpretations of final clauses
Simple Signature

Legal Implications

- Simple signature means signature which is subject to ratification.
- No positive legal obligations under the treaty upon signature.
- Indicates a State’s intention to take steps to express its consent to be bound.
- Creates an obligation in the period between signature and ratification/acceptance/approval to refrain in good faith from acts that would be contrary to the object and purpose of a treaty.
Signature

- When?
- What States and entities can sign? Are there limits on participation (regional commission members, etc., LLDCs, etc.)?
- Who can sign on behalf of a State?
Signature

Who can sign on behalf of a State?

- Head of State
- Head of Government
- Minister for Foreign Affairs
- Acting or Ad Interim Head of State or Government or Minister for Foreign Affairs
All other representatives wishing to sign treaties must be in possession of FULL POWERS
Signature

Requirements for full powers

- A valid instrument of full powers must contain the following elements:
  - Authorize signature
  - Identify the treaty specifically
  - Specify full name and title of individual authorized to sign
  - Issued and signed by Head of State or Government or MFA or by a person exercising the power of one of the three authorities *ad interim*;
  - Dated
Full Powers

(To be signed by the Head of State, Head of Government or Minister for Foreign Affairs)

I, [name and title of the Head of State, Head of Government or Minister for Foreign Affairs],

HEREBY AUTHORISE [name and title] to sign the [title of treaty] on behalf of the Government of [State].

Done at [place] on [date].

[Signature and title]
Signature

Venue

- Appointment for signature in the Treaty Section at UNHQ in NY
  - Facsimile No: 1 (212) 963-3693
  - Phone No: 1 (212) 963-5047
Open for Signature

- “This Convention is open for signature in Port Louis, Mauritius, on 17 March 2015; and thereafter at United Nations Headquarters in New York…” (Art. 7, United Nations Convention on Transparency in Treaty-Based Investor-State Arbitration)

- “This Convention is open for signature by all States at Rotterdam, the Netherlands, on 23 September 2009, and thereafter at the Headquarters of the United Nations in New York.” (Art. 88(1), United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea)

Remain open for signature in New York indefinitely.
To become party to a treaty, a State must express its consent to be bound by a treaty at international law.
Consent to be Bound

*How?*

- Simple Signature followed by Ratification, Acceptance or Approval
- Accession
Consent to be Bound

**Domestic “Ratification”**

- States must ensure domestic legislative requirements are completed prior to consenting to be bound;
- State cannot claim that its consent to be bound is invalid due to violation of its internal law (VCLT, art. 46(1)).
- A State is not a party to a treaty by simply “ratifying” a treaty domestically.
Consent to be Bound

Basic requirements for a valid instrument

- Identify treaty
- Declaration of undertaking
  - **Expression of intent of the Government to be bound by the treaty and to undertake faithfully to observe and implement its provisions**
- Issued and signed
  - Head of State or Government or the MFA or by a person exercising the power of one of the three authorities *ad interim*;
- Dated
Consent to be Bound

Model Instrument of Ratification, Acceptance or Approval

Ratification/Acceptance/Approval
(To be signed by Head of State, Head of Government or Minister for Foreign Affairs)

WHEREAS the [title of treaty] was adopted at [place] on [date],

AND WHEREAS the said [treaty] has been signed on behalf of the Government of [State] on [date],

NOW THEREFORE I, [name and title of the HS, HG or MFA] declare that the Government of [State], having considered the above [treaty], [ratifies/accepts/approves] the same and undertakes faithfully to perform and carry out the stipulations therein contained.

IN WITNESS WHEREOF, I have signed this instrument of [ratification/acceptance/approval] at [place] on [date].

[Signature]
Consent to be Bound

Additional requirements for a valid instrument

- Optional Declarations
- Mandatory Declarations
- Notifications
- Reservations
  - Authorized?
  - Prohibited?
  - Silent?
Consent to be Bound

Optional and Mandatory Declarations

- Legally binding and must be included in a duly signed instrument of ratification, acceptance, etc. or signed in their own right.

- Often such declarations must be made upon ratification, acceptance, approval or accession.
Consent to be Bound

Reservations

- A reservation is any statement - however phrased or named - which purports to exclude or modify the legal effect of a treaty provision.

- Enable a state to participate in a treaty in which it would not be able to participate due to an unacceptable provision or provisions.

- Legally binding and must be included in a duly signed instrument of ratification, acceptance, etc. or signed in their own right.

- Must be done upon signature or deposit.* If done upon signature must be confirmed upon ratification.
Objections to Reservations

- Once a reservation has been formulated and subsequently circulated, concerned States have **12 months** to object to a reservation, beginning from the date of the depositary notification or the date on which the State expressed its consent to be bound by the Treaty, whichever is later. (Art. 20(5)VCLT)
Example of Reservation Clause

“Any Contracting Party may, at the time of signing, ratifying, accepting or approving this Convention or acceding to it, declare that it does not consider itself bound by article 20, paragraph 2 to 7 (*dealing with arbitration*), of this Convention.”

Art 21, *International Convention on the Harmonization of Frontier Controls of Goods*
Reservations

- Modification/Withdrawal possible at any time, but must be signed by Head of State, Head of Government or Minister for Foreign Affairs.
- Treaties may be silent as to reservations
- Certain reservations may be allowed/prohibited.
- Or reservations may be altogether prohibited.
- E.g., (Rotterdam Rules, art. 90: “No reservation is permitted to this Convention.”)
Late Reservations

- When the Secretary-General received a reservation AFTER the deposit of the instrument of ratification, acceptance, approval or accession that meets all the necessary requirements, the SG circulates the reservation to all States concerned and accepts it in deposit only if no such State informs the TS that it does not wish him to consider them to have accepted the reservation.
Example of Late Reservation

- CN. 845.2006
- Circulated as a Communication, rather than as a reservation
- After 12 months, no objection received and reservation accepted in deposit.
Deposit of Instruments

**Place and Method**

- Instruments become effective only when deposited with SG at UNHQ.
- Or by personal delivery to the SG or to his representative - the Legal Counsel or the Chief of the Treaty Section.
- By mail, by facsimile or by e-mail.
Deposit of Instruments

Date of Deposit

- Date when instrument is received at UNHQ either by SG, the Legal Counsel, the Treaty Section or by the Mail Unit;
- Deposit will produce its effect in accordance with provisions of a treaty.
- Important when a State is calculating EIF for participation in meetings or elections.
Entry into Force

“The present Agreement shall enter into force on the sixtieth day after the date of deposit of the tenth instrument of ratification, acceptance, approval or accession.” (Article 12.1, Multilateral Agreement for the Establishment of an International Think Tank for Landlocked Developing Countries (New York, 24 September 2010))

Status as of today: 5 parties; Has not yet entered into force.
Deposit of Instruments

Place and Methods

- Appointment for deposit in the Treaty Section, UNHQ NY
  - Facsimile No: 1 (212) 963-3693
  - Phone No: 1 (212) 963-5047

- During Annual Treaty Event
Signature

Annual Treaty Event

- Millennium Summit (2000)
- Focus 2001: Women and Children
- Treaty Event: Multilateral Treaties on Terrorism
- Focus 2002: Sustainable Development
- Focus 2003: Treaties Against Transnational Organized Crime and Terrorism
- Focus 2004: Treaties on the Protection of Civilians
- Focus 2005: Responding to Global Challenges
- Focus 2006: Crossing Borders
- Focus 2007: Towards Universal Participation and Implementation
- Treaty Event 2008: Dignity and Justice for All of Us
- Treaty Events 2009 - 2016: Towards Universal Participation and Implementation
Treaty Event 2016

- UNHQ New York
- September 19-23, 2016
- Heads of State, Government, Ministers for Foreign Affairs, Other Ministers
Treaty Website

- [https://treaties.un.org](https://treaties.un.org)
- Authoritative Source of information on multilateral treaties deposited with the Secretary-General (status, CTCs)
- Publications (Treaty Handbook, Final Clauses of Multilateral Treaties Handbook with model instruments of full powers, accession, etc.)
- Photos of Treaty ceremonies
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