

11 FAM 730

GUIDELINES FOR CONCLUDING INTERNATIONAL AGREEMENTS

(TL:POL-36; 02-25-1985)

11 FAM 730.1 Method of Concluding Bilateral and Multilateral Agreements

(TL:POL-36; 02-25-1985)

An agreement may be concluded (entered into) by the process of bilateral negotiations which result either in the signing of a single instrument in duplicate or in exchange of diplomatic notes, or by the process of multilateral negotiations, usually at an international conference to which the governments concerned send official delegations for the purpose of formulating and signing an instrument of agreement.

11 FAM 730.2 Bilateral Treaties and Agreements

11 FAM 730.2-1 Negotiation and Background Assistance

(TL:POL-36; 02-25-1985)

Whenever the negotiation of a new international agreement is under consideration, the Department office or the post having primary responsibility informs the Legal Adviser and may, if considered necessary, request background material and advice regarding relevant provisions in existing treaties and agreements, the general treaty relations of this Government with the government or governments concerned, and other pertinent information.

11 FAM 730.2-2 Role of Office of the Legal Adviser

(TL:POL-36; 02-25-1985)

a. Legal Review of Draft Agreements

As soon as tentative provisions for an agreement are considered or drafted, the Office of the Legal Adviser is requested to make available the services of an attorney-adviser to insure that the agreement is properly drafted and agreed policy is expressed clearly and fully. The Office of the Legal Adviser prepares a draft in the first instance upon the request of another office.

b. Legal Clearance Required

Any draft of a proposed treaty or agreement, or any outgoing correspondence regarding the negotiation, signature, and ratification or approval, as well as the existence, status, and application, of any international agreement to which the United States is or may become a party, is cleared with the Office of the Legal Adviser and with other appropriate bureaus or offices and, as appropriate, with any other agency concerned with the reply.

11 FAM 730.3 Instructions to Negotiators

(TL:POL-36; 02-25-1985)

When an agreement is to be concluded at a foreign capital, the Department designates the *United States* negotiator or negotiators, and the negotiator or negotiators are given appropriate instructions. If the agreement to be negotiated is a treaty which will be referred to the Senate, the Secretary of State may at some time prior to or during the negotiations issue or request the President to issue or request the President to issue a "full power" (see 11 FAM 732) constituting formal authorization for the *United States* negotiators to sign the agreement. Such a "full power" is not customary with respect to an international agreement other than a treaty. The receipt or possession of a "full power" is never to be considered as a final authorization to sign. That authorization is given by the Department by a written or telegraphic instruction, and no signature is affixed in the absence of such instruction. If the proposal for an agreement originates with the United States, the *U.S.* negotiators as a rule furnish a tentative draft of the proposed agreement for submission to the other government for its consideration. The negotiators submit to the Department any modification of the draft or any counterproposal made by the other government and await instructions from the Department. If the original proposal emanates from a foreign government, the mission forwards the proposal to the Department and awaits its instructions.

11 FAM 730.4 Preparation of Texts for Signature

(TL:POL-36; 02-25-1985)

If an agreement is to be signed at a post abroad as a single instrument (in duplicate), the engrossing (preparation of the documents to be signed) is customarily done in the foreign *ministry* on paper supplied by it, along with a binding and ribbons to tie the pages in place. However, the mission may lend assistance if the foreign *ministry* so desires. There is no universal standard as to the kind or size of paper which must be used (each foreign ministry has its own "treaty paper"), and the texts may be engrossed either by typing or by printing. For every bilateral agreement there must be two originals, one for each government. Each original must embody the full text of the agreement in all the languages in which the agreement is to be

signed, and must be exactly the same as the other original subject only to the principle of the "alternat."

In the case of an agreement effected by exchange of notes, the U.S. notes are prepared in English and in accordance with 5 FAM 220 through 224 and the rules prescribed in 5 FAH-1, *Correspondence Handbook*. The note of the foreign government is prepared in accordance with the style of the foreign ministry and usually in the language of that country. Whenever practicable, arrangements are made for the notes to bear the same date.

11 FAM 730.5 Arrangement of Texts and Principle of the Alternat

11 FAM 730.5-1 Arrangement of Texts

(TL:POL-36; 02-25-1985)

When English and a language other than English are both used, the texts in the two languages are placed (a) in "tandem" fashion, that is, with one text following the other (the tandem procedure is the most widely used as it is the most expeditious), or (b) in parallel, vertical columns on the same page, the columns being approximately of equal width, or (c) on opposite facing pages of the document the entire width of the type or printed space on the page.

If the two languages are placed "tandem" fashion, the English text is placed first in the U.S. original, and conversely in the foreign government's original.

If parallel columns are used, the English text is placed in the left column of each page in the original to be retained by the United States, and the foreign text appears in the right column. In the other original, to be retained by the foreign government, the foreign text appears in the left column, and the English text in the right column.

If the two languages are placed on opposite facing pages of the document, the English text occupies the left-hand page and the foreign text the right-hand page in the U.S. original, and conversely in the foreign government's original. *If either the "tandem" or the "opposite facing page" style is used, the concluding part (usually beginning "IN WITNESS WHEREOF," "DONE," etc.) should appear engrossed in parallel columns on the page on which the signatures will appear, so that only one set of signatures is required for each separately bound document (see 11 FAM 730 Exhibit 730.5-1, page 1). If parallel signature columns are not feasible, the concluding paragraphs can be placed "tandem" fashion on the page on which the signatures appear (see 11 FAM 730 Exhibit 730.5-1, page 2).*

If an oriental text is one which, from the occidental viewpoint, reads from back to front, it may be possible to join the two texts in a single binding so

that the signatures appear, roughly speaking, in the center of the document. If this is not feasible, the negotiators should seek instructions from the Department.

11 FAM 730.5-2 Arrangement of Names and Signatures; Use of Titles

(TL:POL-36; 02-25-1985)

In the original to be retained by the United States, the United States is named first in both the English and foreign texts, wherever the names of the countries occur together conjunctively or disjunctively; and the signature of the plenipotentiary of the United States appears on the left and that of the foreign plenipotentiary on the right of the original to be retained by the United States. Conversely, throughout both of the language texts of the original to be retained by the foreign government, that government is named first and its plenipotentiary's signature appears to the left of the signature of the U.S. plenipotentiary. The position of full sentences, paragraphs, or subparagraphs in the text is never transposed in the alternate procedure.

The general practice and preference of the Department of State is not to use titles along with signatures, especially where the President or the Secretary of State signs. However, if preferred by the other party or parties concerned, titles may be typed *BELOW* where each will sign (*with ample space allowed for the signature*).

11 FAM 731 CONFORMITY OF TEXTS

(TL:POL-36; 02-25-1985)

After the documents have been engrossed on the basis of agreed texts, and before the signing of the agreement, the negotiators or other responsible officers on each side make sure that the texts in both originals of the engrossed agreement are in exact conformity with each other and with the texts in the drafts agreed to, and especially that where a foreign language is included that text and the English text are in conformity in all substantive respects. Prior to engrossing it should have been determined that the foreign-language text is essentially (that is, as a matter of substance) in accord with the English text, and that it has received the clearance of the Department as required in 11 FAM 722.6.

11 FAM 732 EXCHANGE OR EXHIBITION OF FULL POWERS

(TL:POL-36; 02-25-1985)

Each representative who is to sign a treaty is furnished a full power

signed by the head of state, head of government, or minister for foreign affairs. More than one representative should be named in a single instrument of full power. On occasion, formal full powers may be (but customarily are NOT in U.S. practice) issued for the signing of certain agreements other than treaties. When issued, the full power is formal evidence of the authority of the representative to sign on behalf of the representative's government. It names the representative, with title, and gives a clear indication of the particular instrument of agreement which the representative is entitled to sign. Full powers for representatives of the United States are prepared by the Office of the Assistant Legal Adviser for Treaty Affairs, and generally are signed by the Secretary or Acting Secretary of State. On occasion, full powers are signed by the President.

If the agreement itself requires the exchange of full powers, they are exchanged. If not, they may be either exchanged or exhibited by the representatives on the occasion of signing the agreement, as may be preferred by the foreign representative. If a full power is required, the U.S. representative shall NOT proceed to sign the treaty until the full power is in hand, or the Department specially instructs otherwise. If exchanged, the original full power of the foreign representative is forwarded to the Department with the U.S. original of the signed agreement. If the representatives retain the original of the respective full powers, each representative should supply the other representative with an offset copy or a certified copy of the full power.

11 FAM 733 SIGNATURE AND SEALING

(TL:POL-36; 02-25-1985)

When the engrossing of a treaty or other international agreement which is to be signed as a single instrument has been completed, mutually convenient arrangements for its signature are made by the host government. In the case of treaties, the signatures of the representatives may be accompanied by their respective seals, ribbons being fastened in the seals and binding the documents. The same procedure may be followed for other agreements signed as single instruments. It is not essential that seals be affixed, unless the agreement specifically so requires (*the preference of the Department of State is NOT to use seals*). The representative's personal seal, if available, is used when seals accompany the signatures, except that if the other government concerned prefers official seals, the seal of the mission may be used.

(NOTE.—A personal seal may consist of a signet ring with initial(s) or family crest, written initials, etc.)

11 FAM 734 EXCHANGE OF RATIFICATIONS

11 FAM 734.1 Time and Place of Exchange

(TL:POL-36; 02-25-1985)

It is customary for a treaty to contain a simple provision to the effect that the instruments of ratification shall be exchanged *as soon as possible* at a designated capital, and that the treaty shall enter into force on the date of such exchange or at the expiration of a specified number of days or months following the date of exchange. (As all treaties signed on the part of the United States are subject to ratification by and with the advice and consent of the Senate, and as the time required for action on any particular treaty cannot be foreseen, it is preferable that provision is made in the treaty that the instruments of ratification are to be exchanged "as soon as possible" rather than within a specified period.)

11 FAM 734.2 Effecting the Exchange

(TL:POL-36; 02-25-1985)

In exchanging instruments of ratification the representative of the United States hands to the representative of the foreign government a duplicate original of the President's instrument of ratification. In return, the representative of the foreign government hands to the representative of the United States the instrument of ratification executed by the head or the chief executive of the foreign government. A protocol, sometimes called "Protocol of Exchange of Ratifications" or *procès-verbal*, attesting the exchange is signed by the two representatives when the exchange is made. No full power is required for this purpose. The protocol of exchange is signed in duplicate originals, one for each government, and the principle of the alternat is observed as in the treaty. Before making the exchange and signing the *procès-verbal* or protocol of exchange the diplomatic representative of the United States must be satisfied that the ratification of the foreign government is an unqualified ratification, or subject only to such reservations or understandings as have been agreed to by the two governments.

11 FAM 734.3 Notification of Date of Exchange

(TL:POL-36; 02-25-1985)

In all cases, but particularly in those in which the treaty enters into force on the day of the exchange, it is essential that the mission notify the Department by telegram when arrangements have been completed for the exchange, and also when the exchange actually takes place. By the first pouch after the exchange takes place, if possible, the mission forwards to the Department the instrument of ratification of the foreign government and

the U.S. Government's original of the signed *procès-verbal* or protocol of exchange. The Department then will take such steps as may be necessary to have the proclamation of the treaty executed by the President.

11 FAM 735 THROUGH 739 UNASSIGNED

11 FAM 730 Exhibit 730.5-1
ARRANGEMENT OF TEXTS AND
PRINCIPLE OF THE ALTERNAT

(TL:POL-36; 02-25-1985)

IN WITNESS WHEREOF the undersigned, being duly authorized by their respective Governments, have signed this Agreement.

DONE at Washington, in duplicate, this twenty-fifth day of September, 1988, in the English and Thai languages, each text being equally authentic.

FOR THE GOVERNMENT OF THE
UNITED STATES OF AMERICA:

FOR THE GOVERNMENT OF THE
KINGDOM OF THAILAND:

Continuation - 11 FAM 730 Exhibit 730.5-1

IN WITNESS WHEREOF,
the respective representatives
have signed the present Treaty.

DONE in duplicate in
the English and Spanish
languages at Madrid this
fifth day of March, 1986,
each text being equally

EN FE DE LO CUAL, los
respectivos representantes
firmaron la presente Tratado.

HECHO en duplicado, en
los idiomas inglés y español,
en Madrid, el día cinco de
marzo, 1986, siendo ambos
textos igualmente auténticos.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:
POR EL GOBIERNO DE LOS ESTADOS UNIDOS DE AMERICA:

FOR THE GOVERNMENT OF SPAIN:
POR EL GOBIERNO DE ESPAÑA: