

11 FAM 740 MULTILATERAL TREATIES AND AGREEMENTS

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

11 FAM 740.1 General Procedures

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

The procedures for the making of multilateral agreements are in many respects the same as those for the making of bilateral agreements; for example, the general requirements in regard to full powers, ratification, proclamation, and publication. This subchapter covers those procedures which are at variance with bilateral procedures.

11 FAM 740.2 Negotiation

11 FAM 740.2-1 Function of International Conference

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

The international conference is the device usually employed for the negotiation of multilateral agreements. The greater the number of countries involved, the greater the necessity for such a conference. If only three or four countries are involved, it may be convenient to carry on the preliminary negotiations through correspondence and have a joint meeting of plenipotentiaries to complete the negotiations and to sign the document.

11 FAM 740.2-2 Invitation

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

Traditionally, the international conference was convened by one government's extending to other interested governments an invitation (acceptance usually assured beforehand) to participate, the host government bearing most, if not all, of the expense incident to the physical aspects of the conference. This is still often the practice, but increasing numbers of conferences have been convened under the auspices, and at the call of international organizations.

11 FAM 740.2-3 Statement of Purpose

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

When a call is made or invitations are extended for a conference for the formulation of a multilateral agreement, it is customary for a precise

statement of purpose to accompany the call or the invitations. Sometimes, the invitation is also accompanied by a draft agreement to be used as a basis for negotiations. If the conference is called under the auspices of an international organization, the precise statement of purpose or the draft agreement may be prepared in preliminary sessions of the organization or by the secretariat of the organization.

11 FAM 740.2-4 Instructions to Negotiators

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

The U.S. delegation to a conference may be comprised of one or more representatives. As a rule, the U.S. delegation is furnished written instructions by the Department prior to the conference in the form of a position paper for the U.S. delegation cleared with the Secretary or an officer specifically authorized by him or her and other appropriate Department officers for that purpose, under the procedures described in 11 FAM 722.3. The Office of the Legal Adviser in all instances reviews drafts of international conventions to be considered in meetings of an international organization of which the United States is a member; when necessary, it also provides legal assistance at international conferences and meetings.

11 FAM 740.2-5 Final Acts of Conference

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

The "Final Act" of a conference must not contain international commitments. A Final Act must be limited to such matters as a statement or summary of the proceedings of the conference, the names of the states that participated, the organization of the conference and the committees established, resolutions adopted, the drafts of international agreements formulated for consideration by governments concerned, and the like. If an international agreement is to be opened for signature at the close of the conference, a text thereof may be annexed to the Final Act but must not be incorporated in the body thereof; the text to be signed must be prepared and bound separately for that purpose. Where a Final Act appears to embody international commitments, the U.S. representative reports the same to the Department and awaits specific instruments before taking any further action.

11 FAM 741 OFFICIAL AND WORKING LANGUAGES

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

a. General Procedures

The working languages of the conference and the official languages of the conference documents are determined by the conference. A

conference does not necessarily adopt all of the same languages for both purposes. It is customary and preferable for all the officials' languages in which the final document is prepared for signature to be designated as having equal authenticity. It is possible, however, for the conference to determine, because of special circumstances, that in the event of dispute one of the languages is to prevail and to include in the text of the agreement a provision to that effect. Before a U.S. delegation concurs in any such proposal, it must request instructions from the Department.

b. English Language Text

Negotiators will use every practicable effort to assure that an English-language text is part of the authentic text of any multilateral treaty negotiated for the United States. Where any question exists on this subject, the negotiators should seek further instructions.

11 FAM 742 ENGROSSING

11 FAM 742.1 Language or Languages Used in Texts

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

The multilateral agreement drawn up at an international conference is engrossed for signature in the official language or language adopted by the conference. (See 11 FAM 741.) The engrossing ordinarily will be done by the conference secretariat.

11 FAM 742.2 Principle of the Alternat

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

The principle of the alternat (see 11 FAM 730.5) does not apply in the case of a multilateral agreement, except in the remote case when an agreement between three or four governments is prepared for signature in the language of all the signatories and each of those governments is to receive a signed original of the agreement. Customarily, a multilateral agreement is prepared for signature in a single original, comprising all the official languages. That original is placed in the custody of a depositary (either a government or an international organization) which furnishes certified copies to all governments concerned.

11 FAM 742.2-1 Arrangement of Texts

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

The arrangement of multilateral agreement texts varies, depending largely on the number of languages used. As in the case of bilateral agreements, however, the basic alternatives in the case of multilateral agreements are "tandem," parallel columns, or facing pages, as follows:

a. Tandem

If an agreement is to be signed in two languages, and especially if signed in three or more languages, the texts may be arranged in tandem style, that is, one complete text following the other. This allows readily for any number of official texts; the tandem style precedent of the Charter of the United Nations is followed for the preparation of agreements formulated under the auspices of the United Nations. It is desirable, whenever practicable, that the concluding part of each text be placed with the concluding part of each of the other texts in parallel columns on the page on which the first of the signatures appears, although the tandem arrangement described at the end of 11 FAM 742.2-1c (below) can be used.

b. Parallel Columns

If an agreement is to be signed in only two languages, the traditionally preferred method of arrangement of the texts has been parallel, vertical columns. This method may be used also if only three languages are used, but the three columns are necessarily so narrow that the method has been rarely used in such cases. When there are four official languages, however, it is possible to use the parallel column method by placing two of the language texts on a left-hand page and the other two language texts on the facing right-hand page; this method has been used often and to good advantage in various inter-American agreements with English, Spanish, French, and Portuguese. If any of the languages is oriental, the parallel column method may be inexpedient and one of the other methods may be necessary.

c. Facing Pages

If an agreement is to be signed in only two languages, and circumstances make it necessary or desirable, the facing page method may be used for engrossing the texts for signature, so that one of the language texts will be on a left-hand page and the other will be on the facing right-hand page. When this method is used, it is desirable that at least the concluding part (usually beginning "*IN WITNESS WHEREOF*," "*DONE*," etc.) be engrossed in parallel columns on the page at the end of the texts in both languages so that only one set of signatures is required. If parallel columns are not feasible, the concluding paragraphs can be placed tandem fashion (one language text after another) on the page at the end of the texts in both languages.

11 FAM 742.2-2 Arrangement of Names and Signatures

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

The arrangement of names and signatures, although it may seem a minor matter, sometimes presents difficulties in the case of multilateral agreements. There may be variations of arrangements, depending on particular factors, but the arrangement most generally used is alphabetical

according to the names of the countries concerned. An alphabetical listing, however, presents the further question, even when there are only two languages, of what language is to be used in determining the arrangement. It is a common practice to use the language of the host government or for an agreement formulated under the auspices of an international organization, to follow the precedents established by that organization. It is possible, in the event that agreement could not be reached regarding the arrangement of names of countries and signatures of plenipotentiaries, to have a drawing of lots, a device seldom used. In any event, the question is one to be determined by the conference.

11 FAM 742.3 Conformity of Texts

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

It is the primary responsibility of the delegations, acting in conference, to determine the conformity of the agreement texts which are to be signed. However, the conference secretariat has a responsibility for checking the texts carefully to insure that, when put in final form for signature, the texts are in essential conformity.

11 FAM 743 FULL POWERS

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

In the case of a multilateral agreement drawn up at an international conference, this Government customarily (almost invariably, in the case of a treaty) issues to one or more of its representatives at the conference an instrument of full power authorizing signature of the agreement on behalf of the United States. In some instances, issuance of the full power is deferred until it is relatively certain that the agreement formulated is to be signed for the United States. (See 11 FAM 732.) Ordinarily, that full power is presented by the representatives to the secretary general of the conference upon arrival of the delegation at the conference site. It may be submitted in advance of arrival, but usually that is not necessary. When the conference has formally convened, it usually appoints a credentials committee, to which all full powers and other evidence of authorization are submitted for examination. The full powers and related documents are retained by the credentials committee or the secretary general until the close of the conference. At the close of the conference, the full powers, related documents, and the signed original of the agreement are turned over to the government or the international organization designated in the agreement as the depositary authority, to be placed in its archives.

11 FAM 744 SIGNATURE AND SEALING

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

See also 11 FAM 733.

11 FAM 744.1 Signature

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

Most multilateral agreements are signed. Some, however, are adopted by a conference or organization after which governments become parties by adherence, accession, acceptance, or some other method not requiring signature (for example, conventions drawn up and adopted at sessions of the International Labor Organization). Procedures for the deposit of an instrument of adherence, accession, or acceptance are similar to procedures for the deposit of instruments of ratification. In some cases, accession or approval can be accomplished by formal notice through diplomatic channels.

11 FAM 744.2 Seals

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

Multilateral treaties do not usually provide for the use of seals along with the signatures of representatives. The large number of signatures would make the use of seals difficult and cumbersome.

11 FAM 745 DISPOSITION OF FINAL DOCUMENTS OF CONFERENCE

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

At the close of a conference, the remaining supply of working documents (for example, records of committee meetings, verbatim minutes, etc.) usually is placed in the custody of the host government or the organization which called the conference for appropriate disposition. It is not proper for definitive commitments constituting part of the agreement to be embodied in such working documents. Definitive commitments must be incorporated only in a final document to be signed or adopted as an international agreement. The final documents of the conference may include a Final Act (see 11 FAM 740.2-5) and separately, the text(s) of agreement(s). The practice of signing a Final Act is still followed in many cases. In any event, any agreement formulated at the conference must be engrossed as a separate document and signed or adopted. The signed or adopted originals of the final documents of the conference are turned over to the government or international organization designated in such documents as depositary. If the conference is not held under the auspices of an organization, it is customary for the host government to be designated depositary, but it might be appropriate, even in such case, to name an organization, such as the United Nations, as depositary. The decision is made by the conference, with the concurrence of the government or international organization concerned.

11 FAM 746 PROCEDURE FOLLOWING SIGNATURE

11 FAM 746.1 Understandings or Reservations

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

If it is necessary to inform other governments concerned, and perhaps obtain their consent, with respect to an understanding, interpretation, or reservation included by the Senate in its resolution of advice and consent, this Government communicates with the depositary, which then carries on the necessary correspondence with the other governments concerned.

11 FAM 746.2 Deposit of Ratification

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

When the depositary for a multilateral agreement is a foreign government or an international organization, the U.S. instrument of ratification (or adherence, accession, acceptance, etc.) is sent by the *Office of Assistant Legal Adviser for Treaty Affairs* to the appropriate Foreign Service mission or to the U.S. representative to the organization if there is a permanent representative. The mission or the representative deposits it with the depositary authority in accordance with the terms of the accompanying instruction from the Department concerning the time of deposit. When this Government is depositary for a multilateral agreement, posts are not authorized to accept instruments of ratification of foreign governments; that is, the foreign government cannot deposit its instrument with the post. If a post is requested to transmit an instrument of ratification to the Department, it must make clear to the foreign government that the post is acting only as a transmitting agent and that the ratification cannot be considered as accepted for deposit until received and examined by the Department.

11 FAM 746.3 Registration

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

See also 11 FAM 750.3-3.

It is generally recognized that the depositary for a multilateral agreement has a primary responsibility for its registration. Normally, the depositary has custody not only of the original document of agreement but also of instruments of ratification and other formal documents. Consequently, the depositary is the most authoritative source of information and documentation.

11 FAM 747 THROUGH 749 UNASSIGNED