



Session 6: Tools for Effective Ratification – Requirements and Practical Experiences

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ICAO



Tools For Effective Ratification – Requirements, Processes and Practical Experiences

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International Air Law Treaty Workshop
Singapore | 12 – 14 December 2023

Overview of Presentation

1. ICAO's role as Depositary
2. Consent to be bound
3. Ratification process
4. Resources to assist with ratification
5. Registration functions



1. ICAO's Role as Depositary

- ❑ The depositary of a treaty is the institution to which that treaty is entrusted
- ❑ ICAO is the depositary of almost 40 international air law treaties
- ❑ The depositary is the custodian of the original of the treaty, typically prepared under its auspices, and the formal instruments relating to the treaty, which are submitted for deposit by States.
- ❑ The ICAO Legal Affairs and External Relations Bureau ensures the performance of the depositary functions.



1. ICAO's Role as Depositary

□ Main depositary functions (Article 77, VCLT)

Two original core functions:

“Custodian” of the original of the treaty

“Gatekeeper” of participation in the treaty

Many related functions

Keep custody of the original treaty, full powers, instruments, etc.

Prepare certified true copies

Handle corrections to the original

Examine that instruments received are in due and proper form

Determine the date of entry into force of the treaty

Inform States (and the general public) on treaty actions, entry into force, status of participation, etc.

Circulate adopted amendments and handle their entry into force

Register the treaty (Art. 102 UN Charter)

Promote participation in the treaty (e.g. treaty events)

Advise on legal requirements for the above treaty actions

1. ICAO's Role as Depository

❑ **The Secretary General of ICAO ensures the proper execution of all treaty actions relating to a treaty for which he acts as Depository and is guided by:**

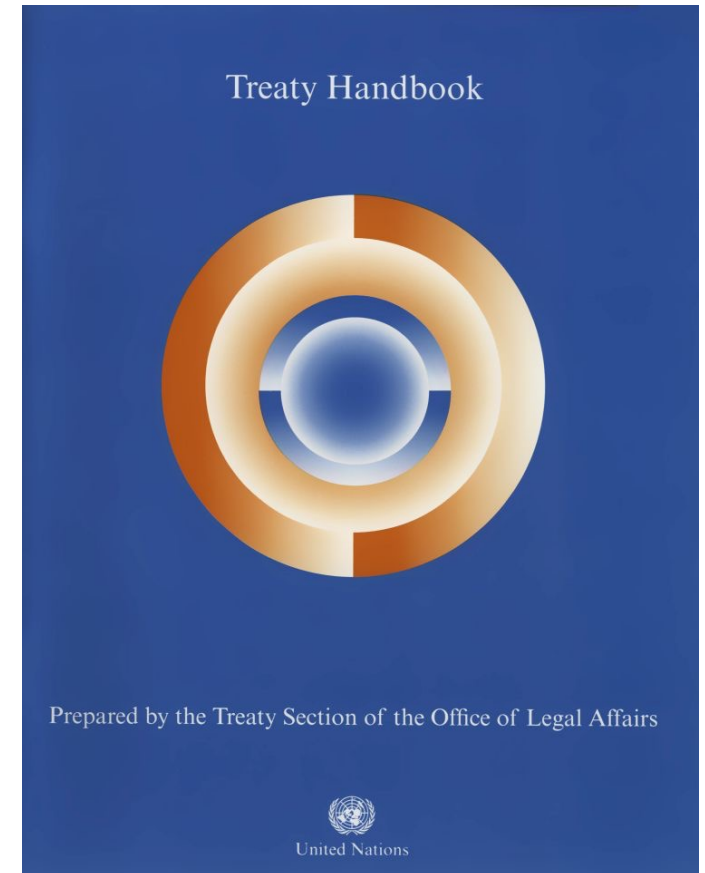
The provisions of the relevant treaty (final clauses)

Public international law, including customary international law as it may be deemed codified in the *Vienna Convention on the Law of Treaties* (VCLT)

ICAO's own depository practice which pre-dates the VCLT and has evolved since

The practice of the Secretary-General of the United Nations as Depository of multilateral treaties

Resolutions of the General Assembly of the United Nations



1. ICAO's Role as Depository

The Secretary General of ICAO is the Depository of the following types of international air law treaties:

Protocols of amendment to the Chicago Convention

Multilateral air law treaties concluded under the auspices of ICAO

Multilateral air law treaties not concluded under the auspices of ICAO (e.g., COSPAS-SARSAT)

2. Consent to be Bound

□ Article 11, VCLT - The consent of a State to be bound by a treaty may be expressed by:

Signature;

Exchange of instruments constituting a treaty;

Ratification;

Acceptance;

Approval;

Accession; or

Any other means if so agreed.

2. Consent to be Bound

❑ **Signature Subject to Ratification, Acceptance or Approval (Article 14, VCLT)**

Where the signature is subject to ratification, acceptance or approval, the signature does not establish the consent to be bound. Rather, it is a means of authentication and expresses the willingness of the signatory State to continue the treaty-making process.

The signature qualifies the signatory State to proceed to ratification, acceptance or approval. It also creates an obligation to refrain, in good faith, from acts that would defeat the object and the purpose of the treaty.

2. Consent to be Bound

❑ **Ratification (Articles 2 (1) (b), 14 (1) and 16, VCLT)**

Ratification means the international act whereby a State establishes on the international plane its consent to be bound by a treaty

The consent of a State to be bound by a treaty is expressed by acceptance or approval under conditions similar to those which apply to ratification

❑ **Acceptance and Approval (Articles 2 (1) (b) and 14 (2), VCLT)**

Same legal effect as ratification, and the same rules apply, unless the treaty provides otherwise

2. Consent to be Bound

❑ **Accession (Articles 2 (1) (b) and 15, VCLT)**

Accession is the act whereby a State accepts the offer or the opportunity to become a party to a treaty already negotiated and signed by other states.

It has the same legal effect as ratification.

Accession usually occurs after the treaty has entered into force.

2. Consent to be Bound

Additional Requirements for a valid instrument

Reservations

Mandatory Declarations

Optional Declarations

Notifications

2. Consent to be Bound

❑ Reservations (Articles 2 (1) (d) and 19-23, VCLT)

A reservation is a unilateral statement made by a State by which it purports to exclude or alter the legal effect of certain provisions of the treaty in their application to that state.

A reservation enables a state to accept a multilateral treaty as a whole by giving it the possibility not to apply certain provisions with which it does not want to comply.

Reservations must not be incompatible with the object and purpose of the treaty. Furthermore, a treaty might prohibit reservations or only allow for certain reservations to be made.

Reservations can be made when the treaty is signed, ratified, accepted, approved or acceded to.

2. Consent to be Bound

□ Declarations

Mandatory, optional, interpretative

Optional and mandatory declarations under the treaty are legally binding. Mandatory declarations and some optional declarations must be included in the instrument of ratification; some optional declarations can be made at any time.

States may make “declarations” as to their understanding of some matter or as to the interpretation of a particular provision of a treaty, “interpretative declarations”. Usually made at the time of the deposit of the corresponding instrument or at the time of signature.

2. Consent to be Bound

□ Notifications

Normally provide information as required under a treaty

Refers to a formality through which a State communicates certain facts or events of legal importance

Distinction between declaration and notification is not always made

3. Ratification process

- **Two-phase process**

- First phase: treaty to be approved for ratification by the national legislature or other organ of a State responsible for approving ratification of treaties
- CAAs can assist to:
 - Identify organs of State responsible for ratification process
 - Propose ratification of treaties to them, follow up for further action
 - Facilitate consultation processes with industry/key stakeholders

3. Ratification process

- **Two-phase process**
 - Second phase:
 - Deposit of an instrument of ratification with ICAO



3. Ratification process

1. In order to ratify/accede to a treaty, a State must deposit an instrument of ratification/accession **in compliance with the relevant provisions of the treaty concerned.**
2. The instrument **must be in due and proper form (Art. 77 (d) VCLT). It must be signed by the proper authority** either by the Head of State, the Head of Government, the Minister for Foreign Affairs, or a person exercising, *ad interim*, the power of one of the above authorities, or with full powers for that purpose.
3. The instrument of **ratification/accession must clearly identify the treaty (exact title, date and place)** concerned and the type of action being taken by the State in accordance with the provisions of the treaty (e.g., ratification, acceptance, approval, or accession).

3. Ratification process

INSTRUMENT OF RATIFICATION OF THE BEIJING TREATY

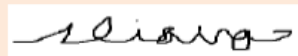
WHEREAS the *Convention on the Acts Relating to International Civil Aviation* was adopted in;

WHEREAS the said Convention was signed on behalf of the Government of the Republic of ;

AND WHEREAS Article 21, paragraph 2, of the Convention specifies that this Convention is subject to ratification, acceptance or approval;

NOW THEREFORE I, Ms. Jane Doe, Minister of Transport declare that the Government of Republic of, having considered the above-mentioned Convention, ratifies the same and undertakes faithfully to perform and carry out the stipulations therein contained.

IN WITNESS WHEREOF, I have signed this instrument ratification on 28 November 2017.

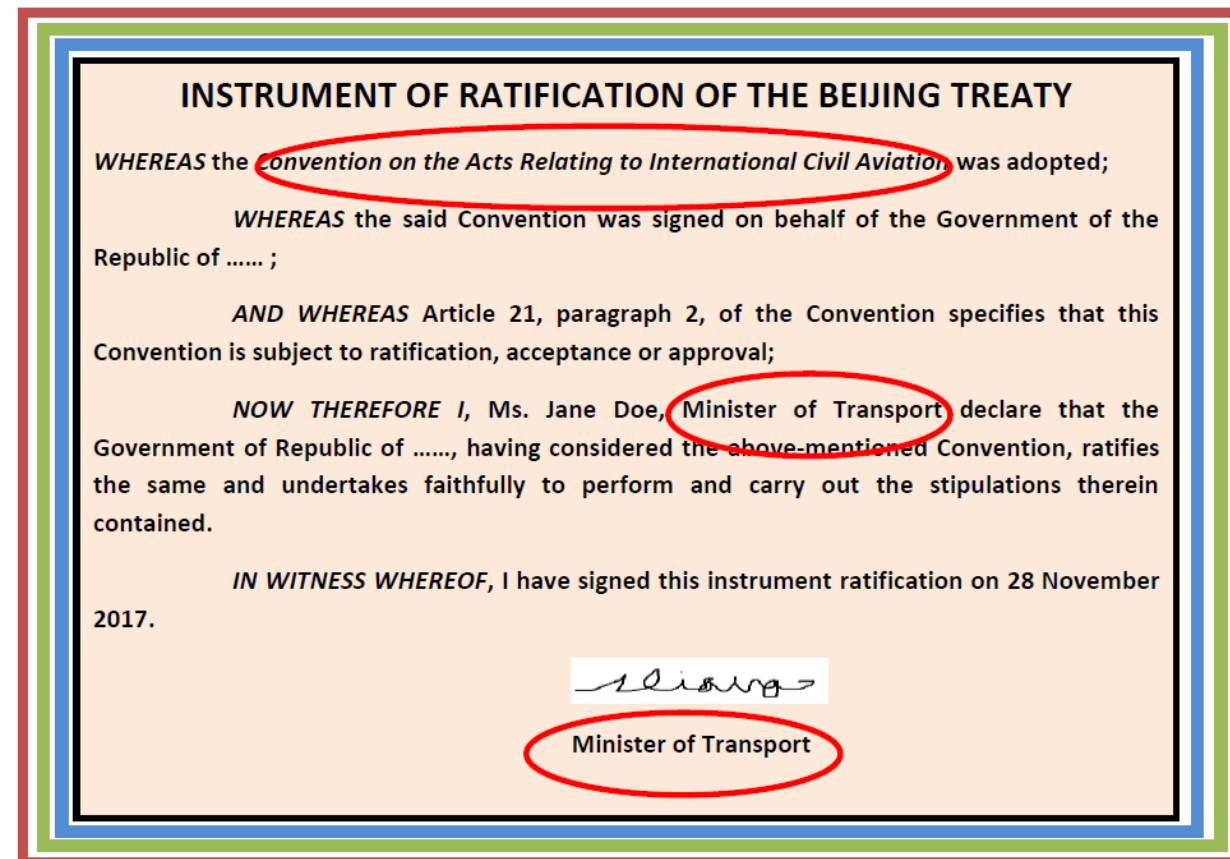


Minister of Transport

3. Ratification process

Common mistakes:

- The title of the treaty
- The date of signature of the treaty
- The place of signature of the instrument is missing
- The treaty has not been signed by the proper authority



3. Ratification process

The Director General of Civil Aviation of the Republic of

DECLARES that the ratification of the Beijing Convention 2010 by the Republic of is effective for its metropolitan territory as well as the following overseas territories only: island A, island B and island C.

ALSO DECLARES that the Republic of will not apply Article 1, paragraphs (f) to (i) of the Beijing Convention.

Signed in the Capital of the Republic of on 10 December 2023.

[Electronic signature] [Electronic seal]

FULL NAME

3. Ratification process

The Director General of Civil Aviation of the Republic of

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**[Electronic signature] [Electronic seal]
FULL NAME**

3. Ratification process

Minister for Foreign Affairs of the Republic of

DECLARES that the ratification of the Beijing Convention 2010 by the Republic of is effective for its metropolitan territory as well as the following overseas territories only: island A, island B and island C.

Signed in NAME OF CITY, in the Republic of on 10 December 2023.

**[Original signature] [Original seal]
FULL NAME**

3. Ratification process

Place of deposit

Instruments become effective only when deposited in original form with the Secretary General at ICAO Headquarters

Or by delivery to the Secretary General or to his representative – D/LEB

Appointment for personal deposit with SG or D/LEB

During Treaty Event at the ICAO Assembly Sessions

3. Ratification process

Date of deposit

Date when original instrument is received at ICAO HQ either by the Secretary General, by D/LEB or by Central Registry

Deposit will produce its effect in accordance with the provisions of a treaty

3. Ratification process

Notification of a depositary action

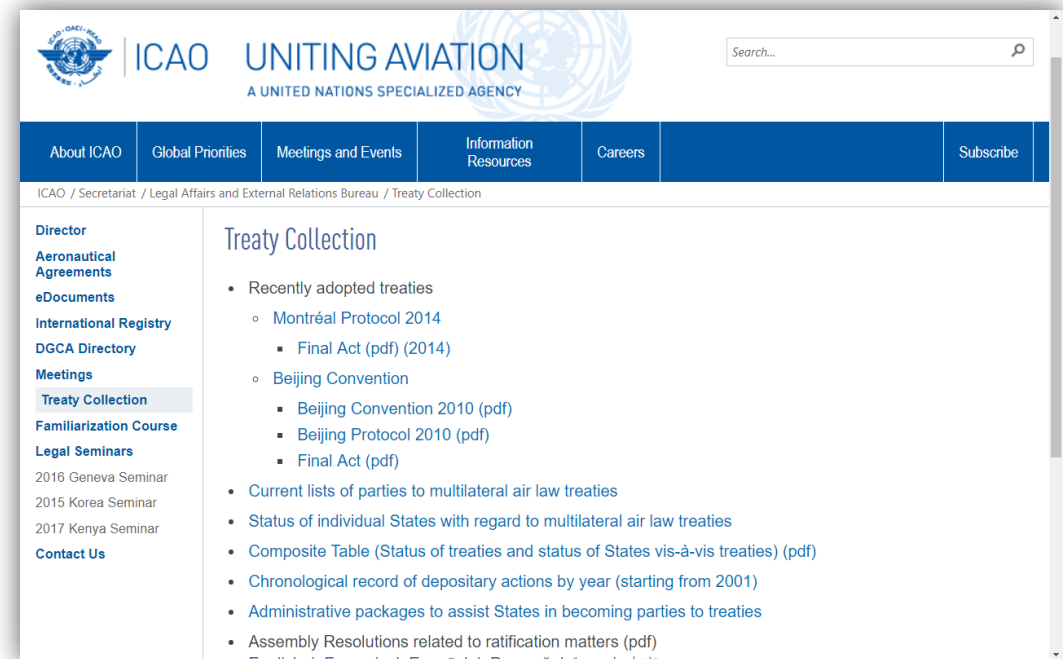
The issuance of an acknowledgement letter or a Note Verbale are the official notifications sent by ICAO to States in relation to any treaty action undertaken by states (e.g., signatures, ratifications, accessions)

All depositary actions recorded by ICAO are made publicly available on the ICAO Treaty Collection Website (e.g., lists of Parties, country status forms, chronological records, etc.)

4. Resources to assist with ratification

ICAO Treaty Collection Website

- Administrative packages providing guidelines for the ratification of, or accession to, international air law instruments in order to assist States in the ratification/accession process
- Lists of Parties to international air law instruments
- Forms indicating the current status of individual ICAO Member States with respect to international air law instruments



5. Registration Functions

Registration Functions

- ❑ Registration of aeronautical agreements and arrangements under Article 83 of the Chicago Convention
- ❑ More than 5000 registrations publicly available on WAGMAR
- ❑ WAGMAR: online registration platform, including Article 83 *bis* agreements
- ❑ *Rules for Registration with ICAO of Aeronautical Agreements and Arrangements*

ICAO | WAGMAR WEBSITE OF AERONAUTICAL AGREEMENTS AND ARRANGEMENTS

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WAGMAR

WEBSITE OF AERONAUTICAL AGREEMENTS AND ARRANGEMENTS

WELCOME TO WAGMAR

Notice : Migration of Agreements and Arrangements from ICAO's Database of Aeronautical Agreements and Arrangements (DAGMAR) is partially complete. Some Agreements and Arrangements may therefore not be accessible on WAGMAR at this time. While the situation is being resolved, please note that you may access preexisting registrations on DAGMAR at the following address:
https://cfapp.icao.int/dagmar/main.cfm?UserLang=_e.

Pursuant to the Convention on International Civil Aviation States are required to register international aeronautical agreements and arrangements with ICAO. WAGMAR permits States to register such agreements and arrangements on-line. It is also available to States, operators and the public to search for information concerning registered agreements and arrangements. If you would like to find out more about WAGMAR, please click on the Video tutorial button below for further information.

For any questions with respect to the ratification process with ICAO or on registration functions please do not hesitate to contact LEB

Emails:

- treaty@icao.int
- officeleb@icao.int





Thank You!